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THE LAW OF OMISSIONS AND NEGLECT OF CHILDREN *

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The sort of omission that is punished by statute is neglect of a duty or obligation. Generally some obligations are thought to be deserving of enforcement. They then properly belong in a society's legal code. Other obligations are merely moral and are outside the purview of law. Thus, only omission of a legally binding obligation is a matter for law enforcement. The question to be considered here is: Should there be an enforced legal duty of parents to support their minor children?[1]

Liability under the law for a wrongful injury ought to be based on direct connection to an intentional action of a rights-invading sort. Consider the following example, taken from an article by Daniel Dinello: A hospital has two patients, Jones and Smith. Each has only one kidney as a result of previous operations. Jones will die in two hours unless he receives a heart transplant. Smith has a severe kidney infection in his one remaining kidney. If Smith does not receive a kidney transplant, he will die in approximately four hours. When Jones dies, his kidney can be transplanted to Smith, or Smith could be killed, and his heart transplanted to Jones. By hypothesis, circumstances are such that there are no other hearts or kidneys available within the time necessary to save either person.[2]

In this example, Smith and Jones are receiving all appropriate medical care except for the transplants. Smith is not killing Jones by being slightly healthier.[3] It is Jones's heart ailment that is killing him. However, if Jones stabs Smith (taking care, of course, not to damage Smith's heart) or the doctors (perhaps acting as Jones's agents) stab Smith, the intentional stabbing is what kills Smith.

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With the importance of causality thus noted, we can now go on to distinguish between commission and omission. Anglo-American law generally follows the idea of causality in making this distinction. The distinction is clear and bold in the traditional reasonings of the law. Francis H. Bohlen writes:

> There is no distinction more deeply rooted in the common law and more fundamental than that between misfeasance and non-feasance, between active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others, or to protect them from harm not created by any wrongful act of the defendant.[4]

The basis for the distinction goes back to the principle of causality in stressing that misfeasance is an attack upon the victim's rights, whereas nonfeasance lets him alone, but without having received a boon that might have been conferred upon him. Bohlen therefore goes on to say:

> The final physical injury to the plaintiff may be the same whether defendant's alleged misconduct is an act of violence or a failure to protect him from the violence of others. But, there is a point intermediate between the plaintiff's actual harm, and the defendant's misconduct, where its consequences are substantially different. In the case of active misfeasance the victim is positively worse off as a result of the wrongful act. In cases of passive inaction plaintiff is in reality no worse off at all. His situation is unchanged; he is merely deprived of a protection which, had it been afforded him, would have benefited him . . . By failing to interfere in the plaintiff's affairs, the defendent has left him just as he was before; no better off, it is true, but still in no worse position; he has failed to benefit him, but he has not caused him any new injury nor created any new injurious situation.[5]

At present, a parent or medical professional who omits to provide lifesaving customary medical care for a minor is usually considered criminally liable by the courts.[6] The crimes committed may include murder, involuntary manslaughter, child abuse, and child neglect. However in ***Bradley v. State***,[7] where the statute spoke of homicide in terms of a positive act, the procurement of a positive act, or culpable negligence, the court properly took the causal view that an omission or neglect cannot be the basis of an indictment for homicide. The court held that if an act of aggression by a third party, a disease, or an accident were the direct cause of a minor's death, then the parent's failure to provide subsequent medical care did not make the parent liable for homicide (though the parent was probably liable under existing law for neglect of the statutory duty to support).

OMISSIONS

Examination of Anglo-American law shows that neglect of four sorts of legal duty is punished: duty to help the government,[8] status-based duties, duties arising from creation of peril, and contractual duties.

First let us consider the legal duties which are believed to make it less costly for government officials to run the governmental apparatus. An example would be the duty to pay taxes and keep and provide information relevant to the payment of taxes.[9] Another example is the duty to register with and cooperate with the system of military conscription.[10] These examples are intimately intertwined with what Robert Nozick has called "the fundamental question of political philosophy," namely, whether there should be a government at all.[11]

Without settling this fundamental question, let us note that a legally enforced duty to cooperate with conscription, for example, is not a necessary requisite of maintaining a rule of law in society, and this may well be true of numerous other duties to aid the government.[12]

The second sort of legal duty that is enforced is the duty (reminiscent of the feudal era and often dating back that far) of carrying out the customary activities of some occupational status.

Sir Anthony Fitzherbert, in his treatise *De Natura Brevium* (1537), lists as known actions on the case a group of cases in which nonfeasance is punished. In this group are obligations attached by custom as an incident to the tenure of a particular estate, to the incumbency of an office, or to the exercise of certain trades and callings. Also in this *assumpsit* group are promissory contracts which were viewed at that time as no different from the assumption of feudal role-expectations.[13]

Such persisting status-attached legal duties would include duty of a master to care for a servant or apprentice, duty of a husband to protect his wife,[14] duty of a licensed professional to care for clients,[15] duty of an innkeeper to serve all comers, duty of a sea-captain to care for a ship's crew and passengers,[16] and duty of a parent or guardian to care properly for a child.

Some of these legal duties that have their historical origins in obligations of status could be justified in particular situations on creation-of-peril grounds. Thus, a surgeon who cuts into his patient could be held bound to sew up the patient not on a professional–client basis, but on the grounds that the surgeon had brought forth the peril faced by the patient.[17]

But many of the legal duties, such as those of innkeepers, are clearly status-related.[18] The duty of a parent to care properly for a child is not based somehow on the fact of generation but on the parent's status *vis-à-vis* the child, for the same duty devolves upon a step-parent, adopting parent, or guardian.[19]

Even if the legal duty of parents to support their minor children takes the form of a status obligation like that of feudal times, justifications that are advanced for the duty to support rarely depend entirely on the status relationship. After the Enlightenment and the liberal revolutions of the 18th century, status as a basis for obligation has rightly been suspected of being rationally indefensible.

Modern ethical thought rejects status-based legal duties for good reasons. Not only does status-based duty often fly in the face of the principle of causality, but status-based duty also permanently freezes legal rights and duties in traditional categories, despite the inadequacies or illogic of these categories. In the words of Joseph Tussman, "Legitimate tends to mean customary; the obligatory is simply what is done; the 'moral' shrinks to 'mores'."[20]

For example, the legal reasoning in the 1946 war-crimes indictment of Gen. Tomoyuki Yamashita focused on his status as a military commander and adopted a non-causal theory of crime. Gen. Yamashita was the commander of all Japanese forces in the Philippines at the close of World War II. After he surrendered, Gen. Yamashita was tried before an American war-crimes tribunal in Manila.

Whereas the war-crimes charges at Nuremberg always alleged that the defendents had directed, planned, or participated in crimes, Gen. Yamashita, in contrast, was convicted of failing to control soldiers under his command. Members of the Japanese armed forces in the Philippines did commit war-crimes. But absolutely no evidence directly implicated Gen. Yamashita in the crimes. He was convicted of breach of a legal duty befitting his status. The dissenting opinion of Justice Frank Murphy correctly emphasized that the principle of personal culpability was disregarded in this judicial travesty.[21]

The third sort of legal duty that is now enforced by the criminal justice process is duty founded on creation of peril. The criminal law punishes persons who put into motion some force that invades individual rights and who then neglect to halt the force which they originally set in motion.[22] What is really being punished is the bringing forth of an emergency, as when the pilot of a passenger airplane bails out on a whim, leaving the passengers to crash. Returning to the idea of causality and its central role in the law, we can see that the creator of the peril has effectively committed an invasive act. If he neglects to halt or mitigate the force or effect of that act, then he can rightly be held responsible.[23]

A person is culpable who omits to halt a force which he originally put in motion. If, for example, a person accidentally starts a fire in a building, then escapes the building, but sees others who could be rescued still in the building, it is his duty to try to aid them.[24]

While the accidental arsonist created the peril whicl served as an instrument for invading his victim's rights, the duty of the perpetrator to aid the imperiled in such cases is to be distinguished from a more generalized duty that is sometimes advanced, namely, a duty of everyone to aid the imperiled. According to this view, a person in need has a just, lawful claim on the aid of others.

Some aspects of the welfare state, a duty to care for a suddenly incapacitated guest,[25] a mother's duty to bear and nourish a child in her womb, and parents' duty to support a child[26], are sometimes held to be justified along precisely these lines.

First of all, it should be noted that the supposed legal duty to support, rescue, or aid is not a universal duty that applies to all potential benefactors in all situations at all times. Robert Hale makes this clear in discussing rescues:

> If a man falls into a river, it cannot be the legal duty of everyone to aid him — a legal wrong to *abstain* from helping. In the first place, relatively few are in a position to help. Failure on the part of someone to be there, and so be in a position to help, can hardly be a legal, or even a moral, wrong, unless that person has in some way assumed responsibility. Moreover, if there are several passersby, each capable of rescuing the drowning man, it cannot be the legal duty of *all* to do so. If all attempted, they would get in one another's way, and fail in the attempt. If *one* does the rescuing, the others cannot well be accused of legal wrong because they abstained. But on which of them could the law fasten a duty to help? The one who does help would evidently release all others from any duty in the matter. It is not so when the duty is to refrain from something, such as assault and battery. One person may do his duty by *not* assaulting but everyone else remains under a like duty just the same.[27]

Thus it appears that the supposed duty to aid the imperiled does not have the property of universality, a property which legitimate legal duties (such as the duty *not* to assault) possess because they are generalizations based on the nature of man and reality.[28] Let us now examine the substance of the proposed duty-to-aid-the-imperiled in greater detail.

The key moral issue is this: In situations where one person's survival absolutely depends upon actions by other persons, may the endangered individual properly demand these services as a right, i.e. independent of, and perhaps in conflict with, the will of the donor?

In an article entitled "A Defense of Abortion", Judith Jarvis Thomson presents an example which illuminates the problem. Suppose that you wake up one morning and find yourself back to back with an unconscious violinist — a well-known and now unconscious violinist.[29]

He has been diagnosed as having a fatal kidney disease, and the Society of Music Lovers has surveyed all medical records and ascertained that only you have the correct blood type.

The Music Lovers have now kidnapped you as a consequence, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as yours.

A hospital official tells you that since the violinist is attached to you, to unplug him would be to let him die. But, the official assures you that after nine months, the violinist will be cured, and you can be released from this bondage.

Thomson also presents a different example. Suppose that I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow. Now it would be very nice of Fonda to fly a thousand miles to do this. But do my friends have a right to make him do it? In response to this issue, Macaulay once wrote:

> It will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that if it were not performed the person who required it would die.[30]

Thomson offers yet a third example that illustrates the difference between charitable behavior and justice and is directly applicable to the abortion question. She says: Suppose a boy and his younger brother have jointly been given a box of chocolates for Christmas. Then suppose that the older brother walks off with the box and refuses to let his brother have any of the candy.

This is injustice, because the older brother is taking what the younger brother is entitled to. The younger brother has been given just title to half the candy, and the older brother is now stealing it from him.

Now, however, suppose a new situation in which the box of chocolates was given solely to the older brother. The younger brother is enviously watching the older brother eat the candy.

Someone might say to the older brother: "You ought not to be so mean. You ought to give your brother some of the chocolates." We may agree, if only for the sake of argument, that the suggestion is morally appropriate, but it does not follow from this that the younger brother has a right to some of the candy.

Many might say that the older brother was being stingy. But if we were being precise about our language, we would not say that he was unjust, for in this case the older brother holds valid title to the candy.

On another occasion, Thomson writes:

> There are many, many things we ought not do to people, things such that if we do them to a person, we act badly, but which are not such that to do them is to violate a right of his. It is bad behavior, for example, to be ungenerous and unkind. Suppose that you dearly love chocolate ice cream but that, for my part, I find that a little of it goes a long way. I have been given some and have eaten a little, enough really, since I don't care for it very much. You then, looking on, ask, "May I have the rest of your ice cream?" It would be bad indeed if I were to reply "No, I've decided to bury the rest of it in the garden." I ought not do that: I ought to give it to you. But you have no right that I give it to you, and I violate no right of yours if I do bury the stuff.[31]

In the case of abortion, the woman holds valid title to her own body. The fetus, if we grant its personhood, has title to its body. But, I would argue, the woman has not transferred title to supportive nourishment to the fetus nor can the woman rightfully be forced into the servile status of involuntarily nurturing the fetus. If the woman wants to unplug the fetus attached to her body, it is her absolute right to do so.

Some may be displeased by Thomson's analogy between a fetus and a sick violinist. Yet we must recall that by hypothesis the fetus is a person from the moment of conception, and recall that this "person" attaches itself to the body of the mother after conception. This person burrows into the wall of the womb. Then, this person expands like Alice-in-Wonderland in the rabbit's house. This is all quite like (in terms of its aggressive character) the case of the violinist attached back-to-back to the kidnapped blood donor.

Hence it is a misreading of the situation to say that the mother created peril aimed at the fetus. It is the fetus which has attacked the mother. Once the mother has freed herself of the fetus, the fetus dies on its own, when the method of abortion removes the fetus intact, not because of force directed against it by the mother.

Just as the supposed duty to aid the imperiled is unsatisfactory as a moral basis for imposing a legal duty to support a fetus (thought of as a person) on a mother, the same supposed duty is unsatisfactory as a basis for imposing a duty to support children on parents.

In any case, Anglo-American law has not recognized a general duty to aid the imperiled. Instead the parental duty to support a child is a status-determined duty. It is similar to the status-determined duty of a husband to support his wife. Such rules based on status have meant that radically different treatment is owed others, depending on their status.

Illustrative of this is the 1907 Michigan case of *People v. Beardsley*.[32] Beardsley had spent the weekend in his apartment with a woman while his wife was away. In the course of events, the woman took some narcotic drugs (against Beardsley's wishes) which put her into a coma, shortly before the wife was expected to return. Beardsley was quite drunk at this point, but he got a friend to move the woman to another apartment. Because there was considerable delay in getting a doctor, the woman died. The appeals court reversed the conviction of Beardsley for manslaughter, saying that Beardsley was under no duty to care for the woman.

The fact that it is neither genetic ties nor need, but "feudal"-type status which governs such cases is shown by *Rex v. Smith* where a sister was found not to have a duty to care for her mongoloid brothers. In contrast, one can see the importance of status in *Stehr v. State*,[34] where, under current legal doctrine, a stepfather had a positive legal duty to care for a stepchild even without an adoption.[35]

A third legally enforceable duty has been contractual obligations. The present author, however, has maintained elsewhere that the only properly enforceable contracts are those in which transfers of property title have been agreed upon. Mere promises or induced expectations should not be legally binding; only the agreed-upon transfers of property.[36]

ABANDONED RESCUES

In addressing the question of whether there is an enforceable parental duty to support, we have thus far considered such conventional duties as legal duties imposed on persons by the government for the government's convenience, and legal duties imposed on persons when they are in a certain status or customary role. We have also considered the natural legal duty of a creator of peril to aid his victim and the supposed natural legal duty of all to aid those in need.

Yet a major notion of legal obligation remains: the obligation of contracts. It was pointed out earlier that Fitzherbert's 16th-century legal treatise *De Natura Brevium* grouped status-determined duties together with contracts. While this seems preposterous to moderns accustomed to Maine's account of the evolution from status to contract, Fitzherbert's classification is not so bizarre as it at first seems. The source of the similarity between status and contract lies in the fact that much of the law of contracts treats contracts as acts of assuming a status rather than as exchanges of titles to goods.

Some persons believe that the obligation to support children stems from a contract or implied contract between the parents themselves or between the parents and children. Before turning to the problem of implicit contracts, it should from the first be clear that no transfer of property title has occurred in such alleged contracts, and that therefore they should not be legally binding.

Before discussing implicit contracts, let us consider the intriguing case of "abandoned rescues".

Some have argued that abandoned rescues are a special case of duty to aid the imperiled in which the law ought to enforce the duty.[37] I am treating this question here rather than with the duty to aid the imperiled because I think contract theory governs many such cases. Imagine a situation in which person A begins to act in a way that leads other potential benefactors to believe that A will aid person B (who is in peril). In this situation these other potential benefactors might well decide not to act to aid B because they expect A to do so. However, in the hypothetical situation, A does not follow through. Person A seems to abandon the task he had appeared to be engaged in. In fact, person A even stops too late for the other potential benefactors to now undertake the rescue of B on their own. The question is whether person A has invaded anyone's rights, either those of the person in peril or those of the potential benefactors.

The hypothetical situation I have been describing here may seem too abstract. If so, imagine a situation in which a person is drowning in view of a beach crowded with persons. One person acts as if he plans to rescue the drowning person, so the others make no effort to rescue. But the person who was acting as if he were going to help, in fact does not help. It is too late for the others to save the drowning person. Has a crime been committed?

Those who would contend that abandoned rescues should be treated as crimes are relying too heavily upon slippery notions of tacit contract and one's legal right to have one's mere expectations fulfilled.

Few would contend that the rescuer (A) of a person (B) stranded on a cliff or drowning in the surf should be legally compelled to continue the rescue once A has decided that additional efforts are too costly or risky to A. Such an assessment by A must be in terms of A's own values. Marc Franklin offers the example of a person who swims out to rescue a drowning person, gets within five feet, sees that the drowning person is a personal enemy and then decides to turn back.[38]

In the hypothesis, A has not physically attacked the other potential benefactors in an effort to stop them from aiding B. The other potential benefactors do not have a legitimate right that their mere expectations will be fulfilled. If the other potential benefactors do not trust A's judgement, they can attempt to make a bilateral title-transfer contract with A. Person B (especially if he is on a cliff rather than swallowing water in the surf) can likewise attempt to make a bilateral contract with A if the situation seems to demand it.[39] It does not appear that the abandonment of a rescue effort *per se* violates anyone's rights.

IMPLIED CONTRACTS

As a final matter in our consideration of the law of contracts, we must examine the notion of implied contract. At present, persons do not usually sign formal contracts to deliver nourishment to a fetus or items that will support a child. Given this situation, moral opponents of abortion or child neglect speak of tacit consent, implicit promises, and implied contracts.[40] Hence we must turn briefly to the nature of implied contracts.

In 1893 in *Regina v. Instan*, a British court found that there was a contracted undertaking in a situation in which an aged women lived with and financially supported her niece. There was no formal assumption of the task, but the court inferred a contract to care for the aunt as implicit in the situation. Because this court-constructed tacit contract was an *assumpsit* contract for personal services, the court's holding would certainly have been invalid in a legal system governed by the title-transfer approach to contracts.

But even within the terms of the *assumpsit* approach itself, there are difficulties with the notion that a contract is somehow "implicit in action". Joseph Tussman writes: "The question of tacit consent is the question of whether there are some actions, including perhaps, the failure to act, which can properly be regarded as the equivalent of . . . express consent."[41]

The example of the person who goes into a restaurant, sits down at a table, orders a meal, and eats it comes to mind. The custom of regarding this as an implicit contract to pay for the meal is not an unreasonable one. But it should be borne in mind that a formal and perfectly legitimate written contract could easily be introduced into this picture.

The danger is that to argue that the contract is somehow "implicit in action" can easily prove too much. For example, Hobbes argued that if a slaveholder did not chain his slaves at all times but allowed them to roam about a bit, then this trust of his slaves by the slaveholder obligated the slaves to obey the slaveholder's every wish. Hobbes carried this over to the political realm where he argued that because the inhabitants of a territory went around acting as if they enjoyed the king's peace, they thereby obligated themselves contractually to obey him as their absolute sovereign.[42]

Locke's great adversary, the patriarchalist theorist Robert Filmer, noted that if tacit acceptance is the standard according to which one decides whether an obligation exists, an obligation will always exist to any regime in power. There will be no way to differentiate in behavorial terms between popular assent to a Lockean regime and acquiescence in the face of domestic usurpers or foreign conquerors.[43]

Moving from the question of political obligation to the question of obligation to support, let us consider the case of a person who by a voluntary act rescues a child from otherwise certain death in a flaming auto wreck that kills the child's natural parents.

Like the natural parents, the rescuer has, by a voluntary act, given life (in a sense) to the child, but is it reasonable to say that the rescuer now somehow owes to the child, the child's maintenance? This would seem to be a sort of monstrous involuntary servitude that is being foisted upon a rescuer.

While our digression has at times carried us somewhat far from the parental duty to support, the problem with implicit contracts has been illuminated in the process. The basic problem is that unless a formal contract should be substituted without controversy, deriving obligations from implicit contracts looks very much like simply imposing obligations on others by force. Then we are no longer talking about contract and consent but about might defining right.

Still, we must examine the actual contractarian case against abortion and child neglect. For contractarians, whatever claim the fetus has to support must stem from the mother's supposed consent to its presence. At the outset, there is some question as to whether it is proper to call sexual activity a consciously purposive act intending procreation. Surely, for most people most of the time, sexual activity is not engaged in for this purpose.[44]

In addition, contractarians must logically exclude any duty to support where the fetus is the result of rape. Anti-abortion contractarian Thomas Johnson writes:

> Are there other circumstances that might arise which would, or could, legally and morally permit an expectant mother to undergo an abortion? The answer is yes — in cases of legally proven (which is sometimes difficult), unwillfully engaged-in acts of rape or incest. When an individual does not commit an act of his own free will, he (or she) cannot be held responsible for the consequences of this act.[45]

Thus, the contractarians who oppose abortion and child neglect do not start with the rights of persons and then consider whether withdrawal of support is criminal or noncriminal. Instead, they begin with the generation of obligations via implied contracts.

Judith Jarvis Thomson notes that these contractarians may also have to exclude duty to support in cases where fetuses result from accidental pregnancy and imperfect contraception as well as in cases of rape.[46] Thomson says that if a room were stuffy and she raised a window to air it out, and a burglar climbed in, it would be inappropriate to say:

> "Ah, now he can stay, she's given him a right to the use of her house — for she is partially responsible for his presence there, having done voluntarily what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars enter buildings."

Thomson goes on to point out that it would be still more inappropriate to say this if she had had bars installed outside her window, and a burglar were able to enter only because of a defect in the bars. The total inappropriateness remains if we imagine that it is not a burglar who climbs in, but an innocent person who blunders or falls in.

I would extend this critique of the contractarians to cover intentional pregnancy. A contract surrendering control over one's body should be legally voidable because enforcement of such a contract would be alienation of a person's will.

To illustrate this point concretely, consider the case of a patient who gives explicit consent to electroshock therapy. But after one treatment, the patient withdraws his consent to further shock therapy.

If the hospital staff persist in treating him against his will, they should be punished for assault and battery.

In a non-slave society, one cannot properly give up control of one's body to others via contract; one is naturally the inalienable proprietor of one's will.

A woman who intentionally embarked on pregnancy might learn that a fetus is deformed, is of an unpreferred gender, or she may simple change her mind about child-bearing. Just as the patient's right over his own body rules out involuntary electroshock, so the woman's self-ownership rules out involuntary support. Similarly, a parent's self-ownership, a parent's inalienable ownership of his or her own will, and a parent's right to dispose of his or her own personal services rule out construing sexual intercourse as an implied contract to put one's personal services at the disposal of a child.

Furthermore, while it makes sense to say that if the duty to support arises from the child's being in need, then the duty could be said to be fulfilled once the child is capable of self-support, this explains only how the obligation is dissolved if it is grounded on need. (It also means that parents would be obligated to support for life a child that could never support itself because of its native defects.) If the duty to support arises from the creation of the child, as the contractarians argue, then one wants to know why the obligation to support stops at the age of majority. The parents are still the creators of the child. Why aren't they then obliged to support the child forever?

The position sketched in this paper indicates that parental omissions in cases of abortion and child neglect violate no one's rights. This position has been defended somewhat in isolation from a full-blown theory of children's rights. But it is, at least, consistent with the standard libertarian account of such rights.[47]

Under this conception of the status of children, because parents have produced a child, they have a right to the initial custody of the child (stemming from a simple extension of the Lockean labor-mixture homesteading principle to the production of children).

Parents have a right to initial custody, but if they decide to physically abuse or to abandon a child or fetus, parents cannot rightfully prevent an outsider from taking on support of the child. A market in rights to adopt children would also be consistent with this account of the proper status of children.

While the children live on the parents' property, the parents have the right to set conditions (e.g. curfew hours) on the continued use of that property, provided that these conditions do not violate the child's right to self-ownership. (For example, physical child abuse would be an invasion of a child's rights.)

Once children leave or run away from their parents (which they have an absolute right to do), the same principles of justice ought to apply to them as apply to any other person, including the right to make mistakes in self-regarding actions.

This brief account of the fuller libertarian theory of the status of children should not be regarded as a complete account or satisfactory defense of that full theory. But it does show that the view of omissions defended here is consistent with a larger integrated theory.

We have considered the hypothesis that there should be an enforced legal duty of parents to support their minor children. Having found the various reasons advanced in support of this duty inadequate, we can only conclude that no such duty exists. The burden of proof must rest on the advancers of hypotheses. Until some new compelling defense of the duty to support is offered, one has to regard the notion of a legal duty of parents to support their children as without merit.

NOTES

1. Under Anglo-American law, parents have no common law duty to support and maintain a minor child. The duty was originally imposed statutorily by the poor laws. *Hammond v. Corbett*, 50 N.H. 501, 9 Am. Rep. 288 (1872). In *Gordon v. Potter*, 17 Vt. 348 (1845), the court quotes English cases showing that while there may be a mere moral obligation to support and maintain a minor child, a parent cannot be made liable for necessaries furnished to his child without his contractual agreement. See also *Raymond v. Loyl*, 10 Barb. 483 (N.Y. 1851); *Kelley v. Davis*, 49 N.H. (1870); *Freeman v. Robinson*, 38 N.J.L. 383 (1876); *Jackon v. Mull*, 6 Wyo. 55, 42 Pac. 603 (1895); *Strange v. Strange* 222 Ga. 44, 148 So. 2d 494 (1966).
2. Daniel Dinello, "On Killing and Letting Die" *Analysis*, Vol. 31, No. 3 (January, 1971), pp. 85–86.
3. On consequentialism, see G.E.M. Anscombe, "Does Oxford Moral Philosophy Corrupt the Youth," *Listener*, Vol. 57, No. 1455 (14 February, 1957), pp. 267–268, 271; also Anscombe, letter to the editor, 4 April 1957, p. 564.
4. Francis H. Bohlen, "The Moral Duty to Aid Others as a Basis of Tort Liability," *University of Pennsylvania Law Review*, Vol. 56, No. 4 (April, 1908), p. 219.

See also P. J. Fitzgerald, "Acting and Refraining," *Analysis*, Vol. 27, No. 4 (March, 1967), pp. 138–139.

5. Bohlen, pp. 220–221. Compare Daniel C. Maguire, *Death By Choice* (Garden City, N.Y.: Doubleday, 1974), pp. 116 ff.
6. In the 19th century, courts decided that while parents could be found guilty of manslaughter if neglect of a child led to his death, those who did not have the status of parent did not have a positive duty to aid. Graham Hughes, "Criminal Omissions," *Yale Law Journal*, Vol. 67, No. 4 (February, 1958), p. 620.
7. 79 Fla. 651, 84 So. 677 (1920).
8. The Supreme Court has held that the Thirteenth Amendment did not outlaw enforcement of duties imposed on the individual by the state. *Butler v. Perry*, 240 U.S. 328 (1916).
9. *Porth v. Broderick*, 214 F.2d 925 (10th Cir. 1954).
10. The similarity between duties to the state and feudal status duties is illustrated by the case of the draft. The obligation to serve in the military was a primary one in feudal England. See Lionel H. Frankel, "Criminal Omissions: A Legal Microcosm," *Wayne Law Review*, Vol. 11, No. 2 (Winter, 1965), p. 372n.16. Also see John V. Murra, "On Inca Political Structure," in *Systems of Political Control and Bureaucracy in Human Societies*, ed. by Vern F. Ray (Seattle: University of Washington Press, 1958), pp. 30–41; and Sol Tax, "War and the Draft," *Natural History* Vol. 76 (December, 1967), pp. 54–58.
11. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 4.
12. For example duty to report treasonous activities, jury duty, duty to testify when under subpoena, duty to register firearms purchases, duty to register the passing of $1000 bills, and duty to report felonies. On the latter as originating in the feudal era duty to raise the hue and cry, see Louis Waller, "Rescue and the Common Law: England and Australia," in *The Good Samaritan and the Law*, ed. by James M. Radcliffe (Garden City, N.Y.: Doubleday, 1966), pp. 150–151.
13. Bohlen, pp. 223–225.
14. See *Territory v. Manton*, 7 Mont. 162, 8 Mont. 85.
15. For a placement of this duty in its medieval context, see R. H. Tawney, *The Acquisitive Society* (New York: Harcourt Brace, 1920), pp. 91 ff.
16. *United States v. Knowles*, 26 Fed. Cas. 801 (N.D. Cal. 1864).
17. Concerning the obligations of surgeons, see Oliver Wendell Holmes, Jr., *The Common Law*, ed. by Mark DeWolfe Howe (Boston: Little Brown, 1963), pp. 218–219. The incident on which the novel *Lord Jim* was based can be more fruitfully analyzed if the distinction between status-based duties and duties stemming from the creation of peril are borne in mind. See Norman Sherry, ed., "Sources," in Joseph Conrad, *Lord Jim*, ed. by Thomas C. Moser (New York: Norton 1968), pp. 319–326, for the court of inquiry report on the abandonment of the "S. S. Jeddah."
18. Duties of innkeepers are found in the Civil Rights Acts of 1875 and 1964.
19. Richard V. Mackay, *Guardianship Law* (New York: Oceana, 1948), p. 16.
20. Joseph Tussman, *Obligation and the Body Politic* (New York: Oxford University Press, 1960), p. 6. Compare F. H. Bradley, "My Station and Its Duties," *Ethical Studies* (London, 1876).
21. A. Frank Reel, *The Case of General Yamashita* (Chicago: University of Chicago Press, 1949), p. 242; *In re Yamashita*, 327 U.S. 1 (1946); J. Woodford Howard, *Mr. Justice Murphy* (Princeton, N.J.: Princeton University Press, 1968), pp. 367–377; Fowler V. Harper, *Justice Rutledge and the Bright Constellation* (Indianapolis, Ind.:Bobbs-Merrill, 1965), pp. 180–195; Orvill C. Snyder, "Liability for Negative Conduct," *Virginia Law Review*, Vol. 35, No. 4 (May, 1949), pp. 446–448. Compare Don B. Kates, Jr., "Vicarious and Negligence Liability of Police Superiors in Section 1983 Suits," *Clearinghouse Review*, Vol. 7, No. 7 (November, 1973), pp. 415–416.
22. On this point, see Barton H. Thompson, Jr., "The Model Statute of Omissions "(unpublished ms., 1972), p. 3. Compare H. L. A. Hart, and A. M. Honore, *Causation in the Law* (London: Oxford University Press, 1959), pp. 28, 47, 396–398.
23. This approach follows in part the approach of the German jurist Julius Glaser and is in general accord with Anglo-American law. See Hughes, p. 627. Unless creations of peril are thus narrowly construed any act with unpreferred consequences for some individual will have to be regarded as creating an obligation.
24. Hughes, p. 624. The duty of a party to an automobile accident where there has been an injury to stay on the scene of the accident can be viewed as a duty under the creation of peril doctrine in cases where the attending party is at fault. Where the attending party is not at fault, he is being compulsorily conscripted into first aid work. This duty enforced in hit-and-run statutes serves to cut down law enforcement expenses. See A. M. Linden, "Tort Liability for Criminal Nonfeasance," *Canadian Bar Review*, Vol. 44, No. 2 (March, 1966), p. 48.
25. American Law Institute, *Restatement of Torts*, Second (St. Paul, Minn.: American Law Institute, 1965), sec. 197, illustration D. I believe that moral opponents of abortion are mistaken in relying upon this tort law doctrine. See John T. Noonan, letter to the editor, *National Review*, 8 June 1973, pp. 611–612; and George Steven Swan, "Libertarian Abortion: A Contradiction in Terms," unpublished ms., pp. 7–8; Eric Mack, "Notes on the Moral Legitimacy of Abortion," *Individual Liberty* (September, 1974), p. 4. The duty-to-guest doctrine is based on the decision of the Minnesota Supreme Court in *Depue v. Flatau*, 100 Minn. 299, 111 N.W.1 (1907). Legal scholars have grouped this case with voluntary doctoring cases in standard legal reference material. See 64 ALR2nd 1181. They have done so because the rule under which the court decided the case is more nearly a rule recognizing the duty of a creator of peril than it is a rule imposing a duty to aid the imperiled. The judge's opinion was based on the notion that where a person is so circumstanced with respect to another that it is obvious that, if he does not use due care in his own conduct, he will cause injury to that other person, the duty arises to exercise reasonable care under the circumstances to avoid the injury. This rule is in accord with the principle of causality and sets forth the duty of a creator of peril under certain circumstances. I believe the Minnesota court misapplied this quite reasonable rule in the *Depue* case. From this has arisen the confusion in the second *Restatement of Torts* and in the writings of anti-abortionists.

26. There is some question as to why a duty to support based on need or peril *per se* should devolve upon the child's parents. One could argue that it devolves upon whatever adult is closest to the child at any one time. There are other plausible bearers of such a duty.
27. Robert L. Hale, "Prima Facie Torts, Combination, and Non-Feasance," *Columbia Law Review*, Vol. 46, No. 2 (March, 1946), pp. 214–215.
28. Murray N. Rothbard, *For a New Liberty* (New York: Macmillan, 1973), pp. 150–151; Maurice Cranston, *What Are Human Rights*? (New York: Basic Books, 1962), pp. 36–42.
29. Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs*, Vol. 1, No. 1 (Fall, 1971), pp. 47–66.
30. Thomas Babington Macauley, *Introductory Report upon the Indian Penal Code*, in *Miscellaneous Works* (New York: Harper, n.d.), Vol. 4, p. 252.
31. Judith Jarvis Thomson, "The Right to Privacy," *Philosophy and Public Affairs*, Vol. 4, No. 4 (Summer, 1975), p. 297.
32. 150 Mich. 206, 113 N.W. 1128 (1907).
33. 2 C. & P. 449, 172 Eng. Rep. 203 (Gloucester Assizes, 1826).
34. 92 Neb. 755, 139 N.W. 676 (1913).
35. On this subject see Robert G. Frank, "Criminally Enforceable Duty to Act," *Washington and Lee Law Review*, Vol. 18, No. 2 (Fall, 1961), pp. 312 ff.
36. Williamson M. Evers, "Toward a Reformulation of the Law of Contracts," *The Journal of Libertarian Studies*; Vol. 1, No. 1 (Winter, 1977), pp. 3–13.
37. B. Thompson, p. 2.
38. Marc A. Franklin, *Injuries and Remedies* (Mineola, N.Y.: Foundation Press, 1971), p. 401.
39. Compare R. Nozick, "Coercion," in *Philosophy, Science and Method* ed. by S. Morgenbesser, P. J. and M. White, and P. Suppes (New York: St. Martin's Press, 1969), pp. 449–450. Nozick argues (p. 450) that whether the imperiled person has led a moral life should govern the potential rescuer's moral decision to aid or neglect. Without agreeing with Nozick's moral outlook in its entirety, one can agree that the moral history of the imperiled person might properly figure in the potential rescuer's assessment of whether rescue was worthwhile. The key legal question under normal circumstances is not the clean hands of the imperiled person, but the clean hands of the rescuer *vis-à-vis* the imperiled person. Nozick's dependence on expectations rather than rights for his notion of coercion can be criticized along the lines taken in the paper on contracts mentioned above.
40. For example, see Ronald M. Green, "Abortion and Promise-Keeping," *Christianity and Crisis*, Vol. 27, No. 8 (15 May 1967), p. 110.
41. Tussman, p. 35.
42. Hobbes, *Leviathan* (Oxford: Basil Blackwell, n.d.), pt.1, chap. 14, p. 86.
43. Gordon J. Schochet, *Patriarchalism in Political Thought* (Oxford: Basil Blackwell, 1975), p. 127. Bentham, while having a wholly different notion from Filmer of what constituted an illegitimate regime, also attacked the contractarian notion of virtual consent. See Jeremy Bentham, *Truth versus Ashhurst*, in *Works*, ed. by Bowring (Edinburgh: William Tait, 1843), Vol. 5, p. 235.
44. Graham Hughes notes that the fathering of children may "possibly" be intentional. "Criminal Omissions," *Yale Law Journal*, Vol. 67, No. 4 (February, 1958), p. 599.
45. Thomas L. Johnson, "Abortion: A Metaphysical Approach," *The Freeman*, Vol. 22, No. 8 (August 1972), p. 503. Green, p. 110.
46. J. Thomson, "Defense of Abortion," pp. 58 ff.
47. Murray N. Rothbard, "Kid Lib," in *Egalitarianism as a Revolt against Nature* (Washington, D.C.: Libertarian Review, 1974), pp. 88–95; Walter Block, *Defending the Undefendable* (New York: Fleet Press, 1976).

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HAYEK AND POLITICAL ORDER: THE RULE OF LAW*

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We might assume from the title of Hayek's earliest comprehensive treatment of the subject that the "rule of law" would appear as the summation of his political philosophy, as his legal ideal. Indeed, Hayek's formulation of the principles of the "rule of law" serves as a synthesis of his notions about man, mind, and society, as an application of his epistemological views on the limitations of the human intellect, of his modified rule utilitarianism, and of his notions of spontaneous order in society to the problem of the nature and limits of the liberal state.

In terms of his theory of knowledge, Hayek insists that the limits of the individual man are far more important than the exponents of Reason, with a capital R, would have us believe. Hubristic exaltation of Reason leads, Hayek contends, to demands for social engineering, for the dominance of one or a few minds possessed of true Reason. A realization of the immensity of knowledge synonymous with such social processes as language, the market and common law, that is to say an appreciation of the division of knowledge in society that enables the individual to perform more tasks without conscious effort than he could alone with full reflection, is a sobering experience for the theorist. The conclusion of such meditation upon the intellectual poverty of the single person, in the light of the enormous wealth of the impersonal social forces, is a disdain for subjugating the spontaneous order to the confines of the planner's all-too-limited intellect.

According to Hayek, we act on the basis of rules which we do not, nor cannot in all probability, fully elucidate, much as the billiard player, in the famous Friedman--Savage example, makes use of mathematical laws without explicitly stating them.[1] So also we recognize "friendly faces", hostile glances, and a host of other social gestures without fully articulating the clues that enable us to do so. That is to say, the rules which govern human action are economical, in the sense that they are abstractions which enable us to act without a full consideration of all the facts before us. Men simply cannot be expected to take account of all the possible consequences of their actions, since they are dependent upon contingencies of time and place beyond their calculations.[2] Nor should they be expected to do so, since this would place responsibilities upon them too great to be fully executed.

In the course of the evolution of the human mind, individuals began to differ sufficiently to make it necessary for previously inarticulated social rules, necessary for survival, to be made communicable, so that deviate behavior could be corrected.[3] In fact, it is only when the intellect arises that such deviance, such a choice of accepting a rule or not, becomes possible. The purpose of such rules, articulated or not, is to diminish the uncertainties of human action. In short, the rules serve as knowledge of what not to do. In commenting on Hume, Hayek states,

> His reason for the [insistence on abstract rules] is that human intelligence is quite insufficient to comprehend all the details of the complex human society, and it is this inadequacy of our reason to arrange such an order in detail which forces us to be content with abstract rules; and further that no single human intelligence is capable of inventing the most appropriate abstract rules because those rules which have evolved in the process of growth of society embody the experience of many more trials and errors than any individual mind could acquire.[4]

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Man does not choose between actions according to their known consequences so much as he prefers those actions the consequences of which are predictable over those whose results are unknown. What he most fears, and what puts him in a state of terror when it has happened, is to lose his bearing and no longer know what to do.[5] Sticking to established norms renders the world predictable, whereas departures from them leave men in a state of confusion and fright. It is therefore just as important to obey these negative rules which preserve us from change, given our own partial understanding of the world, as it is to understand the rules whereby the natural order operates. The negative knowledge conveyed to us by these inhibiting rules is just as significant as positive knowledge of the environment, the latter enabling us to make predictions, the former warning us against the uncertain outcome of some actions.[6]

Rules, whether legal or social, in the sense of mores, have as their task the reduction of uncertainty, at least avoidable uncertainty.[7] Therefore they display attributes of generality and equality, in the sense that to be particular is to be treated unequally, entails arbitrariness, which in turn produces uncertainty. Rules, that is, are essentially different from commands in this respect. They do not subject us, according to Hayek, to the will of another, and therefore the data on which we act are unmanipulated.[8] The relation of rules in the social sense to the character of human knowledge is further suggested by the fact that just as all the rules governing social behavior are not, and probably cannot be, communicated, so the rules governing the mind, according to Hayek, cannot be fully articulated, for

> if it ever were to acquire the capacity of communicating these rules, this would presuppose that it had acquired further higher rules which make the communication of the former possible but which themselves will still be incommunicable.[9]

The nature of social rules, being constructed in a process of interaction of human minds, shares in the character of those minds to a more than superficial degree, being, somehow, an extension of the mental sphere via the division of knowledge.

In society, rules permit the harmonious interchange between actors. The individual actor, however, is also faced with the problem of harmonizing his actions into a consistent plan, which is often not possible very far into the future, given changing conditions. But some consistency is brought into our actions if we adopt a framework of guiding rules which will make the general design, though not the particular details, predictable. These rules of guidance abbreviate the circumstances we need to take into account in acting, picking out certain classes of facts as by themselves decisive in determining our actions. But this process of abbreviation is also a process of abstraction, that is of disregard for other details. We can afford to ignore these details because, according to the rules, they are accidental, partial information which, even if we knew and evaluated all such facts, would probably not alter our intention of following the rule.

> It is, in other words, our restricted horizon of knowledge of the concrete facts which makes it necessary to coordinate our actions by submitting to abstract rules rather than to attempt to decide each particular case solely in view of the limited set of relevant particular facts which we happen to know.[10]

These rules, after all, reflect the wisdom of the species, as they evolved in accordance with the survival needs of the given society.[11]

With respect to Hayek's theory of society, the abstract rules we have been discussing are but an aspect of that spontaneous social order, the result of human action, but not of the design of any one actor. They are suitably classified in the same set of processes as language, common law, or the market, i.e. neither natural nor artificial, in the sense of manufactured, but rather socially created:

> These rules have never been invented, and no one, so far, has ever succeeded in producing a rational foundation of the whole of the existing system of ethical behavior. As I see them, these rules are genuine social growths, the results of a process of evolution and selection, the distilled essence of experience of which we ourselves have no knowledge. They have acquired general authority because the groups in which they held sway have proved themselves to be more effective than other groups.[12]

The body of formulated laws will only implicitly contain these rules, these general principles, which are the object of discovery, as in the case of the legal system. The generalizations we can formulate legally are like all generalizations, i.e. probably dependent upon still higher, more abstract rules which, while governing the legal system, or our minds, are not explicitly known.[13]

Hayek makes more explicit his notion of rules in describing the various types of order in society. If an order is achieved by arranging the relations between the parts of that order, there we have an organization. On the other hand, there is the type of order suggested by the social processes themselves, such as language. Here no law-giver exists to arrange the exact position of each word, the general usage of vocabulary. Though the elements of such an order are prearranged by no one, they still form an orderly whole, responding to changes in the environment by way of rules.[14] These rules of the spontaneous order are different from the ones pertaining to an organization. The latter are rules for the performance of a set task and assume that the place of the individual in a fixed order has been deliberately decided — the rules applying to him depending upon his place in the organization. Such an organization Hayek later terms a *taxis*; its kind of rules he labels a *thesis*.[15] This type of designed order is necessary however to enforce the rules required for the formulation of the spontaneous order, termed a *cosmos*. The rules of this order, *nomoi* in Hayek's terminology,[16] even if given once and for all, would require for their enforcement the rationally coordinated efforts of many men. The improvement or changes in these rules may be, but need not be, also the object of rational collective effort.[17] Here, of course, Hayek leaves open a possibility for common law type of judicially-made, or discovered, law. Though some *nomoi* the individuals will follow simply because of a similarity in their environment, and others because of common cultural heritage, still others they must be made to obey because of a public good argument: it would be in the interest of each to ignore these rules, though necessary for the overall order that they be obeyed.[18] Thus, for example, though the desire for a larger share of the wealth in the form of income produces regularity of conduct in individuals in a society based on division of labor and exchange, still this alone will leave the character of that order largely indeterminate, perhaps not beneficent. It is also necessary that certain conventional rules, which do not follow simply from the nature of the knowledge and aims of the individual private actors, in the form of morals and of law, must be followed.[19]

The rules governing organizations range from specific commands to more general imperatives that leave much up to the actor and therefore take advantage of his particular knowledge.

> It is when we pass from the biggest organization, serving particular tasks, to the order of the whole of society which comprises the relations between them and the individuals and among the individuals, that this overall order relies entirely of a spontaneous character, with not even its skeleton determined by commands.[20]

The problem is therefore one of how best to utilize the nature of the spontaneous order so as to take advantage of the knowledge possessed by the individual and to make it work for the common good. Substituting the command of authority for this knowledge entails the foregoing of the advantages of the division of knowledge for the limitation of the guidance of a single mind. We must take advantage of the *nomoi* in the same sense that the chemist takes advantage of the laws regarding the growth of a crystal, or the biologist of the laws of development of an organism: i.e. we must set the limits, or construct the surroundings wherein the process occurs.[21] We will not, of course, be able to predict the exact position of each particle in the crystal experiment, but our resignation of the power to arrange the parts enlarges our ability to get a generally desirable effect (just as in science "the preference for the concrete is to renounce the power which thought gives us"[22]). That is, we must set up the legal framework of society, particularly as regards the distinction between mine and thine, though the applications and changes in this framework may thereafter be left to gradual, spontaneous forces (such as the common law).[23]

We are fortunate in this respect that men differ in their talents and desires, for otherwise we would have to treat each man differently in order to arrive at a social order,

> and it is only owing to this that the differentiation of functions need not be determined by the arbitrary decisions of some organizing will but that, after

creating formal equality of the rules, applying in the same manner to all, we can leave each individual to find his own level.[24]

There is no other way to take advantage of societal forces, or to produce the crystal, than to forego power over the position of individual elements. The point made is not that the individual knows his own affairs better than anyone else does. It is simply that nobody knows who comprehends those affairs more thoroughly.[25] Similar considerations in Plato's *Statesman* leads to an advocacy of the rule of the law: no one can really say who the one wise law-giver is; all such claims will be looked on suspiciously because of the harm inherent in the wicked man gaining political control.[26] Hence subordination to general rules occurs because of considerations of the limitations of knowledge and the possible abuse of power on the part of pretenders to the claims of the wise.

Summing it up, general rules are necessary for important considerations of social utility: they enable us to get the maximum effects from the conditions of decentralized knowledge of particular times and circumstances that must, of necessity, be present in any society. They are a means whereby we can prevent clashes between competing aims; they do not themselves set social ends, i.e. the aims of any particular actor. Rather, they are means by which any participant in the social processes can pursue his own ends within the limits that they set. Given that a man is limited, as an individual, in his knowledge, they give necessary guidance in the face of an impossible task of calculating all the consequences of our actions. "So long as men are not omniscient, the only way in which freedom can be given to the individual is by such general rules to delimit the sphere to which the decision is his."[27] That is, in terms of ascription of ethical responsibility, a primary factor must be the nature of the knowledge of the moral actor. Act utilitarianism, by demanding a full deliberation of consequences, leads to an extension of the concept of responsibility to such a limit that the concept loses any meaning for the evaluation of a single act or set of ethical acts. Not only is ethical responsibility made meaningful by a submission to general rules, but also the ethical freedom of the individual, in the sense of his choice's independence from the will of another and the unmanipulated status of the knowledge by which he makes such choices, is likewise made congruent with, indeed essential for, a minimum degree of societal order. Indeed, general disregard for norms not rationally demonstrated is disastrous for a civilization, in the same sense as the curtailing of the freedom of the individual would be for the possibility of spontaneous social order. The fate of general norms and of individual liberty seem closely intertwined.

The question of justice is, of course, also crucial to the ethical consideration of such rules. If the rules are to be general, that also entails equal treatment of all coming under their rubrics. Only this will provide us with the certainty that alone enables us to make plans, to take advantage of our own set of data and of talents. A distributive theory of justice, according to Hayek, however, runs amiss on these grounds. For a set of social norms treating all men equally leaves the results, in particular details, uncertain. Indeed, given the inequality of men's abilities and the hazards of fortune, equal treatment leads to unequal results.[28] General rules, in Hayek's sense, are a species of what Professor Robert Nozick terms "ethics of constraint".[29] That is, they set certain rules for the game, and whatever results occur are seen as ethically acceptable.[30] Distributive justice, however, aims at an allocation of goods in accordance with merit. That is to say, we can compare a system of allocation of resources in accordance with the desires and judgments of the participants regarding the utility of the acts of their fellows, with a system where such allocation is fully subordinated to ethical worth. Distributive justice is an example of the ethics of the maximization of an end product. Here, of course, the desired result is a just distribution on principles of merit. The mere setting up of the rules of the game is not enough. One must secure the proper reward for all those who merit it, regardless of fortune, or of the whims of the consumer. But the rectification of the result of social interaction to meet the demands of distributive justice entails that men of unequal abilities or moral worth must be treated unequally. Nor must any rules of the game place limits on the final just outcome, just no longer because played in accordance with just rules, but because no rule, but rather a certain outcome, is desired. Given also the fact that men differ upon what constitutes moral worth, and therefore an authoritative judgment on such must come from a set of a few or one individual, the demands of distributive justice can only be met in an arbitrary fashion, in the sense of dependency of the bulk of the players on the will of some other few judges. Yet this nullifies our conditions of certainty and with it any hope of thoroughly tapping the pool of intellectual knowledge so widely decentralized over the various members of our society.[31] In place of our own data, we are given the data of the distributive judges, and therefore our individual knowledge is made less operable, and we lose the sense of freedom in choosing that which apparently must be the basis of ethical action. (Of course, one may be constrained to perform act *X* and still concur that act *X* is the only ethically acceptable action. Nevertheless, not only is it extremely dubious that such an authority will always order the right moral choices, not only is it probably safer, and more efficient in the long run, to permit men to discover the correct ethical act, but also, it seems dubious to ascribe ethical worth where we cannot know that the conditions for choice have been met.)

The domain of political philosophy is the study of the state, the "monopoly of legitimate coercion". How then does Hayek proceed from the nature of general rules to the concept of the liberal state with relation to the idea of coercion? It is basically through the notion, again, of the knowledge necessary for the individual actor in taking his part in the social process. Coercion does not imply that the actor had no choice in the situation, that he was simply unfree as far as the action is concerned, but rather that the coerced party's mind becomes the tool of someone else's will; i.e. "The alternatives before me have been so manipulated that the conduct that the coercer wants me to choose becomes for me the least painful one."[32] The coercer must therefore be able to foresee the coerced party's act, and must desire to bring such an act about. Coercion, for Hayek, does not include all instances of a person acting or threatening to act in a manner "harmful"[33] to another with the intent of changing that second party's intentions. For example, the act of borrowing a book I need from the library, or of making unpleasant noises, will not be construed as coercion. Rather, "coercion implies both the threat of inflicting harm and the intention thereby to bring about certain conditions".[34] It is necessary that the act of coercion puts the coerced into a worse situation than if the act had not been performed.[35]

Coercion has to be distinguished from the conditions men place upon the rendering of particular services. Only in the particular monopoly position where a good or a service is either "crucial to my existence or the preservation of what I most value" can be withholding of said goods be considered coercive.[36] In such circumstances the state must act to ensure that such a monopolist treats all his customers alike, by charging single prices to all, by prohibiting discrimination, that is to say, by insisting upon the application of the rule of law to the operation of this coercive monopoly.

The mere withholding of benefits does not, Hayek insists, fall under this category of coercive activities. Even if the direct circumstances (need of an operation, possible starvation) should force me to take a job I do not desire, or to pay what seems to me an outrageous price, I am not coerced, for the situation that has arisen for me, in a competitive market, is not personally aimed against me, nor has any one person brought it about so as to make me do his will. It is the result of impersonal social forces, contends Hayek, which cannot be said to be either just or unjust, for only the actions of individual actors can be judged in these terms.[37] In this sense such difficulties are no more unjust than natural catastrophes.[38] The evil of coercion is essentially the substitution of another's will for my own, through the manipulation of the essential data of my action. This can be eliminated only by securing for the actor a sphere which will be protected against such manipulation or invasion. Of course, insofar as deception and fraud are also a manipulation of data, they also must be protected against.[39]

The institution which serves to protect the individual is property in its larger, Lockean sense. Its protection necessitates, of course, the threat of coercion to prevent aggressive coercion. But the demarcation of the private sphere cannot be determined by any one man or a group of men, for then the power of coercion would be transferred to that agency (as we shall see, Hayek's concept of generality and equality do not escape this consequence). Nor can the content of that sphere be fixed once and for all (again seemingly in contrast to the later demand for certainty). Rather, it is desirable that the actors themselves, through the social process, presumably by the agency of the common law, in the larger sense, and exchange, in the personal sense, determine the content of their private spheres. What is essential here is not that everyone own property, in the narrower sense of the means of production, but that there be many providers of this means for the actor to pursue his ends, so that he will not be unconditionally subjected to the will of one such owner exclusively.[40]

It might be objected that Hayek so easily dismisses the calamities of the market by claiming that they are impersonal, so neither just nor unjust. In effect may not rules be judged as being just or unjust, apart from the moral disposition of the person designing them? A sympathetic answer to this might be twofold. First of all, the rules of the market are largely undesigned, in the sense of created by any one individual with a set purpose in mind, and it seems rather difficult, if not abusive of ethical discourse, to judge such rules with the *same* sense of the word just as we use in moral approbation. But secondly, may not justice here be interpreted in a way different from that describing a single moral actor? That is, may we not examine the rules of the market in the sense of justice as fairness about which Professor John Rawls speaks?[41] If so, then Hayek's contention would be that "once we have agreed to play the game and profited from its results, it is a moral obligation on us to abide by the results even if they turn against us".[42] That is, if the rules are just, the result is just, in the sense of fair, even if they sometimes produce calamities. Hayek's attempt to show that the market alone is the compatible economic corollary of the rule of law, which he takes to be fair, emerges as the vindication of the fairness of the market itself. A defense of Hayek on this point necessitates a redefinition of justice, so that individual actors can be rule-abiding in a sense that, of course, the rules themselves cannot be.

What of Hayek's basic notion of coercion? It seems both too narrow and too wide in its application. Professor Ronald Hamowy notes that, with respect to Hayek's inclusion of the test of "preserving what I most value", the invitation to a party which I expect, given my great stress on social standing, will become a coercive matter if (a) it is not forthcoming, or (b) some humiliating requirement, such as my washing the dishes, is set as a price for the affair.[43] The case of a water monopoly, with respect to a man dying of thirst, is coercive if such water is not made available at a "reasonable price". But Professor Hayek's Austrian economics seems to suggest that the "reasonable" or just price is whatever price appears on the market — that a competitive price cannot be used as a measure in the absence of competition. Furthermore, if the owner refuses to sell the water at all, as Professor Hamowy puts it, for religious reasons, then the only choice left for the unsuccessful buyer is death by dehydration, surely making him worse off, in Hayek's definition of coercion.[44] Therefore inaction can, paradoxically, be considered coercive. Surely if being "worse off than if the act had never been performed", then I, being a bibliophile, will be worse off if I am informed of the existence of a book which I desire and which the owner will not sell. Certainly the non-performance of this act of selling will not seem coercive, but according to Hayek's criteria even such inaction must be judged as coercive. The invitation to the party must also seem so from the point of view of a worsened situation regarding things I value most, given extreme socially conscious aspirations, as do other situations where, even if my options are widened, the whole situation has made me worse off.[45]

Hayek's delimitation of coercion appears also to eliminate from the notion certain cases that intuitively appear coercive. With respect to the rules of the state falling under the metalegal principle of the rule of law, Hayek remarks,

> Provided that I know beforehand that if I place myself in a particular position, I shall be coerced and provided that I can avoid putting myself in such a position, I need never be coerced. At least insofar as the rules providing for coercion are not aimed at me personally but are so framed as to apply to all people in similar circumstances, they are no different from any of the natural obstacles that affect my plans. In that they tell me what will happen if I do this or that, the laws of the state have the same significance for me as the laws of nature and I can use my knowledge of the laws of the state to achieve my own aims as I use my knowledge of the laws of nature.

The problems in this formulation are various and grave. First of all, the laws of the state are created in a way that the laws of nature are not. They can, being *theses* and not *nomoi*, be changed. If the analogy between the two were to hold, then one would choose to disobey the laws of the state whenever one could get away with it, just as one would choose to avoid getting in the way of one of the harmful manifestations of the laws of nature, hardly an attitude conducive to a spirit of rule of law. Secondly, as Watkins points out, prohibitions may be every bit as costly to the individual as direct commands may be. That is, though more options are open to the individual if he is prohibited from doing some one thing, rather than commanded to do some specific act, still,

> To measure the degree of penalization which a prohibition involves, what we have to weigh against the prohibited course is not the whole class of unprohibited alternatives but just that unprohibited alternative which he (the prohibited party) dislikes least.[47]

In some cases, of course, one would prefer, or be morally bound, to break the stipulations of the prohibition, simply because none of the remaining alternatives mean so much to us as what we are deprived of. Furthermore, giving enough negative rules sometimes narrows one down to a single practical course of action as much as a direct command might do.

The laws of the state are rules that are aimed at limiting coercion by the threat of coercion. "The threat of coercion has a very different effect from that of actual and unavoidable coercion, if it refers only to known circumstances which can be avoided by the potential object of coercion."[48] These laws for the most part either prohibit certain actions or force the individual to fulfill obligations he has voluntarily assumed. The crux of the problem here is that "according to the logical structure of this argument, 'threatening coercion' is not coercion".[49] That is to say, the form of the laws of the state, according to Hayek's criteria of avoidance, differ not at all from the general case where party p has been told to do an act x by a party q, under pain of incurring harm h. In fact, in accordance with this thinking, no distinction can be made at all between a person's being unfree to perform an act, or being coerced into performing it. Obviously, if I do not know the intention of my coercer, I shall not be coerced, although some harm may come to me. But Hayek says that choice is always involved in the coercive relationship. Hence threats, which are in part the announcement of the intent of the coercer, are essential to that relationship.[50] But then the laws of the state, the "threat of coercion", are no different than coercion proper. The real question, it seems, is not whether the acts of the state are coercive with respect to the question of crime and punishment (and, one might add, with respect to taxation and such advantages accruing from that as subsidies to state-run services), which of course they must be. The real question is rather, is the particular act of coercion, whether by the state or the individual, just? Or to formulate it in a way that both Professor Hayek and Professor Nozick do not explicitly state, is the act of coercion within the rights of a particular party? That is to say, an independent ethical criterion seems necessary in judging the status of coercion. As a major objection, what seems necessary is not only the use of coercion to prevent unjust coercion, but more generally to prevent all unjust violence, of which coercion appears as only a specific threat.

The question of the relation of coercion to the manipulation of essential data is also confusing. What of Watkins' example of the worker in a factory whose processes are too complicated for him to understand? If his job is either "crucial to his existence" or "preserves what he most values", are not the orders he receives a manipulation of his data? Will he not believe that the will of another is being substituted for his own in this instance?[51] An objection might be made that this question implies a subjectivistic theory of freedom. That is, it might be contended, a person may well be free from the arbitrary will of another and still believe himself to be unfree. Yet surely this subjective dimension is important to a discussion of freedom. After all, in the notion of coercion the element of threat dominates, yet the threat may very well be a bluff. To the extent to which I find the threat credible, I may be coerced. No one would doubt that the bank teller who handed over the money to a robber brandishing a water gun was coerced, even if, as was the fact, he was free not to do so. Just so, the worker described above may, for all practical purposes, feel coerced, or manipulated, with respect to the job at hand. He will, that is, think of himself as a mere tool. Here the objective criteria come into play: is the worker really being threatened? Is his employment something rightfully owed to him, or is it rather an offer than a threat? Complications arise here over the question of when to apply the objective as opposed to subjective notions of freedom in analyzing some case. In the instance of threats, it seems that we must always ask about the ethical propriety of the threat if we are to discover whether the person was justly coerced, after we have determined whether the threat is or is not credible to the threatened party, which is a means of determining whether the situation is coercive. In terms of the manipulation of data. we must always ascertain whether the situation is one of a threat, or an offer, and then, if the former, again apply whatever canons of justice we possess to its propriety.[52]

But, proceeding from our conclusions that even negative rules may well be coercive, we must further ask whether it can really be said that obedience to general rules makes us freer than obedience to commands.[53] After all, we might counterpose two systems, one where commands are dominant, but do not touch upon things "crucial to my existence" or related to "things I value most", the other where general rules do infringe (taxation, conscription) upon these areas and are in control of much of our daily activities. Shades of gradation between these poles are possible, and it is by no means obvious that general rules would always be preferred in order to maximize liberty, although perhaps general rules have other desirable qualities that make a trade-off with liberty seem desirable. The content, rather than the form, of the general rule, just as the content rather than the form of the command, seems the chief criterion for judgment, at least as far as libertarian sentiments are concerned.

It would be bad enough, from the libertarian point of view, if the state prohibited certain actions whose coercive character was dubious (gambling, drugs, prostitution). Hayek's characterization of the limits of law goes beyond this and enjoins laws compelling positive actions: in those instances where all are treated equally (as in non-progressive or non-regressive taxation), and in those instances where citizens are seemingly treated unequally (the draft). The saving grace of these state actions, according to Hayek, is that they are predictable:[54] one can make one's plans on the sure knowledge of both death and taxes. But the line is not drawn even at this limit, that of certainty. The state may also act where such positive rules are neither avoidable nor predictable, as in the case of jury duty, or service as a deputy constable. Here, what is important is that

> the decision as to who must serve is made to rest on fortuitous processes, such as the drawing of lots. The unpredictable acts of coercion, which follow from unpredictable events but conform to know rules, affect our lives as do other "acts of God", but do not subject us to the arbitrary will of another person.[55]

Again, it might be questioned whether these unpredictable events are so like natural happenings as Hayek suggests. After all, an individual performing, or threatening to perform, an act in order to prevent me from doing some other act makes me, of course, unfree. But so does the individual who sets up some rules (use of lots, etc.) in the present that at some future time will have an undesirable effect on my choice of actions.[56] At this point, Hayek allows far more discretion than he later finds justifiable.

This of course suggests the deficiency of Hayek's presentation with respect to the question of human rights. Although admitting that interference by the state into the envisioned private sphere, such as laws against homosexuality, is undesirably coercive, Hayek's conceptual dependency of rights upon the principle of the rule of law deprives the former of any use as an independent criterion of judging laws. Although in a later essay he defines the rule of law as "uniform rules of just conduct towards one's fellows",[57] he tells us in *The Constitution of Liberty* that,

> Though there can be no doubt that, in order to be effective, it [a law] must be accepted as just by most people, it is doubtful whether we possess any other formal criteria of justice than generality and equality — unless, that is, we can test the law for conformity with more general rules which, though perhaps unwritten, are generally accepted, once they have been formulated. But, so far as its compatability with a reign of freedom is concerned, we have no test for a law that confines itself to regulating the relations between different persons and does not interfere with the purely private concerns of an individual other than its generality and equality.[58]

But the "purely private concerns" of an individual are the sum of "all actions not explicitly restricted by a general law" [59] That is to say, all rights are merely legal guarantees that the government will not act in a certain sphere, that is, a logical consequence of the rule of law. The content of such rights is set by the given governmental rules, and is neither absolute nor immutable.

> In actual fact they cannot mean more than that the normal running of society is based upon them and that any departure from them requires special justification. Even the most fundamental principles of a free society, however, may have to be temporarily sacrificed when, but only when, it is a question of preserving liberty in the long run, as in the case of war.[60]

But even in less pressing times than war the "public interest" may demand the infringement of the rights of particular individuals and groups. In "clear and present danger" situations, the right of freedom of speech may be curtailed to the same extent that habeas corpus might be suspended in a time of siege. Furthermore, the right of eminent domain is granted by Hayek as a necessary and regular power of government provided (a) that it is defined by cases defined by general law and reviewable by the courts and (b) that "full" indemnification for any damage be given to individuals whose "legitimate expectations" have been frustrated.[61]

Though Hayek insists that "In particular, the pleasure or pain that may be caused by the knowledge of other people's actions should never be regarded as a legitimate cause for coercion", and therefore that laws against religious practices or homosexuality among consenting adults are illegitimate,[62] such a judgment cannot be derived from the formulation of the "rule of law" notion, but only from some notion of substantive rights. Though "the morality of action within the private sphere is not a proper object for coercive control by the state",[63] it must be remembered that the definition of the private sphere is itself the result of state action. The content of rights, such as property or "freedom of contract", is not the same as the recognition of those elements of the private sphere.[64] If such rights are variable, if the private sphere is mutable, what happens to the much vaunted claim of certainty which the general rule entails, particularly if the changing of that content is subject to legislative action? As far as the question of "absolute rights" is concerned, it seems that we must either come down on the side of the collective or of the individual in terms of precedent. Hayek clearly favors the group, and individual rights seem to be stressed only for reasons of social utility. As far as the argument from the public interest is concerned, we might reply to Hayek in the same words he quotes from William Pitt at the beginning of Lecture IV in *The Political Ideal of the Rule of Law*: "Necessity is the plea for every infringement of human freedom. It is the argument of tyrants; it is the creed of slaves."[65] The "public interest", as Hayek should know, is the slogan of the ideology of statism; it is as vague a phrase and as subject to redefinition as is Hayek's notion of human rights. But clearly the tendency is for the contents of the former to expand, while the content of the latter becomes trivialized. As far as restitution or indemnification in the full is concerned, how can one judge such a price except in a competitive market? But it was the reluctance of the buyers to raise the price, or, more likely, the reluctance of the holder of the property to sell, that forced the state to resort to eminent domain proceedings. Is any price the "frustrated" party now quotes to be paid? Of, again more likely, is the state's compulsory price to be the last word in indemnification?

If the question of rights cannot be raised without the prior concept of the rule of law being defined, we need to define that doctrine more thoroughly in order to see which governmental actions are just and which are not. As we have seen, coercion is necessary to prevent aggression, the "threat of coercion" is the only guarantee of the private sphere. Government, therefore, is necessitated because of the requirements for a guarantee, a requirement which Hayek assumes can only be forthcoming by a monopoly of legitimate coercion. The limitation of the coercive activities of government to the rule of law, however, is not the same thing as the limitation of the proper role of government. Government may provide other services which are only coercive insofar as their financing is concerned. All arguments against governmental activities in the economic sphere that are in accord with the "rule of law" must be matters of expediency "either because they will fail or because their costs will outweigh their advantages".[66] If the government undertakes to provide services that would not be supplied at all (because of the difficulty of restricting the benefits to those who pay for them), then the question becomes one of whether the cost is worth it. Government may legitimately engage in activities facilitating the acquisition of knowledge or of facts of general value. State enterprise, therefore, is not ruled out. Indeed, situations may arise where it is possible to provide certain goods or services by private effort, but not all the costs or benefits involved would enter into market calculations, and where the state could legitimately assist with production.[67] What is important, however, is that the state be given the monopoly of force alone — and not be granted monopolies in these economic situations, since that would, as we shall see, constitute an infringement of the rule of law.[68]

> The first point that must be stressed is that, because the rule of law means that government must never coerce an individual except in the enforcement of a known rule, it constitutes a limitation on the power of all government, including the powers of the legislature. It is a doctrine concerning what the law ought to be, concerning the general attributes that particular laws should possess . . . The rule of law, therefore, is also more than constitutionalism: it requires that all laws conform to certain principles.[69]

The rule of law is therefore not a rule of the law but rather a meta-legal principle.

Dicey had expressed that principle by the requirements that there be no punishment without a crime (the fact of which is established in an ordinary court); that every man be subject to the ordinary law of the land and to the jurisdiction of the ordinary courts, and by the fact that the general principles of the British Constitution were "the results of judicial decisions determining the rights of private persons in particular cases brought before the court".[70] Lord Hewart remarks that

> No one can lawfully be restrained or punished or condemned in damages except for a violation of the law established to the satisfaction of a judge or jury or magistrate in proceedings regularly instituted in one of the ordinary Courts of Justice.[71]

Hayek's stipulation that all rules of law be general, equally applied, and certain has kindred connotations. The reasons for Hayek's formulation differ considerably from that of these Old Whigs. The latter are simply defending the Ancient Constitution. Lawyers in this tradition have already begun to make their peace with collectivist arbitration.[72] Hayek's concept, however, is based upon more of rationalist than historicist suppositions; that is to say, it is more interested in principles than in tradition, particularly when that tradition can easily become a conveyor of anti-liberal institutions. Not commitment to tradition alone, but defense of traditional institutions of liberty seems to characterize Hayek's insistence on the "rule of law".

Law should be general and equally applied, that is, it should not pick out particular persons or groups. To allow otherwise is to invite arbitrary action, to change the law from a tool to be used by the citizenry into an end which they must serve. Law must be essentially a matter of long-term measures, referring to unknown cases or persons, so that the particular will of the legislators will not dominate the data of present or future actors and hence direct them toward the legislators' ends. Of course, law must always be prospective, not retrospective, in its effects.[73]

Yet certain groups are singled out necessarily by laws (such as those against rape). Hayek suggests that such laws will be consistent with the rule of law if (a) no proper names are used in the law and (b) such distinctions are acceptable to a "majority both inside and outside the group",[74] i.e. if equal applicability is to prevail.

As regards the exclusion of proper names, this is not sufficient for the exclusion of discriminatory legislation. In principle it is always possible to contrive a set of general descriptions that, by their common factors, single out a unique person or class. Thus Professor Hamowy indicates that the city of New York need never be mentioned explicitly in laws of that state's legislature. Rather, references are made to any "city containing a population of more than one million inhabitants according to the last Federal census". So also goes the case with respect to Atlanta, Georgia.[75] All that is necessary for these purposes is for the general characteristics to apply to the required minority or majority group. Hayek admits this possibility and illustrates the lengths to which discrimination is possible in a footnote in *The Constitution of Liberty*.[76] He confesses that "no entirely satisfactory criterion has been found that would always tell us what kind of classification is compatible with equality before the law. To say, as has often been said, that the law must not make irrelevant distinctions or that it must not discriminate between persons for reasons which have no connection with the purpose of the law is little more than evading the issue."[77] Generality, like equality before the law, may always remain therefore an ideal beyond our ability of accomplishment — though not a meaningless one, according to Hayek. That is, it is more the spirit guiding us into framing laws for unknown persons, than the formal generality, that must be the final safeguard. As Leoni points out, there are many genera under which a rule may be subsumed, and many more species under each genus, so that the formal requirement may amount to less than nothing as a safeguard.[78]

With respect to the stipulation of a majority within and without the group favoring legal discrimination, Professor Hamowy's criticism presents a severe obstacle to its practical utilization. Either the word "group" refers to the specific object of the legislation, or to a wider class concerned with such legislation. The former interpretation seems dubious: most members within the group, in the case of discrimination, would be against; in the case of privileges granted, they would certainly favor the law, thus trivializing the standard. The second sense, however, yields an ever-widening circle of groups "concerned" with the legislation. The dividing line here would be of a very arbitrary character. The gerrymandering process of evaluating this line would, of course, leave the majority in full control of determining the composition of the group.[79] As far as privileges go,

> if being favored by the majority outside the group of a statute granting special privileges to a minority is imply the acquiescence of the majority to the statute, [then] the few who stand to gain by the legislation stand to gain much and will lobby accordingly; those who stand to lose, the bulk of the population each individually, stand to lose only a little and are politically unorganized for the purpose of preventing the legislation. In addition, proponents of the legislation often gain the acquiescence of many people by invoking the "national interest" or "our defense posture". The result, almost invariably, is that the legislation is passed and accepted by those "outside the group"[80].

Furthermore, since rights are being left out of the question, it is possible that a coercive law, acceptable to both those inside and outside the group, where the group is narrowly defined, would materialize.[81] These may be laws banning interracial marriage, or interreligious housing, or, for different reasons, laws banning certain drugs and therefore creating a black market desired by the "illegal" producing group.

This second requirement of the law, equality, or rather equal application, attempts to render the content of the law more libertarian, insofar as both governors and the governed will come under its aegis. Hayek admits that certain areas, e.g. religion, may well not be protected by this stipulation if governors and governed differ in their beliefs, or, in a democracy, with respect to unpopular minority fates.[82] Here, of course, the same problem arises of the possibility of group discrimination as did in the case of the rubric of generalization of rules. Some laws clearly have a greater impact upon some groups than upon others, particularly economic regulations such as tariffs and licensing, so effective in the suppression of various minority ethnic groups specialized in certain professions. Furthermore,

> All of the following laws meet the criterion of being "equally applicable"; it is a punishable offense to support subversive political groups (defined in the law as all groups other than the one presently in power); it is a punishable offense to undermine faith in the United States government (thereby curtailing all political criticism); it is a punishable offense to read any literature not approved by the censor, to smoke, to take certain drugs, to drink alcoholic beverages, to engage in "immoral" sexual activities, etc.[83]

To which list we might add, "it is a punishable offense to cast doubt upon the soundness of U.S. currency or undermine faith in the value of the U.S. dollar and the Federal Reserve System", which would effectively make illegal the teachings of the Austrian School of Economics. Thus Hayek's criterion of equal applicability becomes Leoni's nightmare of "equal application to all those the law applies to"; within each class equal treatment, but as many classes as one wishes and therefore as many laws of the land as one requires for discriminatory purposes.[84]

The first requirement of the rule of law, generality, as described above, refers to the proscriptive character of the rule, its reference to abstractly defined rather than to particular conditions.[85] "Rule of law" theorists particularly object to the discretionary quality of administrative actions that tend to be invasive of the private sphere, and are permitted such powers by delegated legislative authority. It is against the *ad hoc* nature of the actions of these bureaus and of administrative tribunals that the norm of generality is invoked. Discretionary powers are, according to Hayek, perfectly justifiable when they pertain to the direction of resources belonging to the government and its agents. When discretion is widened to include the relationship between the state and the private citizen, then it goes beyond the legitimacy of the "rule of law". Here the same difficulty presents itself as it did in the case of equal application of the laws. Any circumstance of time or place can be made specific, particular, simply by finding a set of general characteristics that apply to it alone.[86] Although in a formal sense no judicial or administrative body, under this principle, could render *ad hoc* decisions, it could easily get around the requirement by this device.

The question of discretion, however, is more complex than Hayek assumes. Not only is there much discretion possible even in a "rule of law" body politic, as we shall see below, but it is not so obvious that discretion, in the sense of Davis's "individualized justice",[87] is an unmixed curse. After all, Hayek makes room for "exceptions to general proscription of stipulated physical actions" since "the law is interested not so much in the physical act (generally) as in attempts to subvert the structure of ordered relationships by contravening the intent of the laws", even if he does not give any guidelines for the definition of the legal terms involved.[88] Killing, for example, is not illegal if performed under such and such a circumstance by a given agent of the law or in self-defense. But surely the concrete circumstances of time and place require discretion, i.e. require the data available to the actor on the scene to be utilized to the fullest. The same desire that decentralized knowledge be utilized in the fullest possible fashion, within the confines of highly abstract rules, also seems to vindicate a like utilization of the expert judgment of the agent of the law faced with a specific judgment regarding application of the principles of that law, regardless of whether that agent be a policeman or a judge. Any sound organizational *theses*, claims Hayek, leave room for the adjustment of the individual to changing circumstances, which it is assumed he knows best.[89] After all, *theses* are rules, not direct commands. Only specific orders, i.e. commands, would eliminate discretion, and why should we treasure individual judgment less in matters of justice than in matters of production? Perhaps, it might be replied, because the matters of justice involve the use of force, and hence are a matter of suspicion where closer vigilance is necessary. But how then are laws to be changed, how are judges to make precedent decisions unless some discretion is possible?[90] Of course, institutional checks are necessary so that alternative judgments are possible — thus, given a spontaneous order, the legal entrepreneur will have to compete with others for the general acceptance of his judgment as a judicial precedent. Nevertheless, Hayek seems unaware even of the possibility of a trade-off between rule-abidingness and individualized justice. Any resort to a redefinition of strict adherence to the general rules as entailing rather a devotion to the spirit of the laws, must necessarily introduce a notion of discretion.

But if there is to be legal and judicial discretion, how will this affect the third requirement of the "rule of law", certainty? Given the bulk of legislation produced, and the inability of higher executive organs to directly enforce the laws, much of the application of the law will fall as a duty upon the police, who must, therefore, possess a good deal of discretion. But so must the prosecutor, the judge, the respective chief executive in the case of criminal law. The entire process of criminal proceedings from the decision to arrest or not to the judgment of the executive on pardon are matters of discretion.

> We have not yet found a way to eliminate discretion with respect to arresting, prosecuting, sentencing, paroling and pardoning without destroying critical values we want to preserve. Perhaps it is not too much to say that the essence of criminal justice lies in the exercise of discretionary power, despite the continuing importance of the jury trial.[91]

With respect to civil law, the need for discretion as well as rules is manifested in the subject of equity, "which is essentially a reaction against the tendency to govern too much through rigid rules and the main purpose of which is to replace rules with some measure of discretion".[92]

Thus the discretionary power of the policeman, after he has evaluated the situation, includes not only the power to arrest, or to refuse to do so, but extends to areas where crime is not involved, such as "suspicion" or "holding for investigation".[93] Certain vaguely worded crimes, such as vagrancy, or unlawful assembly (at what point does a few people become an assembly? When does a conversion on the common become a public incitement to riot?) preclude any prediction of when the crime has occurred. In many such cases the difference between committing and not committing the crime is solely the discretionary decision of an officer present to press charges or not.

The law courts also exercise discretion, sometimes amounting to a validation of the discretion of the arresting officer, since, unless overwhelming evidence to the contrary is forthcoming, his decision will be upheld. But judicial discretion, which includes not only minor infringements of the law but also constitutional questions, makes certainty even harder to achieve. Changes in the interpretation of such constitutional issues, exemplified by Hamowy in pornography and drug decisions, make it difficult to predict one's position *vis-à-vis* the law.[94] The question also arises not only of what are the facts in a given dispute, but also in numerous borderline cases, of whether the case falls within a law's scope of applicability.

> The judge's task would be a fairly easy one if it were confined to determining the admissability of certain evidence or to deciding on the truth or falsity of evidence presented to the Court. But he is further faced with ascertaining law in each case. If decisions concerning questions of law could be predicted with a good measure of certainty, there would be little disagreement among trained lawyers over such question. The very existence of appellate courts belies this.[95]

Perhaps the most original critique of Hayek on the issue of certainty, and also the most succinct on the principle of equality, is that of Bruno Leoni in *Freedom and the Law.* On the latter point we note that Hayek sides with the *Rechtsstaat* theorist R. Gneist against the proponents of justicialism, on the question of separate administrative courts. The justicialists took the position that all acts of administrative discretion were to be reviewed by the ordinary courts of law. Hayek and Gneist opt for separate administrative courts, whose independence is made necessary for the sake of expertise.[96] Hayek contends that Dicey's insistence on the role of the ordinary courts and neglect of Continental administrative law prevented the rise of institutional checks on bureaucratic discretion for England. Perhaps Hayek has underestimated Dicey's knowledge of the Conseil d'Etat, and the effect that its unexemplary role in the Second Empire might have had upon him.[97] At any rate, Leoni charges that separate court systems are identical with separate laws of the land, insofar as different people will be treated differently depending on which class of cases of law they fit into. Since "state officials, as representatives of the public administration, are regarded as people having *eminentia jura* (preeminent rights) over the citizens", cases judged according to separate administrative law might tend to favor the proponents of the public good rather than the private citizen whose "particular will" will always be suspect in the light of an appeal to the "general will".[98]

Other students of administrative law, even advocates of the welfare state, who value the "rule of law" concept, have found "internal institutional safeguards" in the administrative branch of little value as a check on abusive discretion. Bernard Schwartz, who does not take the position of Leoni on independent courts, notes that, for the following reasons, administrators can never wholly acquire a "judicial mind". First of all, they lack the independence which characterizes the judge, being, of course, instruments of public policy (in a restricted sense).

> Nor can the administrator decide disputes with that "cold neutrality of an independent judge", of which Burke speaks. The very purpose of administration is to get things done. The administrative agency is created to accomplish certain purposes and it would be derelict in its duty if it were not biased in favor of those objects for which it has been created.

Finally,

> these defects are inherent in administration. Attempts to ameliorate them through pure internal checks lose sight of the fact that administration and not justice is the prime purpose of the administrative process. What is needed, rather, is the assertion of judicial control over administrative excesses.[99]

Professor Schwartz recognizes both the role of individual rights, and the necessity of judicial review of *ultra vires*, canons of fair play, the presence of evidence of a probative value in acts of discretion, and the issue of constitutionality in checking abuses.[100]

Leoni's argument goes a step farther. The progress of science in this century has for some theorists of the law created the impression that "progress" in law making is analogous to the extension of our ability to control nature. That is to say, law-making is looked upon in the same fashion as any process of manufacturing.[101] Legislation becomes industrialized, so to speak, and mass-produced regulations, with varying degrees of obsolescence, are the result. This is certainly no boon to the proponent of certainty in the law, not short-run certainty, for today's law may be repealed tomorrow, but a more tradition-bound certainty that is only possible in a system of judge-made, or discovered, law.

Judges differ from legislators in a number of respects, according to Leoni. They intervene only when asked to do so by the parties involved, and, for their decision to be reached and be effectively applied entails a continuous collaboration of the parties themselves, at least in civil matters. The decisions reached by judicial process in such cases affects mainly only the parties concerned, to a lesser extent third parties, and is practically never operative with respect to people having no connection with the given disputants. Furthermore, such judicial decisions are rarely arrived at *ex nihilo*, but reference is usually made to other decisions in similar cases, and therefore the procedure involves a collaboration of all parties concerned, both past and present.

> "All this means is that the authors of these decisions have no real power over other citizens beyond what those citizens themselves are prepared to give them by virtue of requesting a decision in a particular case."[102]

The common law represents for Leoni the same spontaneous order as do language and the market. Legislation, on the other hand, can be likened to a centralized economy, whereas the market society is analogous to and seems compatible only with a system of judge-discovered laws.[103] Where legislation is dominant, regulations abound, and spontaneity withers away in direct proportion.

Legislation is the commitment of law-making to the direction of a few, just as judge-made law invites the highest possible participation of all involved. In the legislative process itself, coercion is present in the very procedure of majority rule. A vote cast for the losing side is a vote lost, yet the resulting victory for the other side may spell less freedom for the voter in the future.[104] Furthermore, Leoni contends, the actual result of parliamentary proceedings is the possible victory of a minority, based upon fleeting coalitions that seem hell-bent upon retribution toward their opponents while their voting coalition holds together. Legislation should be rejected when it is a means of subjugating minorities to treat them as losers, when it is possible for the individuals involved to pursue their ends without relying upon a coercive group decision and without compelling other parties to do what they would not do without that compulsion. Whenever there is doubt about the desirability of legislative action, as compared with some alternate process, the adoption of the former must be the result of an acute critical assessment.[105] Group decisions and individual decisions will be in conformity insofar as the former punish all forms of behavior which all the members of a society, if a reversibility test were included, would agree should be punished or redressed, insofar as the former "reflect the result of a spontaneous participation of all the members of the group in the formation of a 'common will'", as in a process of law-making similar to the common law. And "Finally, individual freedom is perfectly compatible with all those processes the result of which is the formation of a common will without recourse to decision groups and group decisions."[106]

Hayek clearly prefers a written law, after the fashion of the Continental code, to a pure common law tradition because the frequency of law creation, as opposed to discovery, may be no less in the latter system than in the system of codified law. There appears to be a *prima facie* conflict between a system of case law and the ideal of the rule of law, according to Hayek, insofar as

> The explicit recognition that jurisdiction as well as legislation is the source of law, though in accord with the evolutionary theory underlying the British tradition, tends to obscure the distinction between the creation and the application of law. And it is a question whether the much praised flexibility of the common law, which has been favorable to the evolution of the rule of law so long as that was the accepted political ideal, may not also mean less resistance to the tendencies undermining it, once that vigilance which is needed to keep liberty alive disappears.[107]

Leoni, on the contrary, views written law as defective in certainty precisely because of its legislative character, that is, its very short-run certainty. The certainty Leoni wishes to secure is

> The possibility open to individuals of making long-run plans on the basis of a series of rules spontaneously adopted by people in common and eventually ascertained by judges through centuries and generations.[108]

Who appoints these judges? That question, says Leoni, is subordinate to the question of what the judges are to do. Who, asks Leoni in turn, appoints the scientists or the doctors? "It is, in fact, based on a widespread consent on the part of clients without which no appointment is really effective."[109] But will not the judges also exercise personal interference into the private sphere of the parties in an adjudication? Perhaps, but their interference will be less far-reaching and decisive than that of legislation, even if interference is never avoidable.[110] The law is not, nor should not be, the exclusive domain of legislation, i.e. the will of the few. It is rather

> in the last analysis something which everyone makes everyday with his behavior, his spontaneous acceptance and observance of the rules that everyone helps to establish, and finally, even if it seems paradoxical, with the disagreements themselves which eventually arise among the various individuals on the observance of these rules.[111]

Surely, however, given the possibility of creativity among judges, Leoni's process of common law adjudication would not be *ipso facto* as certain as some libertarians might wish it to be. Nor would its contents, simply because they were the result of a tradition, be more libertarian than some legal code or constitution. What alone makes for long-run certitude, as also for a check upon power, is some notion of, some provision for substantive rights. Professor Rothbard clearly points out the deficiencies in the various criteria Leoni employs to judge the content of the law. The first, unanimity, is obviously not practical as a test of the compatibility of liberty with law. The negative Golden Rule (Do not do unto others what you would not wish them to do to you), cannot exclude sado-masochists, and would also make charity legally compulsory.[112]The crux of the problem, however, in Leoni and in Hayek, appears to be a deficient definition of coercion or freedom. The Leoni version stresses the subjective side of the concept, but says nothing about any other requirements for judging the presence of freedom.

What then may we conclude about the effectiveness of Hayek's concept of the "rule of law" on state action? In the economic realm, Hayek permits much state intervention, not only through taxation, monetary policy, and regulation of industry, but also by direct state ownership or subsidy to enterprises. Tariffs, licensing, exclusion of certain trades are all permitted within the formal confines of the "rule of law". Licensing in particular would permit a society of status within the jurisdiction of the "rule of law".[113] State monopoly, on the other hand, seems excluded. Price controls become impossible because they cannot be expressed as general rules but rather as specific commands and so they cannot be long-run measures, but rather *ad hoc* decisions for the short run.[114] They seem to be arbitrary measures, that is, simply expressions of the will of the controller, and it is against that arbitrariness that the "rule of law" stipulates the necessity of general, prospective rules. Generally speaking, under the "rule of law" requirements, direct administrative commands for specific actions might be curtailed, and review of such discretion as occurs would be guaranteed to the citizens. It might be harder to impose generally unpopular legislation, but liberties considered essential by unpopular minority groups would be largely unprotected.

Lest this discussion be construed as an attempt to prove the worthlessness of Professor Hayek's theory of laws, it should be borne in mind that, "a full theory of freedom would, as well as specifying the optimal pattern of freedom and unfreedom, concern itself with choices among such suboptimal patterns".[115] That is to say, in the sense of the classical philosophers, we must discuss the best possible regime along with the best regime, and, sometimes, content ourselves with reforming our situation so as to arrive at the best regime possible under the circumstances. Certainly Hayek's economic arguments, showing the inefficiencies of state interference in the market place, are not a full moral defense of economic liberty, but they are a necessary defense. So also the theory of the "rule of law", while not substantially libertarian, may be a necessary formal requirement of law in a free society. Perhaps a resurrection of "rule of law" theorizing would put us in a much better position *vis-à-vis* freedom than we are now. So also, despite some non-libertarian content, most classical liberals, I think, would prefer living in a common law tradition society à la Leoni to a society based upon liberal legislation which, given the vicissitudes of law-makers, would more rapidly transform into its opposite than would the common law system. Thus we are faced with some possible trade-offs between the long-run, though not quite so libertarian, guarantees of one liberal society, and the more libertarian, though lacking any institutional long-run certitudes, policies of another.

The rationalist libertarian may well chaff under the general rules provisions of the "rule of law". Here again we come to grips with the problem of more latitude to decide cases in accordance with individual needs, which may well degenerate into arbitrariness, versus the willingness to abide by such rules, which may result in injustice in the short run. The rationalist libertarian must be brought to the defense of his position against the suggestion of Hayek and Leoni that more wisdom is contained in spontaneous orders (which include the common law) than in the mind of the single individual. The conservative choice of Hayek, that is to remain with general age-proven rules, is not obviously an irrational choice, and may well be the most practical one for a free society, if we grant that the giving up of discretion to the greatest degree possible is preferable to the dangers that the propensity to break rules for the sake of individualized justice might entail. It is not an easy decision to make, but Hayek at least aids us in seeing what the reasons for such a trade-off would be from a conservative libertarian position.

NOTES

1. F. A. Hayek, "Rules, Perception and Intelligibility," *Studies in Philosophy, Politics and Economics* (London, 1967), p. 43.
2. "Kinds of Rationalism", *Ibid.*, p. 90.
3. F. A. Hayek, "Kinds of Order in Society," *New Individualist Review*, Vol. III, No. 2 (1960), p. 7.
4. Hayek, "Kinds of Rationalism," p. 88.
5. Hayek, "Notes on the Evolution of Systems of Rules of Conduct," *Studies*, p. 80.
6. *Ibid.*, p. 81.
7. Hayek, *The Political Ideal of the Rule of Law* (Cairo, 1955), p. 32.
8. Hayek, *The Constitution of Liberty* (Chicago, 1960), p. 153.

9. Hayek, "Rules, Perception and Intelligibility," p. 62.
10. Hayek, "Kinds of Order in Society," pp. 11–12.
11. Hayek, "Notes on the Evolution of Systems of Rules of Conduct," p. 71.
12. Hayek, "What is 'Social'? — What Does It Mean?", *Studies*, p. 243.
13. *The Constitution of Liberty*, p. 209.
14. "Kinds of Order in Society," p. 7.
15. Hayek, *The Confusion of Language in Political Thought* (London, 1968), pp. 11–15.
16. *Ibid.*, pp. 12–13.
17. "Kinds of Order in Society," p. 8.
18. *Ibid.*, p. 8.
19. *Ibid.*, p. 8.
20. *Ibid.*, p. 10.
21. *The Political Ideal of the Rule of Law*, p. 30.
22. "Kinds of Order in Society," p. 12.
23. *The Constitution of Liberty*, p. 231.
24. Hayek, "Individualism: True and False," *Individualism and Economic Order* (Chicago, 1948), pp. 15–16.
25. *Ibid.*, p. 15.
26. Plato, *The Statesman*, 292a–303d.
27. "Individualism: True and False", p. 19.
28. *The Constitution of Liberty*, p. 87.
29. Robert Nozick, "On the Randian Argument," *The Personalist*, LII, No. 2 (Spring, 1971), fn. 4, pp. 299–300.
30. Hayek, "The Principles of a Liberal Social Order," *Studies*, p. 175.
31. *Ibid.*, p. 172.
32. *The Constitution of Liberty*, p. 133.
33. It is difficult to say what it is that Hayek means by harmful in this context. The example of the borrowed book is simple enough, as also the further example of unpleasant noise-making. In this context we might substitute "annoyance" for "harmful". Yet the further example on p. 134 of *The Constitution of Liberty* involving someone deliberately stepping in my way seems to be coercive, particularly if he is bigger than I. Hayek's further criteria of "crucial to existence" and "preserving what one most values", discussed below, seem relevant to the concept of harm in this context.
34. *The Constitution of Liberty*, p. 133.
35. "Freedom and Coercion," *Studies*, p. 349.
36. *The Constitution of Liberty*, p. 136.
37. "The Principles of a Liberal Social Order," p. 167.
38. *The Constitution of Liberty*, p. 137.
39. *Ibid.*, pp. 143–144.
40. *Ibid.*, p. 140.
41. *A Theory of Justice* (Cambridge, Mass., 1972). See especially pp. 83–90.
42. "The Principles of a Liberal Social Order," pp. 174–175.
43. Ronald Hamowy, "Hayek's Concept of Freedom: A Critique," *New Individualist Review*, Vol. I, No. 1 (April, 1961) pp. 28–29.
44. *Ibid.*, p. 29.
45. Hamowy, "Freedom and the Rule of Law in F. A. Hayek," *Il Politico,* Vol. XXXVI, No. 2 (Giugno, 1972), fn. 17, p. 354.
46. *The Constitution of Liberty*, p. 142.
47. J. W. N. Watkins, "Philosophy," *Agenda for a Free Society,* Arthur Seldon, ed. (London, 1961), p. 39.
48. *The Constitution of Liberty*, p. 142.
49. Hamowy, "Freedom and the Rule of Law in F. A. Hayek," fn. 22, p. 356.
50. Nozick, "Coercion," *Philosophy, Science, and Method,* S. Morgenbesser, P. Suppes and M. White, eds.) (New York, 1969), see especially the discussion of threats and offers, p. 462. Professor Nozick lists what he believes to be the necessary and sufficient conditions for coercion, pp. 441–443, here listed in their final form:
"Person P coerces person Q into not doing act A if and only if:
1. Part of the Q's reason for not doing A is to avoid (or lessen the likelihood of) the consequences which P has threatened to bring about or have brought about.
2. P threatens to bring about or have brought about some consequence if Q does A (and knows he is threatening to do this).
3. A with this threatened consequence is rendered substantially less eligible as a course of conduct for Q than A was without the threatened consequence.
4. If P has not decided to bring about the consequence, or have it brought about, if Q does A, then (part of) P's reason for saying that he will bring about the consequence, or have it brought about, if Q does A is that (P believes) Q will believe this consequence worsens Q's alternative of doing A.
5. Q does not do A.
6. Q knows that P has threatened to do the something mentioned in 2, if he, Q, does A.
7. Q believes that, and P believes that Q believes that P's threatened consequence would leave Q worse off, having done A, than if Q didn't do A and P didn't bring about the consequence."
These conditions are congruent with Hayek's categorization of the rules of law discussed above, and hence, these laws coerce.
51. Watkins, p. 43.
52. This is not meant to undervalue our subjective experience of freedom. Undoubtedly, judging whether our will is dominant, or another's is substituted for it, is crucial to the existence of liberty. What seems important, in judging the factory case, is whether any other system but the market allows us the relative dominance of our own wills in the whole area of choice that surrounds us.
53. Watkins, pp. 150–151.
54. *The Constitution of Liberty*, p. 143.
55. *Ibid.*, p. 143.
56. Nozick, "Coercion," p. 444.
57. "The Principles of a Liberal Social Order," p. 165.
58. p. 210.
59. *Ibid.*, p. 216.
60. *Ibid.*, p. 217.
61. *Ibid.*, p. 217.
62. *Ibid.*, p. 145.
63. *Ibid.*, p. 145.
64. *Ibid.*, p. 229.
65. House of Commons, 18 November 1783, p. 46.
66. *The Constitution of Liberty*, p. 221.
67. *Ibid.*, fn. 6. 492.
68. *Ibid.*, pp. 222–223.
69. *Ibid.*, p. 205.
70. A. V. Dicey, *Introduction to the Study of the Law of the Constitution*, 10th edn. (London, 1959), p. 188.
71. Lord Hewart of Bury, *The New Despotism* (London, 1929), p. 26.
72. Judith N. Shklar, *Law v. Administration: The Old Whigs* (unpublished manuscript), pp. 7–22. Professor

Shklar makes the point that "It is change, as such, with its disorders, that legalism abhors", and that the individualistic propensities of Whig legal thought are historically accidental. Hayek's liberalism, of course, is not opposed to change *per se*.

73. *The Constitution of Liberty*, p. 208.
74. *Ibid.*, p. 154.
75. Hamowy, "Freedom and the Role of Law in F. A. Hayek", fn. 33; N.Y. Rapid Transit act (April 28 Laws 1941), Chapter 800 (Chapter 48(a) of the Consolidated Laws. Section 2a(7)), p. 360.
76. N. 19, p. 489 cites a regulation quoted in G. Haberler, *The Theory of International Trade* (London, 1936), p. 339, providing for a special rate of duty for "brown or dappled cows reared on a level of at least 300 metres above the sea and passing at least one month in every summer at a height of at least 800 metres."
77. *Ibid.*, p. 209.
78. Bruno Leoni, *Freedom and the Law* (California, 1972), p. 75.
79. Hamowy, "Freedom and the Rule of Law in F. A. Hayek." pp. 360–361.
80. *Ibid.*, n. 34, pp. 360–361.
81. *Ibid.*, p. 362.
82. *The Constitution of Liberty*, p. 155.
83. Hamowy, "Freedom and the Rule of Law in F. A. Hayek", p.363.
84. Leoni, p. 69.
85. *The Political Ideal of Rule of Law*, p. 35.
86. Hamowy, "Freedom and the Rule of Law in F. A. Hayek." p. 363.
87. Kenneth Davis, *Discretionary Justice* (Baton Rouge, 1969) answers the question of "why not rules alone?" by the following observations:
(1) "Much discretionary justice not now governed by rules should be"
but (2) "Much discretionary justice is without rules because no one knows how to formulate rules." and (3) "Much discretionary justice is without rules because discretion is preferred to any rule that might be formulated; individualized justice is often better, or thought to be better, than the results produced by precise rules", p. 15.
88. Hamowy, "Freedom and the Rule of Law in F. A. Hayek," p. 364.
89. "Kinds of Order in Society," p. 9.
90. Davis, p. 29. But see Hayek's latest analysis of judge-discovered law, *Law, Liberty and Legislation*, I, "Rules and Order" (Chicago, 1973), pp. 115–118.
91. Davis, p. 18.
92. *Ibid.*, p. 18.
93. Hamowy, "Freedom and the Rule of Law in F. A. Hayek," p. 364.
94. *Ibid.*, pp. 369-370.
95. *Ibid.*, p. 373.
96. *The Political Ideal of the Rule of Law*, pp. 28–29.
97. Shklar, pp. 5–6.
98. Leoni, p. 67.
99. Bernard Schwartz, "Executive Power and the Disappearance of Law," *New York University Law Quarterly Review*, Vol. XXI, No. 4 (October, 1946), p. 505.
100. *Ibid.*, p. 505.
101. Leoni, "'Consumer Sovereignty' and the Law," *New Individualist Review*, Vol. III, No. 1 (Summer, 1963), p. 17.
102. Leoni, *Freedom and the Law*, p. 21.
103. *Ibid.*, pp. 21–22.
104. *Ibid.*, p. 110.
105. *Ibid.*, pp. 13–14.
106. *Ibid.*, p. 154.
107. *The Constitution of Liberty*, p. 198.
108. Leoni, *Freedom and the Law*, p. 95.
109. *Ibid.*, p. 183.
110. *Ibid.*, p. 187.
111. Leoni, "'Consumer Sovereignty. and the Law," p. 19.
112. Murray N. Rothbard, "On Freedom and the Law," *New Individualist Review*, Vol. I, No. 4 (Winter 1961), p. 39.
113. Hamowy, "Freedom and the Rule of Law in F. A. Hayek," p. 364.
114. *The Constitution of Liberty*, p. 228.
115. Nozick, "Coercion," p. 457.

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OF GRAVER IMPORT THAN HISTORY: PSYCHIATRY IN FICTION

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> "Like any efficient business organization, the management of a hospital for mental diseases is consciously interested in disseminating effective propaganda concerning the patient's hospital experience, to the patients themselves, to relatives and to the public at large . . . Little is heard, though, about the patient's real thoughts and feelings concerning hospitilization and the loss of his freedom."
>
> Byron G. Wales[1]

In Chapter 9 of the *Poetics*, Aristotle wrote that "poetry is something more philosophic and of graver import than history, since its statements are of the nature rather of universals, whereas those of history are singulars" (1451b, trans. Ingram Bywater). This is a classic tenet to whose abstract significance we often pay lip service without recognizing the dynamic role it could play in our interpretation of the literary arts. However, to make it viable for application to modern works, we need only broaden the term *history* to include those behavioral sciences which have evolved since Aristotle's time.

When we do so, we recognize that a fruitful field for critical exploration from this point of view is precisely those areas of human concern in which the behavioral sciences have vested benefits, but which literary artists have examined more disinterestedly, and hence more "truthfully", than professional practitioners. The important social contributions that such criticism can make are obvious. Indeed, in a recent thoughtful article, R. Gordon Kelly has pointed out the "heuristic value in suggesting that a given literary text is analogous to a response to an interview schedule for which the questions have been lost. The text embodies the response in a complex form, and the meaning of the work may be specified, in part, by reconstructing the 'questions' to which the author was responding."[2]

A striking illustration of this approach can be demonstrated through analyzing the fictional study of psychiatry, which has become an increasingly important narrative theme, extensively treated in short stories, novellas, and novels, in the literature of several countries, from the 19th century to the present. Applying the cited Aristotelian principle to these works, we see that "poetry" has indicated rents in the social fabric in an examination which is on the whole both "more philosophic and of graver import" than that undertaken by the behavioral sciences.

The values of studying such fictional narratives are therefore threefold: (1) Fiction writers, or "poets", as Aristotle pointed out, are bound only by considerations as to "what such or such a kind of man will probably or necessarily say or do"; it is this limited but precise constraint that makes their statements "of the nature rather of universals, whereas those of history are singulars". (2) Almost without exception, studies of psychiatric practices by the behavioral sciences adopt the viewpoint of those who are in a position to use them for social control. Fiction, however, also gives us an analysis of these practices from the point of view of those who are susceptible to such control. (3) As an extension of (1), artists, since they have no professional commitment to established psychiatric mores, are paradoxically in a unique position to give us an objective analysis of their universal human significance, regardless of the fact that their examination is cast in a fictional framework.

Accordingly, fiction may give us a profound insight into the displacements and potential fractures inherent in what Thomas Szasz has called the "Therapeutic State"[3] as it is interpreted by the various echelons in its governing hierarchy. I therefore propose to examine critically a number of works which cover aspects of institutional psychiatry.[4] These works include five short stories: Linda Arking's "Certain Hard Places" (1974), F. Scott Fitzgerald's "The Long Way Out" (1937), Max Frisch's "Schinz" (1950), and James Thurber's "The Catbird Seat" (1942) and "The Unicorn in the Garden" (1939); three novellas: Anton Chekhov's *Ward Six* (1892), Joachim Maria Machado de Assis' *The Psychiatrist* (1881–82), and Katherine Anne Porter's *Noon Wine* (1936); and 12 novels: Millen Brand's *Savage Sleep* (1968), Peter Breggin's *The Crazy from the Sane* (1971), Ralph Ellison's *Invisible Man* (1947), Joanne (Hannah Green) Greenberg's *I Never Promised You a Rose Garden* (1964), Ken Kesey's *One Flew Over the Cuckoo's Nest* (1962), Jack London's *The Iron Heel* (1908), Penelope Mortimer's *Long Distance* (1974), Sylvia Plath's *The Bell Jar* (1963), James Park Sloan's *The Case History of Comrade V.* (1972), Valeriy Tarsis' *Ward 7* (1965), Kurt Vonnegut's *God Bless You, Mr. Rosewater* (1965), and Robert Penn Warren's *All the King's Men* (1946).[5] One is tempted to add Franz Kafka's surrealistic parable, "Der Schlag ans Hoftor."[6]

The list spans several countries and almost a century in time. Although the works it includes are all in the genre of narrative prose fiction, they have little in common other than their inclusion of the psychiatric theme. Not only are they unequal in length, they are of unequal artistic merit. Moreover, some are didactic works which propound a thesis and argue it persuasively; others are representations of human actions affecting the reader emotionally, either humorously or seriously. Nevertheless, the mere fact of their disparity would underline the significance of their consensus, if it were to be found, in the portrayal of institutional psychiatry.

In this essay,[7] I shall implement R. Gordon Kelly's theory by examining these fictional studies in order to determine whether one can perceive among them any common ground in answers to the following questions: How are "sanity" and/or "insanity" defined? Who allocates individuals to the categories of "insane" and "sane"? On what grounds is this authority vested in him or her? Who stands to gain by implementing the decision that someone is insane? How are psychiatric professionals portrayed? How are the insane treated?

I

Although colloquial terms used to describe the objects of psychiatric attention have evolved in a progression that goes more or less from *mad* to *crazy* to *lunatic* to *insane* to *mentally ill* to *sick* to *disturbed* (with side excursions into *neurotic* and *psychotic*), in this paper no attempt will be made to differentiate among such labels. Nor will my concern be with the luxuriant and convoluted technical taxonomy of psychiatric conditions (*schizophrenia*, *catatonia*, *hebephrenia*, etc.). Rather, attention will be focussed initially on how the condition of those deemed other than "normal" is defined, regardless of what tag is pinned to the individuals involved.

Three definitions of "insanity" are suggested, either explicitly or implicitly, in the fiction I have studied. According to the first, the insane person is one whose behavior deviates from what his society regards as acceptable. This definition will vary, of course, according to the mores of a given society. Thus, in Jack London's *The Iron Heel*, Bishop Morehouse is regarded as insane in a plutocratic oligarchy because he espouses the communistic principles of primitive Christianity. In Valeriy Tarsis' *Ward 7*, however, Valentine Almazov is locked up as insane because, in a collectivist society, he champions the tenets of individualism. More subtle than either of these is Max Frisch's portrayal of how a bourgeois Swiss city (presumably Zurich) reacts to a respectable lawyer, Heinrich Gottlieb Schinz, after his sudden insight into the inequities of its economic and legal system. Schinz can no longer remain mute in the face of injustice: "Ich kann es nicht aushalten, Unrecht zu sehen und zu schweigen" (p. 200). Although he recognizes that his attitude is idiosyncratic — "Man sieht die Dinge etwas anders, als die andern sie lehren" — his wife, Bimba, also learns that the prevailing attitudes collapse when not buttressed by social pressures: "Komisch, wie anders man sieht, wenn einmal der gewohnte Umgang etwas nachläßt" (p. 202). As a consequence of his egalitarian defense of a thief in a city which venerates property, Schinz is incarcerated as a madman. "Die Außenwelt, ausgenommen Bimba, hat das Ganze . . . durchaus als einen klinischen Fall betrachtet, aufsehenerregend auch so, erschütternd auch so, aber für die Außenwelt ohne jede Folge" (p. 208).

A second and related definition is based on the individual's ability to function effectively and/or happily in his society. This raises a further question: Who judges whether or not he is able to function? It may be agents of his society; or it may be his acquaintances, friends, or family; or it may be the individual himself. In *One Flew Over the Cuckoo's Nest, Ward Six* and *Invisible Man* it is agents of their respective societies who decide that Randle McMurphy, Andrei Yefimych, and Ellison's narrator are in need of psychiatric attention. In *Cuckoo's Nest* the "theory of the Therapeutic Community" is that "a guy has to learn to get along in a group before he'll be able to function in a normal society; ... society is what decides who's sane and who isn't, so you got to measure up". However, relatives make this judgment in *God Bless You, Mr. Rosewater;* "The Unicorn in the Garden"; *I Never Promised You a Rose Garden;* and *The Bell Jar*. In *The Case History of Comrade V.*, it is the individual himself who decides to consult a psychiatrist.

Yet neither of these definitions can be pushed too far, since both are highly subjective and, in the last analysis, have more to do with the individual's society and his relation to it than with any intrinsic condition. The difficulty is indicated by Professor Nezhevsky in *Ward 7* (pp. 119–120). His dismisses "the current notion of 'mental illness' — if only because no one could give a definition of mental health, so that there was no firm principle by which to define or classify pathological phenomena". The same point is hinted at in *Savage Sleep* (p. 149). The protagonist, Dr. Marks, is explaining the "likeness between insanity and childhood". Then, prodded by his son, he admits that a remark he had himself made to his daughter ("The whole world knows I love you") "was insane too. But everybody used these large expressions. What the hell was sane and insane in this world anyway?" McMurphy in *Cuckoo's Nest* (p. 63) faces a similar problem. He tells his fellow inmates in the mental hospital: "I been surprised how sane you guys all are. As near as I can tell you're not any crazier than the average asshole on the street." And in *I Never Promised You a Rose Garden* Dr. Fried, remembering Nazi Germany, reflects ruefully that "sometimes . . . the world is so much sicker than the inmates of its institutions" (p. 17).

As a consequence of this stumbling block, both of the first two definitions of sanity/insanity are finally telescoped into a third, stated most explicitly in *The Case History of Comrade V.* (p. 142): "Sanity is a matter of role, and nothing more. The man behind the [psychiatrist's] desk is sane; the man in front of it is mad, or at least in grave doubt of sanity . . . . Now this may not seem a very ideal definition, and it is not, but it will have to stand until a better theoretical construct can be tested. The starting point, of course, is this: psychiatrists are, *by definition*, sane. This is, in a sense, the cornerstone of modern society. The man in the streets is indeterminate until encountered in the office of the psychiatrist. The client of the psychiatrist is open to grave doubt." The reader who remembers the brouhaha over Senator Thomas Eagleton's nomination to the vice-presidency after his psychiatric history had been revealed will be disinclined to doubt the general acceptance of such a judgment. The irony of this definition, however, is that the psychiatrist himself not infrequently winds up on the wrong side of the desk and is cast in the insane role. Thus, Dr. Bacamarte in *The Psychiatrist*, after testing and rejecting various shifting definitions of insanity which lead to the incarceration of four-fifths of Itaguai's population, is finally driven to commit himself as "the perfect, undeniable case of insanity" (p. 44). The same fate also befalls psychiatrists in *Invisible Man* (p. 57), *Ward Six*, and *The Case History of Comrade V.*

The authority of the psychiatrist in defining sanity/insanity derives, ultimately, from the enormous respect the modern world has paid to science since the days of Newton. The point is made explicit by Dr. Bacamarte in *The Psychiatrist* (p. 24): "Science is a serious thing and it must be treated seriously. For my professional decisions I account to no one but God and the authorities in may special field. ... I shall never [account for my methods] to laymen of any description." Such absolute dominion would not, of course, be possible if it were not accepted by the very people over whom it is exercised. Thus Mr. Fitweiler in "The Catbird Seat" says (p. 16): "These matters are not for the lay mind to grasp." Unfortunately, however, as this fiction demonstrates has happened in psychiatry, science can all too easily degenerate into "scientism", or what Moody E. Prior has described as "the superficial adoption of the paraphernalia of physical science as a masquerade where they do not function essentially".[8] Thus the psychiatrist in *Comrade V.* (pp. 145–46) finally acquires a delusion of his own: that psychiatry is "a universal system . . . of perception and value", the "ultimate science that emcompasses and supervises all the others", including mathematics, geophysics, astronomy, and anthropology.

II

An answer to the question of how psychiatrists acquired their pervasive authority is given in *The Psychiatrist* (pp. 29, 30); it has been granted them by the government, which "recognizes that the question is purely scientific and that scientific issues cannot be resolved by legislation". The government "knows that the mentally ill must receive treatment. It knows also that it cannot itself provide this treatment and that it even lacks the ability to distinguish the sane from the insane. These are matters for science, not for politics. They are matters requiring the sort of delicate, trained judgment that [the psychiatrist is] fitted to exercise".

The reason the government has delegated this awesome and sinister power is, of course, that psychiatric control is an easy way to maintain public order without going through tortuous legal channels safeguarding the rights of the accused, presuming them innocent until proved guilty, and setting definite terms to their imprisonment. "For order, my friends, is the foundation on which government must rest" (*The Psychiatrist*, p. 31). Thus, Mr. Helton in *Noon Wine* (p. 93), who had killed his brother, was put in the asylum instead of being tried for the murder. Black professional men in *Invisible Man* are incarcerated in the vets' asylum when their aspirations threaten a social order based on white supremacy. The puzzled narrator remarked (p. 57): "Whenever I saw them I felt uncomfortable. They were supposed to be members of the professions toward which at various times I vaguely aspired myself, and even though they never seemed to see me I could never believe that they were really patients. Sometimes it appeared as though they played some vast and complicated game . . . whose goal was laughter and whose rules and subtleties I could never grasp." And the role of the asylum is obvious in preventing mavericks like Bishop Morehouse (in *The Iron Heel*), Valentine Almazov (in *Ward 7*), and R. P. McMurphy (in *One Flew Over the Cuckoo's Nest*) from disrupting the social order. Hathaway in *Long Distance* (4/22/74 — pp. 83, 84) suggests to his Board that they can get Basil Gondzik off their hands by sending him to the psychiatric wing, where he "may possibly become a responsible citizen. . . . It is my firm belief that the balance of Basil's mind has, of late, been disturbed. Basil is no criminal. He is an intelligent man. He needs help, rather than punishment. . . . If we decide that he is deranged -- which I firmly believe — and should be institutionalized, the Board will be relieved of a very arduous and unpleasant duty." Chief Bromden describes the hospital in *Cuckoo's Nest* (p. 38) as "a factory . . . for fixing up mistakes made in the neighborhoods and in the schools and in the churches. . . . When a completed product goes back out into society, all fixed up good as new, *better* than new sometimes, . . . something that came in all twisted different is now a functioning, adjusted component, a credit to the whole outfit and a marvel to behold. Watch him sliding across the land with a welded grin."

But if the psychiatrist acts usually as the agent of society in exercising extra-legal control over dissidents, he may also function as the agent of an individual who has something to gain from the incarceration of another person. Thus, a spouse may wish to have his mate hospitalized rather than go to the trouble of securing a divorce. The husband in "The Unicorn in the Garden" gets rid of a nagging wife in this way. Mr. King in "The Long Way Out" (pp. 400–401) commits his wife because of a delusion she has having "something to do with the Declaration of Independence". Zagogulin's wife has her husband taken forcibly to *Ward 7* (pp. 65–67) because she wants to clear the field for her amorous escapades; her solution is "inhuman but so currently adopted as to be almost fashionable".

Other reasons for someone's wanting an individual committed to a mental hospital are also indicated in these fictional works. In *Ward Six*, Dr. Khobotov has the chief psychiatrist, whom he envies, incarcerated in order to take over his job. Mr. Martin in "The Catbird Seat" eliminates an obnoxious office rival in the same way. Likewise, the narrator of *Invisible Man* is put in a company mental hospital by Liberty Paints because he was a troublesome employee. In *Ward 7* (p. 17), the well-known bibliographer Samdelov, "like several other patients, . . . had been committed by his relations who needed his 'living space'". The shyster lawyer Norman Mushari, dazzled by dreams of a fat fee, persuades the Rhode Island Rosewaters to institute court proceedings against Eliot Rosewater in order to prove him insane. (Vonnegut's novel is unusual in that it has a happy ending; Mushari's ploy fails.)

The reptilian Mr. Hatch in *Noon Wine* tells Mr. Thompson (p. 95): "In the last twelve years or so I musta rounded up twenty-odd escaped loonatics. . . . I don't make a business of it, but if there's a reward, and there usually is a reward, of course, I get it. It amounts to a tidy little sum in the long run, but that ain't the main question. Fact is," he rationalizes, "I'm for law and order, I don't like to see . . . loonatics at large." In a remarkable essay on her novella,[19] Porter characterizes Mr. Hatch as "evil in the most dangerous irremediable way", since "he will always be found on the side of custom and common sense and the letter of the law". There is "nothing much wrong" with his defense — "it only lacks human decency".

Very commonly parents who cannot handle their troublesome offspring any other way arrange to have them hospitalized. This accounts for the fact that Esther Greenwood in *The Bell Jar*, Deborah Blau in *I Never Promised You a Rose Garden*, Jimmy Cady and George Golding ("something of a problem child" — p. 255) in *Savage Sleep*, Danny in "Certain Hard Places." and Billy Bibbitt in *One Flew Over the Cuckoo's Nest* wind up in mental hospitals. These "children" range in age from eight (George Golding) to over thirty (Billy Bibbitt). Danny says (p. 45) "When I was eighteen my father and I were arguing a lot, and he had me placed for a month in a psychiatric hospital. He was a doctor, he could do it."

A few individuals may enter mental hospitals voluntarily. It is this group, in *One Flew Over the Cuckoo's Nest*, whose rabbity behavior McMurphy finds so puzzling: Harding, Sefelt, Frederickson. "Voluntary" commitments are often, however, little more than legal fictions. Dale Harding's relationship with his wife Vera makes his presence in the mental hospital closely analogous to Zagogulin's in *Ward 7*.

Finally, and most disturbing of all, is the role that pure chance can play in determining whether a given individual winds up in a lunatic asylum. In Kafka's nightmarish parable, the narrator, for reasons never very clear to him, finds himself standing in a bare, prison-like room which he fears he may never leave; it is furnished with a bed which is as much like an operating table as a cot. "Die Stube sah einer Gefängniszelle ähnlicher als einer Bauernstube. Große Steinfliesen, dunkel, ganz kahle Wand, irgendwo eingemauert ein eiserner Ring, in der Mitte etwas, das halb Pritsche, halb Operationstisch war" (p. 131). Added to the ominous quality of his surroundings is the uncertainty of his release: "Könnte ich noch andere Luft schmecken als die des Gefängnisses? Das ist die große Frage oder vielmehr, sie wäre es, wenn ich noch Aussicht auf Entlassung hätte."

In *Ward Six* Gromov reflects: "Not without reason does the age-old experience of the people teach that no one is safe. . . . And, legal procedures being what they are today, a miscarriage of justice is not only quite possible but would be nothing to wonder at. People who have an official, professional relation to other men's suffering — judges, physicians, the police, for example — grow so callous in the course of time, simply from force of habit, that even if they wanted to they would be unable to treat their clients in any but a formal way. . . . And once this formal, heartless attitude has been established, only one thing is needed to make a judge deprive an innocent man of all his rights . . . : time. Just the time necessary for the observation of certain formalities for which a judge receives his salary — and it is all over" (pp. 12–13).

This passage is later glossed when Ivan Dmitrich, now an inmate of the psychiatric ward, upbraids the doctor, Andrei Yefimych (p. 29): "There are dozens, hundreds, of madmen walking around at liberty, simply because you, in your ignorance, are incapable of distinguishing them from the sane. Why, then, must I, and these other unfortunates, be shut up here as scapegoats for all of them? Morally, you, the medical assistant, the superintendent, and the rest of your hospital rabble are immeasurably inferior to every one of us — why then should we be here and not you? Where's the logic?" Dr. Ragin answers: "Morals and logic do not enter into it. Everything depends on chance. Those who are put in here, stay here; those who are not, enjoy their liberty, that's all. And there is no morality or logic in the fact that I am a doctor and you are a mental patient — it's pure chance, nothing more."

III

Once the individual is locked up in a mental hospital, he becomes the object of attention from three kinds of medical and paramedical personnel: orderlies, nurses, and of course the psychiatrists themselves. In *Rose Garden*, the nurses and attendants in the Disturbed Ward have "big, hard, muscular bodies, . . . heavy arms and . . . frightened faces" (pp. 53, 67). The characters presented in these roles are, by and large, unattractive ones, many of whom display the callous impersonality toward their charges described by Gromov. Others take a sadistic delight in tormenting their victims.

In the fiction I have studied, only two attendants are portrayed sympathetically: McPherson and Dobshansky in *Rose Garden*. The reason for McPherson's success with his patients is his recognition of the humanity they share with him. He "was a strong man, even a happy one. He wanted the patients to be like him, and the closer they got to being like him the better he felt. He kept calling to the similarity between them, never demanding, but subtly, secretly calling, and when a scrap of it came forth, he welcomed it" (p. 66). When the patients twit him by telling him that without his keys "you wouldn't know yourself from us!" he only laughs and agrees: "We're not so different" (p. 88). His tone with the patients is "like a priceless jewel", that of "a simple respect between equals" (p. 94).

McPherson stands out, however, because of his rarity. The attendants, or hospital orderlies, are usually described as brutal exponents of the doctrine of physical coercion for controlling their helpless charges. In *Ward Six* (pp. 7–8), the guard Nikita, "an old retired soldier", is "one of those diligent, simple-minded, dogmatic, and obtuse individuals who love law and order more than anything else in the world, and as a consequence are convinced that *they* have to be beaten. He distributes blows indiscriminately on the face, chest, or back, in the certainty that there is no other way to keep order here." Andrei Yefimych, when he is himself locked up, experiences first hand what his patients have undergone from this attendant (pp. 57–58): "Using both hands and his knee, [Nikita] roughly knocked Andrei Yefimych to one side, then drew back his fist and punched him in the face. . . . There was . . . a salty taste in [Dr. Ragin's] mouth, probably blood from his teeth. Waving his arms . . . , [he] felt two more blows from Nikita's fists in his back. . . . All of a sudden out of the chaos there clearly flashed through his mind the dreadful, unbearable thought that these people . . . must have experienced this same pain day in and day out for years. How could it have happened that in the course of more than twenty years he had not known, had refused to know this?"

In *Invisible Man* (p. 63), Supercargo, the attendant at the vets' insane asylum, is "a huge black giant of a man" who habitually wears a "hard-starched white uniform. Usually he walked around threatening the men with a strait jacket which he always carried over his arm, and usually they were quiet and submissive in his presence". Like Nikita, Supercargo wants order, "and if there's white folks down there", he wants "*double* order".

The ward attendants in *Cuckoo's Nest* have been chosen with care by the Big Nurse (pp. 27–28):

> Her three daytime black boys she acquires after . . . testing and rejecting thousands. They come at her in a long black row of sulky, big-nosed masks, hating her and her chalk doll whiteness from the first look they get. She appraises them and their hate for a month or so, then lets them go because they don't hate enough. When she finally gets the three she wants . . . she's damn positive they hate enough to be capable.
>
> The first one she gets . . . [is] a twisted sinewy dwarf the color of cold asphalt. His mother was raped in Georgia while his papa stood by tied to the hot iron stove with plow traces, blood streaming into his shoes. The boy watched from a closet, five years old and squinting his eye to peep out the crack between the door and the jamb, and he never grew an inch after. ... He wanted to carry a sock full of birdshot when he first came on the job, to work the patients into shape, but she told him they didn't do it that way anymore, made him leave the sap at home and taught him . . . not to show his hate and to be calm and wait, wait for a little advantage, a little slack, then twist the rope and keep the pressure steady. All the time. That's the way you get them into shape, she taught him.
>
> The other two black boys . . . are tall and sharp and bony and their faces are chipped into expressions that never change. . . .
>
> All of them black as telephones. The blacker they are . . . the more time they are likely to devote to cleaning and scrubbing and keeping the ward in order. For instance, all three of these boys' uniforms are always spotless as snow. White and cold and stiff as her own.

The attendant who is described with the most psychological insight is Hobbs, in *Rose Garden*. His brutality is accounted for by his frightened recognition that "the craziness he saw around him" was "an extension of something inside himself. He wanted people to be crazier and more bizarre than they really were so that he could see the line which separated him, his inclinations and random thoughts, and his half-wishes, from the full-bloomed, exploded madness of the patients." They expect him to wind up "on some mental ward as a patient" (p. 66), and are not surprised when they learn that he has committed suicide.

In *Rose Garden*, however, the most vicious attendants of all are the conscientious objectors who regard their service in mental hospitals as little better than being imprisoned to stay out of the army. The patients are their punishment for refusing to be drafted, and are treated accordingly. Ellis is portrayed as a typical example of this type of attendant: he "feared and hated the patients, and looked upon the government which had punished him as the early Christian martyrs must have looked upon the Roman procurators" (p. 92). The protagonist, herself helpless in restraints, watches him beat up her roommate, who had jerked her head away from him. "Movement of the head was a person's whole repertoire in pack; Ellis grabbed Helene's face and held it with one hand. . . . Then he straightened a little, not angry, only deliberate, and began to hit her in the face. The blows landed sure and hard. . . . Deborah, watching, saw what would be to her forever after the symbol of the impotence of all mental patients: the blow again, calm and accurate and merciless. . . . When he had slapped her into submission, he took her pulse . . . and left" (pp. 103–104). Deborah later characterizes "a pacifist" as "one who uses his open hand".

The mistreated patients nurture their resentment against brutal attendants, and, when they get an opportunity, retaliate in kind. Thus, in *Invisible Man* (p. 64), when the vets at the Golden Day see their chance, they beat and kick Supercargo into unconsciousness, yelling "Give the bastard some order!" Hobbs, in *Rose Garden* (pp. 65–66), is "attacked by the patients night after night," and finally, in a wild free-for-all, they break his wrist.

Like the attendants, nurses also tend to be portrayed negatively. Usually, as in *Rose Garden*, *The Bell Jar*, and *Savage Sleep*, they are only appendages to the doctors. At best, like the well-meaning Miss Fitzhugh and Miss Davis in *Savage Sleep*, they are helpless to do more than accompany with a sympathetic smile and a not unkindly word the tortures they are ordered to inflict. At worst they can be merely annoying. Thus Esther Greenwood in *The Bell Jar* suffers the ministrations of a whole series of unpleasant nurses: "Dumpy and muscular in her smudge-fronted uniform, the wall-eyed nurse wore such thick spectacles that four eyes peered out at me from behind the round, twin panes of glass. . . . As she leaned over to reach the side of my head nearest the wall, her fat breast muffled my face like a cloud or a pillow. A vague, medicinal stench emanated from her flesh'' (p. 117). Other nurses torment Esther with vague threats: '''At you-know-where they'll take care of *her*!''' (p. 143). ''I felt the nurse had been instructed to show me my alternatives. Either I got better, or I fell down, down, like a burning, then burnt-out star, . . . to the state place next door'' (p. 171).

But Miss Ratched in *Cuckoo's Nest* is the fiendishly efficient and omnipotent dictator of her antiseptic domain, ruling physicians as well as patients with her ''sure power that extends in all directions'' (p. 26). Like Nikita, she had formerly been in the army.

> The Big Nurse tends to get real put out if something keeps her outfit from running like a smooth, accurate, precision-made machine. The slightest thing messy or out of kilter or in the way ties her into a little white knot of tight-smiled fury. She walks around with that same doll smile crimped between her chin and her nose and that same calm whir coming from her eyes, but down inside of her she's tense as steel. . . . And she don't relax a hair till she gets the nuisance attended to — what she calls ''adjusted to surroundings.''
>
> . . . . .
>
> What she dreams of . . . is a world of precision efficiency and tidiness like a pocket watch with a glass back, a place where the schedule is unbreakable . . . . Year by year she accumulates her ideal staff: doctors, all ages and types, come and rise up in front of her with ideas of their own about the way a ward should be run, some with backbone enough to stand behind their ideas, and she fixes these doctors with dry-ice eyes day in, day out, until they retreat with unnatural chills. (pp. 26–27)

She rides her patients, rubbing their noses in their weaknesses ''till what little dignity [they] got left is gone and [they] shrink up to nothing from humiliation'' (p. 131).

IV

However, it is the physicians who are the most interesting and, almost without exception, the most powerful figures presented in this fiction. They can be grouped under three fairly well-defined rubrics. First, there is a very small number of humane and understanding doctors. Strangely enough, pathologists — notably Drs. Pirosh and Johanson in *Savage Sleep* — fall under this heading. They are strongly opposed to the whole concept of ''mental illness'' as an organic disease to be treated by physical means, basing their opinion on post-mortems which reveal a pattern of irreversible injury and even death from such interventions as shock treatments.

Dr. Pirosh says ''there's always more or less damage from shock. . . . I've mentioned it in Staff but they don't seem to want to hear me'' (p. 32). ''When you do a lot of posts and see the hemorrhaging — a hemorrhage in the cardiac controls in the brain, and good-by. . . . But the important thing is, shock isn't helping patients'' (p. 96). Dr. Johanson is even more emphatic, as he shows Dr. Marks slides of the brains of 50 shocked patients (pp. 270–271): ''These are all deaths from shock itself or from suicide. A slit throat or slit wrists can't hurt the brain. . . . Here's loss of ganglion cells typical of whole areas of the brain. . . . This is insulin shock. Do you see where the cells are replaced by lines of scar tissue? . . . Petechial hemorrhage. If any of it hits the cardiac or respiratory center in the medulla, the patient dies.'' Metrazol and electric shock show the same revealing lines of scar tissue.

Dr. Johanson believes shock treatments are hostile to the patient since they produce ''artificial convulsions and damage to tissues, to bones, to life''. He objects on grounds of principle:

> In the middle of the last century some doctors treated mental illness by castration. Masturbating causes insanity, ergo stop masturbation. . . . The flesh is innocent. The cells have done no wrong. Why must they be assaulted, mutilated? What is it in these professors of the soul, these psychiatrists, that makes them so angry with body tissue? . . . If the brain tissue is quiescent — in, say, nondreaming sleep — then surely it's guiltless, isn't it? Or consider it as an instrument, a mere potential. Would you smash a violin, a Stradivarius, because it was imperfectly played by a child who didn't know music? Is the brain, the cellular structure in itself, guilty and punishable? Is it at fault for the way it responds to human cruelties? I object to shock because it's nonspecific, there's no scientific methodology there and there cannot be.

Allies of the pathologists are those psychiatrists who regard their clients with sympathy and understanding. Fortunate indeed are the few patients, like Deborah Blau in *Rose Garden*, who come within their ambience. Without exception, such psychiatrists are strongly opposed to the use of either fraud or force; are frequently outspoken in attacking particular examples of it; and are psychoanalytically oriented, although by no means classical Freudians (often their feelings for their clients range from affection to genuine love). Shock they regard with horror. On the other hand, they are not afraid of their patients, even the psychotics, and are willing to spend long hours in conversation with them, attempting to understand and assuage the disguised terrors that haunt them. Examples of this group are Dr. Nolan (*The Bell Jar*); Dr. Fried (*Rose Garden*); Drs. John Marks, Erich Naumann, and Bertram Lewin (*Savage Sleep*); and Drs. Zoya Alexeyevna Makhova and René Gillard in *Ward 7*. A perhaps significant sidelight is that at least two of these are based on real people: Dr. Fried on Frieda Fromm-Reichmann[10] and Dr. Marks on John N. Rosen.

Dr. Gillard, the French psychiatrist, says (pp. 120–123) that he knows "only of mental states — we don't call them diseases — and in so far as they are undesirable, we try to modify them by modifying whatever factors in the patient's way of life partly, or even wholly, account for them." He avoids drugs, his staff are forbidden to talk about "illness", his patients are free to come and go, and the men and women are free to mix. Love he regards as therapeutic. "A hospital is not a prison," he says; "we don't force people to have treatment." He does not regard the attempted suicide as a psychiatric patient: "If he can't or doesn't want to go on living, it's his own affair. It's for him to dispose of his own life, not for the authorities. I must say, the idea of compulsory treatment really revolts me. . . . Compulsion in every form is disgusting — especially mental, psychological compulsion."

Dr. Marks's greatest insight is his recognition of the humanity of his patients. His specialty is the putatively hopeless rejects of mental hospitals who are usually relegated permanently to the back wards. After some gruelling ordeals, he comes to feel (p. 460) "that he could handle the hardest case and bring the patient out [of psychosis, even speechless catatonia.] . . . But when he defined the case as a hard case, it was with a qualification of no prior shock treatment or at least a minimum of shock." Dr. Marks recognizes (p. 464) "that the doctor is part of his patient's life at its most despairing and dreadful moments. . . . The patient is human. . . . There was no difference in humanity between [himself, the psychiatrist,] and a psychotic."

However, Dr. Marks had perceived that "the Establishment itself can waver" (p. 299). Heretics like him are definitely in the minority. Even the honest and humane Dr. Fried is reluctant to intervene against reported brutality "on the wards", since she is "not an administrative doctor" (p. 105). More common than Drs. Marks and Fried are well-meaning but weak individuals who go along with psychiatric assaults on human freedom and dignity because they feel powerless to change the system. In this group are included Andrei Yefimych Ragin in *Ward Six*, Dr. Spivey in *Cuckoo's Nest*, Aaron Almquest in *The Crazy from the Sane*, Andrey Efimovich Nezhevsky in *Ward 7*, and the young doctor in "The Long Way Out". Dr. Nezhevsky says, typically (p. 140), "You can't fight a war all by yourself."

But even such ambivalent Milquetoasts do not predominate. The vast majority of fictional psychiatrists are those in the third group. Like Dr. Gordon in *The Bell Jar*; Dr. Bacamarte in *The Psychiatrist*; Comrade V.'s psychiatrist; Dr. Ed Brown in *Rosewater* (pp. 41–45), the quack who coined a new term, "samaritrophia", for the official taxonomy and built his reputation on it; Drs. Staul and Frick in *The Crazy from the Sane*; and most of the psychiatrists in *Savage Sleep* (e.g. Drs. Linscomb, Wellman, Bently, and Carey), these doctors regard themselves as the priesthood of their modern theocracy. They use "their prestige and a certain sense of private ownership of reality to separate themselves from their patients" (*Rose Garden*, p. 202). "They make everything pathological, every emotion's a symptom" ("Certain Hard Places", p. 45). Motivated by love of power, they advocate social engineering as a laudable goal. Deceit and trickery are accompanied in their arsenal by physical restraint, chemotherapy, shock, and psychosurgery as they coerce their unhappy victims with pain and fear.

V

The fiction I have examined portrays in harrowing detail the various forms of fraud and force used by the psychiatrists in the last group and their allies. In *I Never Promised You a Rose Garden*, one of the principal reasons for Dr. Fried's success with Deborah Blau, "the veteran of many deceits" (p. 192), is that the analyst is always honest, sometimes painfully so. (Indeed, her uncompromising honesty gives the novel its title.) But Dr. Fried is a notable exception. Typically, the treatment of those who become the objects of psychiatric control is a terrifying instance of how a general principle enunciated by Moody Prior operates: "The initial effect of power is to deprive its victim of the customary forms and objects which help him to express his identity and establish his status among his fellows. . . . Ultimately, the victim of power becomes a helpless, manipulable object, and finally a mere thing, a corpse."[11]

Dr. Marks in *Savage Sleep* asks himself "Wasn't this whole damn hospital just . . . a continuous replacing of life by death? No care, no love, no will to help these suffering human beings, nothing but evasions and beatings" (p. 393). Deceit is used both to entice patients into the mental hospitals and to keep them docile once they are incarcerated. Thus Khobotov traps Andrei Yefimych in *Ward Six*, Dr. Yanushkevich lures Valentine Almazov into Ward 7 by falsehoods, and Comrade V.'s therapist is himself duped by another psychiatrist who poses as "an official of the National Institute of Health". Although it is used against unattractive characters, trickery is a key element in "The Unicorn in the Garden," "The Catbird Seat," and *Long Distance*. Dr. Pirie in "The Long Way Out" lies to Mrs. King in order to keep her "a tractable patient" instead of "a restraint case".

Indeterminate commitment is a subtle stratagem which fosters hypocrisy in the patients. In order to secure their freedom, they are induced to pretend an outward conformity to whatever they perceive as the demands made upon them. The lifeguard in *Cuckoo's Nest* knows from bitter experience that "being committed ain't like being sentenced. 'You're sentenced in a jail, and you got a date ahead of you when you *know* you're gonna be turned loose. . . . I was picked up for drunk and disorderly, and I been here eight years and eight months'" (pp. 161–162). Too late, Randle McMurphy discovers that he has traded a few months' stay at the prison farm with his psyche intact for, quite literally, a mess of pottage: fresh orange juice in a soul-destroying environment from which he cannot escape. It is the indefiniteness of his commitment, with his term limited only by the whim of Miss Ratched, that he finds so terrifying and that causes his ultimate despair.

More fortunate is the narrator in *Long Distance*, who learns to play a role. "My sense of survival made one last feeble attempt to save me, and succeeded. . . . I learned how to act. My part, that of a grateful and reformed criminal, came to me as if by magic. I already knew it by heart. I had become an entertainer." The nurses and doctors respond with the grateful "relief of people whose necessary brutality had hurt them much more than it hurt me. They congratulated me for looking so much better, sounding so much happier, being so much more tractable. They showed me off to each other, their prize exhibit. I am sure I was written down as an example of the efficacy of their treatment, and probably held up as a sign of hope to others whose vice was to be misfortunate. I basked in their self-approval. It was a non-stop performance, and there were moments when I felt very tired, but fear, thank God, kept me going." Another patient in the same novel, however, Basil, will probably "be treated indefinitely", since there is "little hope of his learning to pretend" (4/22/74 — pp. 35–36, 83, 89).

But even more common than fraud is the use of force: physical restraint, chemotherapy, insulin and electric shock, and psychosurgery. A patient in *Rose Garden* says (p. 47): "I've been in six hospitals. I've been analyzed, paralyzed, shocked, jolted, revolted, given metrazol, amatyl, and whatever else they make. All I need now is a brain operation and I'll have had the whole works. Nothing does any good, not this crap or anything else."

Physical restraint, the least sophisticated of these instruments, includes the obvious measures of locked doors and barred windows which are endemic to lunatic asylums; the wet-packs which, aside from sedatives, are the only non-analytic treatments used in Deborah Blau's hospital; and straitjackets, almost the synecdoche of psychiatric power. Chemotherapy, however, has opened up a vast new technology for behavioral control. By forcing patients to pop pills of various kinds, psychiatrists keep large groups of them in a state of almost constant dazed tranquillity.

This method is widely used in *Ward 7, One Flew Over the Cuckoo's Nest, Savage Sleep, The Bell Jar,* and *Long Distance.* Even in *Rose Garden's* relatively humane hospital the patients, "dizzy with sedatives" (p. 140), sink under "the brittle crust of drugged sleep" (p. 121). However, René Gillard, the French psychiatrist in *Ward 7* (p. 122), characterizes the "long-term effects" of "happiness pills" as "anything but happy! Damage to memory, to eyesight, reduced sexual potency, apathy and indifference." The narrator in *Long Distance* (4/24/74 — p. 35) describes her experience with chemotherapy. "They gave me an incredible and constantly changing quantity of drugs. Until I learned better, and became wily, I screamed quite openly at the pain these pain-killing drugs caused me. The white shapes hung over me, solicitous. . . . More drugs were prescribed. . . . If I slept too much, they woke me up. If I was too wakeful, they put me to sleep. If I was depressed . . . , they cheered me up. If I was too cheerful . . . , they depressed me again. If I remembered, they made me forget. If I forgot, they forced me to remember. All in all, I had never known such unhappiness or such exhaustion. I literally did not know if I was coming or going." Her one recourse was to secrete the pills in her cheek, stuff them in the pillowcase, "or, on one occasion, drop [them] into a nurse's tea."

Far more terrifying than drugs, however, are shock treatments, either insulin (as in *Savage Sleep* and *The Bell Jar*) or electric (as in *Savage Sleep, The Bell Jar, One Flew Over the Cuckoo's Nest, Long Distance, Invisible Man,* and *Mr. Rosewater*). Sometimes shock is used punitively, as in *Cuckoo's Nest.* And Dr. Marks in *Savage Sleep* discovered that "when one patient had 'acted up,' she had been given several consecutive electric shocks" (p. 393). The insulin ward, dimmed by a "cloud of sweat . . . into the usual phantasmagoric purgatory", is described in the same novel (pp. 257–258). The faces of the patients became "moist and red" as "the hot minutes of the insulin went by and its power everywhere began seeping down through the brain. Several of the men and one of the women moaned and screamed. They twisted. The nurses and attendants held them, keeping them from falling out of bed, tying them in or readjusting their canvas bonds. Now the time of drowning, the time of those hoarse cries between terror and sleep. . . . On one of the beds a man had begun to protrude his tongue, over which he seemed to have lost control, and foam formed on his lips."

The eight-year-old George Golding in *Savage Sleep* dies from insulin shock, and Marta Kleinerman gets worse (p. 340), going into mute catatonic rigidity. One patient in *Rose Garden* is "a gentle, generous veteran of mechanical psychiatry in a dozen other hospitals. Her memory had been ravaged, but her sickness was still intact" (p. 225). Dr. Marks in *Savage Sleep* regards Ethel as his most challenging case because she has had "a maximum of shock: incalculable rivers of electric shock and insulin coma had flowed through her with their physical ravage to the brain" (p. 460). We are given a graphic description of the consequences (p. 393): her "wasted body lay . . . completely still, her eyes open but non-seeing. . . . [Dr. Marks] had seen on Johanson's slides what must be in this brain — massive replacement of live ganglion cells by ridges and corrugations of scar tissue. Life replaced by death."

Some of the most lurid passages in this group of fictional works concern compulsory electroshock, the panic with which it is faced and endured by the cowed patients, and the helpless disorientation which succeeds it. Representative descriptions of the ordeal, which is a feature of *Invisible Man, Savage Sleep, The Bell Jar, God Bless You, Mr. Rosewater, One Flew Over the Cuckoo's Nest,* and *Long Distance,* are indicated here.

This "benevolent electricity" is described in *Long Distance* (4/22/74 — p. 35): "They repeatedly convulsed me with many electric volts. Although their firm belief was that the root of the trouble was in my unconscious, they paradoxically believed that if I wasn't conscious of the pain of these electric shocks, I wouldn't feel it. My body, I suppose, clenched its teeth and writhed in a momentary death throe; in fact every part of me except for my anesthetized nerves must have suffered appallingly. . . . It obviously frightened me very much, for in the few moments I was conscious (before they put me under again) intense fear was my main symptom."

Electroshock is also pictured in detail in *One Flew Over the Cuckoo's Nest*. Harding describes it to McMurphy (pp. 66–67) as "a device that might be said to do the work of the sleeping pill, the electric chair, *and* the torture rack. . . . No one ever wants another one. Ever. . . . You are strapped to a table, shaped, ironically, like a cross, with a crown of electric sparks in place of thorns. You are touched on each side of the head with wires. Zap! Five cents' worth of electricity through the brain and you are jointly administered therapy and a punishment for your hostile go-to-hell behavior, on top of being put out of everyone's way for six hours to three days, depending on the individual. Even when you do regain consciousness you are in a state of disorientation for days. You are unable to think coherently. You can't recall things." Harding later points out "the Shock Shop" to McMurphy as the place where "fortunate souls . . . are being given a free trip to the moon. No, on second thought it isn't completely free. You pay for the service with brain cells instead of money. . . . One flash and you're unconscious immediately. No gas, no needle, no sledgehammer. . . . The thing is, no one ever wants another one. You . . . change. You forget things. It's as if . . . the jolt sets off a wild carnival wheel of images, emotions, memories" (pp. 177–180).

Finally McMurphy's own shocking is described (pp. 270–271): "Climbs on the table without any help and spreads his arms out. . . . A switch snaps the clasps on his wrists, ankles, clamping him. . . . A hand takes off his wristwatch. . . . They [smear] the graphite salve on his temples. . . . Put on those things like headphones, crown of silver thorns over the graphite. . . . Just as those irons get close enough to the silver on his temples — light arcs across, stiffens him, bridges him up off the table till nothing is down but his wrists and ankles and . . . he's frosted over completely with sparks. . . . They roll him out . . . , still jerking, face frosted white."

The narrator of *Invisible Man* relates his experience with electroshock (pp. 177–183).

> My head was encircled by a piece of cold metal like the iron cap worn by the occupant of an electric chair . . . . The machine droned, and I . . . steeled myself for the shocks, but was blasted nevertheless. The pulse came swift and staccato, increasing gradually until I fairly danced between the nodes. My teeth chattered. I closed my eyes and bit my lips to smother my screams. Warm blood filled my mouth. . . . I wanted to be angry, murderously angry. But somehow the pulse of current smashing through my body prevented me. Something had been disconnected. . . . I tried to *imagine* myself angry — only to discover a deeper sense of remoteness. I was beyond anger. I was only bewildered. . . . There was no avoiding the shock and I rolled with the agitated tide, out into the blackness. . . . All my limbs seemed amputated. . . . I seemed to have lost all sense of proportion. . . . Thoughts evaded me, hiding in the vast stretch of clinical whiteness to which I seemed connected only by a scale of receding grays. . . . I seemed to exist in some other dimension, utterly alone. . . . Meanings were lost in the vast whiteness in which I myself was lost. . . . A terrible sense of loneliness came over me.

When he is asked his name, he cannot remember it: "I was overcome with swift shame. I realized that I no longer knew my own name. . . . I tried again, plunging into the blackness of my mind. It was no use; I found nothing but pain. . . . Who am I? I asked myself. But it was like trying to identify one particular cell that coursed through the torpid veins of my body. Maybe I was just this blackness and bewilderment and pain."

Esther Greenwood, in *The Bell Jar* (pp. 117–119), describes a similar encounter. "Doctor Gordon was fitting two metal plates on either side of my head. He buckled them into place with a strap that dented my forehead, and gave me a wire to bite. . . . Then something bent down and shook me like the end of the world. Whee-ee-ee-ee-ee, it shrilled, through an air crackling with blue light, and with each flash a great jolt drubbed me till I thought my bones would break and the sap fly out of me like a split plant." Afterward she felt "dumb and subdued. Every time I tried to concentrate, my mind glided off, like a skater, into a large empty space, and pirouetted there, absently."

Chief Broom's experiences with the Shock Shop in *Cuckoo's Nest* are also portrayed: "There'd be that door, opening to show me the mattress padding on the other side to stop out the sounds, the men standing in a line like zombies among shiny copper wires and tubes pulsing light, and the bright scrape of arcing electricity. I'd take my place in the line and wait my turn at the table. The table shaped like a cross, with shadows of a thousand murdered men printed on it, silhouette wrists and ankles running under leather straps sweated green with use, a silhouette neck and head running up to a silver band goes across the forehead. And a technician at the controls beside the table looking up from his dials and down the line and pointing at me with a rubber glove. . . . No matter how hard I tried, two or three times a month I found myself with that door opening in front of me to the acid smell of sparks and ozone" (p. 126).

Esther Greenwood in *The Bell Jar* (p. 168) could always tell which patients were going to be shocked "because they didn't get their breakfast trays with the rest of us. They had their shock treatments while we breakfasted in our rooms, and then they came into the lounge, quiet and extinguished, led like children by the nurses, and ate their breakfasts there."

Chief Broom describes the aftermath of his shock treatments (pp. 275–276): "I'd wandered around in a daze for as long as two weeks after a shock treatment, living in that foggy, jumbled blur which is a whole lot like the ragged edge of sleep, that gray zone between light and dark, or between sleeping and waking or living and dying, where you know you're not unconscious any more but don't know yet what day it is or who you are or what's the use of coming back at all."

McMurphy, whose "humor had been parched dry between two electrodes" (p. 305), makes a gallant effort to conceal the terror that seizes him whenever he is to be subjected to another shock treatment (pp. 276–277). "But every time that loudspeaker called for him to forego breakfast and prepare to walk to Building One, the muscles in his jaw went taut and his whole face drained of color, looking thin and scared."

Esther Greenwood, too, in *The Bell Jar*, who had felt "an immense relief" flooding through her each morning when she got her breakfast tray, knowing she was "out of danger for that day" (p. 168), is terror-stricken when she deduces, from not having been served breakfast, that she is to undergo shock again. In blind panic, she tries vainly to hide by curling up in a corner of the hall alcove with the blanket over her head, numb with dread (pp. 172–173).

Sometimes electroshock does not kill, but is a failure nonetheless, its victims pathetic dropouts from the human race. Chief Bromden, narrator of *Cuckoo's Nest*, is himself such a failure, as Harding explains to McMurphy (p. 67): "The Chief, years ago, received more than two hundred shock treatments. . . . Imagine what this could do to a mind that was already slipping. Look at him: a giant janitor. There's your Vanishing American, a six-foot-eight sweeping machine, scared of its own shadow. That, my friend, is what we can be threatened with."

But, although he moves through a fog of fear, reduced to hysteric deafness and muteness, Chief Broom is at least still ambulatory. More grisly is the example of Ellis, "a drooling, pants-wetting idiot at thirty-five" (p. 67), whose forced shock treatments caused his degeneration to a mere vegetable: "Ellis is a Chronic came in an Acute and got fouled up bad when they overloaded him in that filthy brain-murdering room that the black boys call the 'Shock Shop'. Now he's nailed against the wall in the same condition they lifted him off the table for the last time, in the same shape, arms out, palms cupped, with the same horror on his face. . . . They pull the nails when it's time to eat or time to drive him in to bed or when they want him to move so's I can mop the puddle where he stands. At the old place he stood so long in one spot the piss ate the floor and beams away under him" (pp. 14–15).

VI

Even shock, however, horribly though it is portrayed in psychiatric fiction, is not the ultimate degradation. That dubious distinction is reserved for psychosurgery, whose practitioners aim quite explicitly at homogenizing the victim's personality to a bland pudding. This method of character reduction is used in *The Bell Jar, Cuckoo's Nest,* and *All the King's Men.*

In *The Bell Jar*, we are briefly introduced to Valerie, who, having been "always angry," was lobotomized. One day she shows Esther her scars (pp. 157–158), "two pale marks, one on either side of her forehead, as if at some time she had started to sprout horns, but cut them off". The horrified Esther looks at Valerie "in awe, appreciating for the first time her perpetual marble calm". Although she is "not angry any more", Valerie will never leave the mental hospital; she now likes it there, and her "snow-maiden face behind which so little, bad or good, could happen" (p. 196) will always be a fixture of its corridors.

An actual psychosurgical operation is described in *All the King's Men*. However, the few pages (pp. 316–319) it occupies cannot be understood without reference to the novel as a whole.[12] Dr. Adam Stanton, the surgeon, has been characterized as a rigidly repressed man incapable of love (except for a thinly disguised incestuous attachment to his sister) who sees everything in terms of black and white. His "ice-water-blue, abstract eyes . . . were a reproach to all uncertain, twisted, and clouded things and were as unwavering as conscience" (p. 234). The prefrontal lobectomy he performs follows close on the heels of a passage in which Jack Burden talks about the importance of love as a means of changing the character of another person, with one's own character also changing in the process. (This is how the rare "good" fictional psychiatrists like Dr. Marks and Dr. Fried operate.) Dr. Stanton, however, sets about changing someone's character as if his patient were an inanimate block of wood he is operating on with carpenter's tools. Of course he has no "love" for the other person, and is not himself changed. Indeed, he cannot even be sure that his carpentry will bring about the desired result.

The surgery, which Jack Burden witnesses, is described in gruesome detail. Adam aims at giving his patient "a different personality", but says "You can't ever guarantee anything. . . . There have been cases . . . where the patient didn't become cheerfully extroverted but became completely and cheerfully amoral", with "all the ordinary inhibitions" disappearing. Burden characterizes the operation as "more radical even than what happened to Saul on the road to Damascus". As Adam cuts away, he does a job "that would have made a Comanche brave look like a tyro with a scalping knife". The victim becomes completely dehumanized. "The man there on the table didn't seem real" as Jack watches Adam's "high-grade carpenter work". But when Adam begins cauterizing the brain, Jack gets a little sick, for he is reminded of a childhood memory involving "the smell of . . . burning horses". Eventually the prefrontal lobectomy is completed and "what was left inside the split-open skull . . . was sealed back up and left to think up an entirely new personality".

More repellent than the physically nauseating details of this psychosurgery, however, are its implications for arbitrary behavior control. Anyone who sets about changing the character of another person is attempting to change his moral values. Consequently the "human engineer" — the man who presumes to give someone else a rebirth, a new personality — must operate on the assumption that he understands what ethical standards are desirable. Yet Adam himself is represented only a few pages further on (p. 323) as "acting perfectly crazy", and he winds up a murderer.

In *Cuckoo's Nest*, lobotomy — "chopping away the brain" — is characterized as "frontal-lobe castration" (p. 180). When McMurphy returns from this operation (pp. 307–309) his face is "milk-white except for the heavy purple bruises around the eyes". Chief Broom is appalled at its empty expression. "There's nothin' in the face. Just like one of those store dummies." Scanlon agrees: "Whole thing's . . . too *blank*." As the swelling around the eyes begins to subside, Chief Broom realizes he cannot let "something like that sit there in the day room with [McMurphy's] name tacked on it for twenty or thirty years so the Big Nurse could use it as an example of what can happen if you buck the system". More hours pass: "The swelling had gone down enough in the eyes that they were open; they stared into the full light of the moon, open and undreaming, glazed from being open so long without blinking until they were like smudged fuses in a fuse box." Chief Broom suffocates McMurphy, but when he lifts the pillow, he sees in the moonlight that "the expression hadn't changed from the blank, dead-end look".

Presumably McMurphy's operation would have been, by psychiatric standards, a "success". "The technicians [now] got more skill and experience. No more of the button holes in the forehead, no cutting at all — they go in through the eye sockets. Sometimes a guy goes over for an installation, leaves the ward mean and mad and snapping at the whole world and comes back a few weeks later with black-and-blue eyes like he'd been in a fist fight, and he's the sweetest, nicest, best-behaved thing you ever saw. He'll maybe even go home in a month or two, a hat pulled low over the face of a sleepwalker wandering round in a simple, happy dream. A success, they say, but I say he's just another robot for the Combine" (pp. 15–16).

Ruckly's operation, on the other hand, was a failure, reducing him from an Acute to a Chronic: "They made a mistake in one of their head installations. He was being a holy nuisance all over the place, kicking the black boys and biting the student nurses on the legs, so they took him away to be fixed. They strapped him to that table" and "brought him back to the ward two weeks later, bald and the front of his face an oily purple bruise and two little button-sized plugs stitched one above each eye. You can see by his eyes how they burned him out over there; his eyes are all smoked up and gray and deserted inside. . . . All day now he won't do a thing but hold an old photograph up in front of that burned-out face, turning it over and over in his cold fingers, and the picture wore gray as his eyes on both sides with all his handling till you can't tell any more what it used to be." He sits "fumbling and drooling over his picture. He never does much else. The dwarf black boy gets a rise out of him from time to time by leaning close and asking, 'Say, Ruckly, what you figure your little wife is doing in town tonight?' Ruckly's head comes up. Memory whispers someplace in that jumbled machinery. He turns red and his veins clog up at one end. This puffs him up so he can just barely make a little whistling sound in his throat. Bubbles squeeze out the corner of his mouth, he's working his jaw so hard to say something. When he finally does get to where he can say his few words it's a low, choking noise to make your skin crawl — 'Ffffff*fuck* da wife! Ffffff*fuck* da wife!' and passes out on the spot from the effort" (pp. 15–16).

VII

In summary, the picture fiction paints of psychiatry is a grim one. In didactic works like *The Psychiatrist, Savage Sleep, The Iron Heel, Ward 7,* and *God Bless You, Mr. Rosewater,* the thesis is clearcut, persuasive, and devastating: psychiatry, as interpreted by its professional adherents, is an instrument of social control unbridled in its arbitrary grasp of power. Feeding upon its own successes, it grows constantly more rapacious, its fires stoked by society's yearning for scapegoats and man's lust for dominion over his fellows. In mimetic works, the representation of psychiatric power is repellent, even in the humorous Thurber stories. In reading serious mimetic works like "The Long Way Out", *Noon Wine, Ward Six, I Never Promised You a Rose Garden,* and *One Flew Over the Cuckoo's Nest,* we find our responses running the gamut of two contrapuntal scales, both of which stem from an initial concern. On the one hand, as we contemplate the degradation of psychiatric victims, our emotions range over concern–irritation–annoyance–resentment–indignation–anger–outrage. Coupled with this spectrum, however, is another, as the realization dawns on us that "there but for the grace of God . . . ": concern–uneasiness–perturbation–anxiety–fear–terror–dread. Through these works, we are reminded of the existence of an oppressed and growing segment of our population: those unfortunates hidden away in lunatic asylums. Both "The Long Way Out" (pp. 400, 404) and *God Bless You, Mr. Rosewater* (p. 42) make explicit analogies to oubliettes.

Randle McMurphy, who at first fails to understand why his fellow-inmates are so rabbity, asks (p. 65): "What is there [Big Nurse] can do to you, anyway? . . . She can't have you whipped. She can't burn you with hot irons. She can't tie you to the rack. They got laws about that sort of thing nowadays; this ain't the Middle Ages."

McMurphy is centuries behind the times, however. What he fails to realize is that, like the Grand Inquisitor, the psychiatrist is armored not only in his profession, but with all the awesome panoply of the State. And his weapons are infinitely more refined than such clumsy contrivances as the rack and the iron maiden. If clerical benevolence to the 17th-century witch consisted of destroying her body by physical torture so that her soul might live, psychiatric benevolence to the mental patient today consists in destroying his soul by technological torture so that his body might live. And yet, since its practitioners often mechanically equate flesh and spirit, their ministrations may destroy his body, too. Our fiction writers have been dramatizing for us their conviction that demonology, wearing the deceptive disguise of scientistic pseudo-humanitarianism, continues to flourish.

NOTES

1. Byron G. Wales, "Rewards of Illness: Observations on Institutionalization by a Former Neuropsychiatric Patient," *Mental Hygiene* vol. 44 (January, 1960), p. 61.
2. "Literature and the Historian," *American Quarterly*, vol. 26 (May, 1974), p. 151.
3. In *Ideology and Insanity*, Anchor Books A 704, Doubleday (Garden City, New York, 1970), p. 139.
4. Earlier studies by psychiatric professionals have been gingerly in their approach and defensive in their conclusions. See, for example, Charles Winick, "The Psychiatrist in Fiction," *Journal of Nervous and Mental Disease*, vol. 136 (January, 1963), pp. 43–57; Marjorie C. Meehan, "Psychiatrists Portrayed in Fiction," *Journal of the American Medical Association*, vol. 188 (20 April, 1964), pp. 255-258; and Paul Rom, "Psychiatry in Modern Novels," *International Journal of Social Psychiatry*, vol. 11 (Winter, 1965), pp. 70–77.
5. The texts I have used in this paper are the following: Linda Arking, "Certain Hard Places," *The New Yorker*, vol. 50 (March 25, 1974), pp. 40–76; F. Scott Fitzgerald, "The Long Way Out," in James K. Bowen and Richard VanDerBeets, Eds., *American Short Fiction*, Bobbs-Merrill (Indianapolis, 1970), pp. 400-404; Max Frisch, "Schinz," in Robert Spaethling and Eugene Weber, Eds., *A Reader in German Literature*, Oxford University Press (New York, 1969), pp. 181–212; James Thurber, "The Catbird Seat" and "The Unicorn in the Garden," in *The Thurber Carnival*, Harper & Brothers (New York, 1945), pp. 9–17, 268–269; Anton Chekhov, *Ward Six and Other Stories*, trans. Ann Dunnigan, Signet Classic CQ 613, New American Library (New York, 1965), pp. 7–59; Machado de Assis, *The Psychiatrist and Other Stories*, trans. William L. Grossman, University of California Press (Berkeley, 1966), pp. 1–45; Katherine Anne Porter, *Noon Wine*, in *Pale Horse, Pale Rider*, Signet Modern Classic CQ 488, New American Library (New York, 1967), pp. 62–112; Millen Brand, *Savage Sleep*, Crown Publishers (New York, 1968); Peter Breggin, *The Crazy from the Sane* (Secaucus, N.J.: Lyle Stuart, 1971); Ralph Ellison, *Invisible Man*, Vintage V-715, Vintage Books (New York, 1972); Joanne (Hannah Green) Greenberg, *I Never Promised You a Rose Garden*, Signet Y-4835, New American Library (New York, 1971); Ken Kesey, *One Flew Over the Cuckoo's Nest*, Viking Compass C 161, Viking Press (New York, 1972); Jack London, *The Iron Heel*, American Century Series, Hill & Wang (New York, 1957); Penelope Mortimer, *Long Distance*, in *The New Yorker*, 50 (April 15 and 22, 1974), *passim*; Sylvia Plath, *The Bell Jar*, Bantam Book T 7178, Bantam Books (New York, 1972); James Park Sloan, *The Case History of Comrade V.*, Houghton Mifflin Boston, 1972); Valeriy Tarsis, *Ward 7*, trans. Katya Brown, Dutton Paperback D 183, E. P. Dutton (New York, 1966); Kurt Vonnegut, Jr., *God Bless You, Mr. Rosewater*, Dell 2929, Dell (New York, 1970); and Robert Penn Warren, *All the King's Men*, Bantam Modern Classic QY 5249, Bantam Books (New York, 1970). In order to eliminate excessive footnotes, I have referred to these editions by page numbers enclosed in parentheses in the body of the article.
6. In *Er, Prosa von Franz Kafka*, Band 97 der Bibliothek Suhrkamp, Suhrkamp Verlag (Frankfourt-am-Main, 1968), pp. 130–131.
7. Many of the insights in this article were developed in coöperation with my English 615-B graduate students at the State University of New York at Albany: Lenore Cherkes, Susan Ciszek, Edwin W. Dietrick, Diane Gori, Edward Kazlauskas, Arlene King, Elisabeth Leydier, Susan Oaks, James M. Parker, James Rawson, Anne Roberts, and Richard Spires. I am grateful for their collaboration.
8. *Science and the Humanities*, Northwestern University Press (Evanston, Ill., 1962), p. 42.
9. Katherine Anne Porter, "'Noon Wine': The Sources," *The Collected Essays and Occasional Writings of Katherine Anne Porter*, Delacorte Press (New York, 1970), p. 480.
10. "Dr. Fried" was identified by Dr. Hilde Bruch, who had been a consultant in the case on which *Rose Garden* was based. See Bruch's *Eating Disorders*, Basic Books (New York, 1973), pp. 350–351.
11. *The Drama of Power: Studies in Shakespeare's History Plays*, Northwestern University Press (Evanston, 1973), pp. 165–166.
12. This is not the place to go into an extended analysis of *All the King's Men*. It can be pointed out, however, that the prefrontal lobectomy Adam Stanton performs dramatically exemplifies a stage in Jack Burden's thinking which the narrator has to abandon. If a human being's character can be altered by the surgeon's knife, then our so-called morality is nothing but a mechanistic function of the brain's organic structure and we need take no moral responsibility for our decisions. This, of course, is the philosophy of the Great Twitch which Jack Burden has to transcend in terms of the development of this novel. Before *All the King's Men* can end, given the premises on which its plot of thought is constructed, Jack Burden must learn to accept responsibility for the consequences of his actions.

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THE SOCIAL ANALYSIS OF THREE EARLY 19TH CENTURY FRENCH LIBERALS: SAY, COMTE, AND DUNOYER*

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The topic of this paper is the class theory of Jean-Baptiste Say (1767–1832), Charles Comte (1782–1838) and Charles Dunoyer (1786–1862). However, in order to be fully accurate, this title should be qualified in several respects. First, the thinking of these men can not be examined in complete isolation, divorced from traditional liberal ideas, the works of their contemporaries and the intellectual currents of the day. Secondly, their class theories strictly speaking cannot be separated from what we might now consider the separate specializations of economics, history and political theory. This is the nature of the times as well as in the nature of the subject. In the early 19th century, the social sciences had not developed in the sense which we know them today. With the exceptions of history and political economy, real specializations had not yet become established among the "political and moral sciences", as they were then known. In this group, Say is the exception, a true specialist, perhaps the first professional economist of the 19th century. Comte is closest to Say in this regard, a professor of law and a publicist. He wished to apply in his own field the scientific methods of J. B. Say. His *Traité de legislation* involved a meticulous examination of the history and social organizations of the human race based upon the principles of utility and political economy. Dunoyer, who is remembered primarily as a political economist, was somewhat more ambitious in his endeavors. Trained as a lawyer, he was a publicist, a professor of political economy, and he wrote his chief work, *La Liberté du travail* as a history of the growth of liberty in civilization, which to Dunoyer meant the history of civilization itself. It was a vast social-historical treatise shaped and informed by the principles of political economy. It would be impossible to discuss the class theories of these men without examining their view of history, their political ideas and most importantly their economic thought. In fact, the main thesis of this paper is that a cogent, cohesive and vastly powerful social analysis was created with the fusion of liberal historical and political thought with the economic orthodoxy of Jean-Baptiste Say.

An examination of any group of critical radicals, such as the French liberals of the Restoration and July Monarchy periods, necessarily must address itself to three basic questions. First, what was the primary liberal view of the origins and history of the class structure of their society? Secondly, how did they envision the structure of a truly just society? And finally, by what means was the just society to be attained? From this derives the basic organization of the paper. In the first section, I will present a brief and by no means exhaustive examination of some aspects of the revolutionary liberal tradition in which these men shared and some of the contemporaneous intellectual climates which influenced their work. The second section will deal with the development of the doctrines of *industrielisme* which was the synthesis of traditional liberal views on history and politics and the new science of economics. The final section of the paper will examine the vitally important concepts of anarchy and social evolution as they were developed in the later writings of Say, Comte and Dunoyer.

I

One of the most important themes in the historical thought of the late 18th and early 19th

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centuries was the concept of the evolution of civilization through various stages. Perhaps the first among the French to develop this was Bossuet in his *Discours sur l'histoire universelle* (1681). In 1750, Turgot set out in his *Plan de deux discours sur l'histoire universelle* the division of civilization into the stages of hunting, pastoral and agricultural societies which was to be so influential among later liberal theorists. It was within this evolutionary framework that the liberals of the Restoration period developed their ideas concerning the structure of modern society.[1]

The fundamental liberal notion of the origin of the pre-revolutionary and restoration class structure of France was based upon what we might most simply call the Conquest Theory. This concept was hardly a novelty in the post-Napoleonic era. It was, rather, a commonplace of 18th century liberal radicalism. Thomas Paine employed it to attack the legitimacy of the British monarch in his *Common Sense* of 1776. Paine's wry comments about French bastards and armed banditti may have lacked scholarly restraint, but they were an effective piece of propaganda in the American Revolutionary struggle.[2]

Briefly, the conquest theory traced the origin of contemporary European class structure to the barbarian invasions which swept over the Roman Empire and imposed upon the indigenous peoples of western Europe and the Mediterranean world a barbarian military hierarchy from whence there developed the royal and noble classes of medieval and modern Europe. Coincidental with this was the rise of Christianity and the consequent elaboration of a religious hierarchy, the higher orders of which were rapidly co-opted by the secular aristocracy. For centuries, the servile masses groaned under the tyranny of the feudal system; however, the various rivalries of kings and lords and religious and secular factions allowed opportunities for the growth and reassertion of the productive classes. In France, the growing importance of these classes received legal sanction in the recognition of the Third Estate as one of the three great orders of the realm. It was in a critical examination of these origins of the structure of their society that the radicals of the 18th century found the ideological grounds for revolution.

In his revolutionary tract, Paine distinguished radically between society and government, one, always a blessing arising from our wants, the other, a necessary evil, arising from our wickedness.[3] Paine realized, of course, that in a developed and civilized society brute force alone would not suffice to support a political order.[4] A successful revolutionary must first break the bonds of conviction and emotion which attach men even to bad governments. This was the role of natural law and social contract theories, to sap the legalist and theological foundations of monarchical government. Thus, rather than the anointed of God, the king became merely the descendant of the "principal ruffian of some restless gang" who at one time managed to usurp the natural rights of men.

Similar notions were developed just prior to the outbreak of the French Revolution by Abbé Sieyès in his tract, *What is the Third Estate?* Amid the breakdown of the late medieval and absolutist order in France, Sieyès appealed to the growing sense of nationhood within French society. Sieyès defined the essence of this nationhood as the existence of a community living in a common order under a common law.[5] This emphasis upon a common order and a common law was in stark contradiction to the political theory and practices of absolutism. In the theory of the absolutist state, society consisted of innumerable legally autonomous groups variously called estates, corps, orders or classes. Society was divided vertically and horizontally into these particular groups, each having its own functional monopoly, its own status, and its own privileges (*privatae leges* or private laws); hence the opposition between "particular orders" and "common order", "private laws" and "common law". Over all the king enjoyed absolute power, at least in theory. Each particular corps or group had the right to counsel the king in matters which were germane to its interests. In turn the king dispensed justice.[6]

It was the obvious breakdown of this particularist and feudal view of society towards which Sieyès aimed his arguments. He noted that it was the Third Estate which performed all the essential functions of society, meaning here production and commerce. The feudal view perhaps fit the time when the Third Estate was merely the servile horde which existed only to provide the sustenance of the warrior and clerical classes. However, with the growth of arts, of industry and of commerce, the Third Estate had grown to become the largest, the strongest, and most vital portion of society. French society was no longer the medieval commonwealth of knights and priests and serfs, but a modern nation based upon industry and commerce, and the Third Estate was that nation; nothing outside the Third Estate could share in that nationhood. "The Third Estate which had been reduced to nothing, has reacquired, through its industry, a part of what the injustice of the stronger had taken from it." The nobility was no longer the "monstrous feudal reality" of the dark ages; it was quite simply a malignancy living parasitically within the body of the nation.[7]

During the course of the French Revolution the concept of the progressive development of humanity and of the establishment and evolution of classes within society was given a more precise formulation by the Marquis de Condorcet in his *Esquisse d'une tableau historique des progrès de l'esprit humaine.* Development in Condorcet's theory meant intellectual development. It was, however, intimately tied to the material circumstances of a society. Human effort created products, property, which gave rise to exchanges, the division of labor and ultimately to the development of surplus. The accumulation of a surplus allowed time for leisure and the opportunity for observation and reflection. Observation and reflection led to discovery and intellectual improvement which, when applied to man's necessary activities, increased productivity and created further advancement.[8]

In the foundation of his study, Condorcet embraced completely the method of the natural sciences. Since the laws of the physical universe, whether known or unknown, were necessary and constant, he assumed that this was no less true for the laws regulating the development of man's moral faculties. An examination of the development of those faculties across the course of human history would reveal those laws and make it possible to trace the probable future course of the race.[9] Both Condorcet's emphasis on the scientific method and his general scheme for the development of civilization were to have great influence among the liberals of the post-Napoleonic era.

In the period stretching from the American revolution to the restoration of the Bourbons in France, there was general recognition, throughout the Western world, of the great progress which had been attained through the development of the physical sciences and technology. There was also, after the style of Condorcet, a growing confidence that those same methods when applied to the phenomena of society and government would bring about a great flowering of the social sciences and a consequent rationalization of society. Montesquieu, in his *De l'esprit des lois* (1748), proclaimed that he had drawn his principles not from opinion, but "from the nature of things", a phrase that was to recur throughout the treatises of the early 19th century.[10] Say used it in describing the method of his political economy.[11] Charles Comte seconded this in the opening pages of his *Traité de legislation* as did Dunoyer in his course at the Athenée.[12]

Undoubtedly, the success of Adam Smith and J. B. Say in delineating a science of political economy encouraged efforts in the other social sciences. There was the belief that history might be made scientific, an idea that the liberals of Restoration France may have drawn from Turgot.[13] There was hope, further, that the confluence of these new social sciences would produce the definitive science of society. There were some such as Saint Simon who thought that they had it within their grasp.[14]

The situation which faced the liberals with the re-establishment of the Bourbon dynasty was comparable to the one facing their *philosophe* forebears in the pre-revolutionary era. Like the *philosophes*, they wished to expose the foibles and injustices of their society to the light of reason. Their work, however, was profoundly influenced by revolutionary and imperial experiences as well as by the newer intellectual currents of their times.

For one thing, the liberals were obviously affected by attacks upon the rationalist criticism of the 18th century. Defenders of the old orders and many newer liberals complained that the *philosophes* destroyed, but they could not build; and, where they attempted to replace the structure of the society they had so effectively undermined, their schemes were nothing but pure speculations, vain and artificial constructions bearing no relations to the real needs of society.[15] In the elucidation of their concept of the scientific method as applied to the phenomena of society, both Say and Comte were careful to avoid the policy science pitfalls of the revolutionary theorists, a common enlightenment view that political and moral sciences were meant to translate fact into values.[16] Say and Comte explicitly disavowed this purpose. Their sole task, they claimed, was to unearth facts and the chains of cause and effect which held them together. The true scientist might advise as to the consequences of a particular act, but never as to the duties of the enactor.[17] Where the liberals saw the outline of a better society, they were at pains to demonstrate how it would emerge naturally through the mechanisms of society itself, rather than being forged in the political machinations of a revolutionary convention.

Another attitude which the restoration liberals picked up from the historians of the late 18th century and the writings of the dynastic apologists was a strong sense of the historical relativity of social institutions. This attitude was not necessarily foreign to the liberal tradition. Peter Gay noted that there was a strong underlying strain of historical relativism in the writings of enlightenment historians, though it was often ignored by the historians themselves.[18] Even though the liberals found unconvincing the arguments of Chateaubriand and later those of de Bonald and de Maistre for the re-establishment of the medieval commonwealth, they were nevertheless impressed by the historical vision that social institutions must reflect the true nature of society.

One of the first of the restoration liberals to consciously employ this notion in an attack upon contemporary society was Benjamin Constant in his lecture, later published, *De l'esprit de conquête* (1813). Constant noted that the ancient world was organized upon the basis of warfare. Military virtues were necessary to the survival of the ancient state and, hence, were laudable. The modern world, however, was organized upon a different basis. "We have arrived at the epoch of commerce, the epoch which must necessarily replace that of warfare, as that of warfare must necessarily precede it."[19]

To attempt to impose upon a society a form that did not fit its nature would be to destroy it. In the ancient world independence and security were bought only at the price of constant warfare. Not to fight was inevitably to be conquered and enslaved. To turn a modern man into a warrior would make him ferocious, but it would not remove from him the habit of commercial calculation. Unrestrained by the public-spirited virtues of the ancient republic, he would be at once calculating and egotistical, and society would dissolve into brigandage and chaos.[20] Dunoyer in particular was impressed by this argument, and he later admitted the importance of Constant's lecture in the development of his own thought.[21]

Although Constant certainly felt that man had some role in the shaping of his social institutions, he realized that the effect was reciprocal. " . . . Man conforms to the institutions which he finds established as he conforms to the laws of the physical universe. He is influenced by even the worst aspects of these institutions in the arrangement of his interests, his speculations, the entire plan of his life." Reflecting some disillusionment with the revolutionary experience, Constant notes: "To change all this, even for the better, would do him harm."[22]

The sentiment that power was ultimately ineffectual in propelling rapid social change had an obviously optimistic side. Dunoyer expressed it clearly in his early work and it remained a constant liberal motif.[23] The idea was simple to the point of banality: a prince or despot could not long act against the opinion of the vast majority of his subjects. To do so was to destabilize his regime and invite revolution. If nothing else this should have been the lesson that the Bourbons drew from the Great

Revolution. That they, or at least their partisans, had not done so was an obvious source of irritation to the liberal faction.

This principle, however, cut two ways. On the pessimistic side, it set a limit to the possibilities of reform. The political and social amelioration of society could only move so fast, the pace being set by the degree of civilization and enlightenment which society already enjoyed.[24] The influence of Condorcet's developmental theory is clear, though there was less emphasis upon progress as axiomatic in the thinking of Comte and Say. Necessity remained an important aspect of Dunoyer's developmental theory; and, interestingly, this was accompanied by a more pronounced strain of pessimism in his later writings.

There developed among the Restoration liberals a real anti-revolutionary stance. Education became for them the prime engine of reform.[25] This anti-revolutionary stance became particularly forceful with the ultimate realization by the liberals that power and industry were antithetical. Comte noted in his *Traité de legislation* that a state which, for better or for worse, wished to create new laws which did not correspond to the wants or the needs of society must " . . . apply the power which it possessed to give reality to its statutes, and reform (*modifier*) by violence the population which is subject to it. . . . It must make itself the master of the people by conquest, enslave the generations already formed, and seize those newly born to fashion them to its will".[26] The basic theme of the *Traité* is that such a use of force is absolutely contrary to the existence of modern society.

Thus, from various intellectual sources the liberals of the Restoration absorbed both an abiding faith in the progress of civilization and a growing consciousness of the constraints which physical and social realities impose upon human action. Though Comte and Dunoyer were essentially Restoration figures, their intimate association with men such as Say and Destutt de Tracy, intellectuals of the late revolutionary and Empire periods, places them clearly within the liberal, *idéologue* traditions of that era.[27] The imprint of revolutionary and imperial experiences left them with a strong sense of the inefficacy of power and, in the end, inspired within them an abhorrence of power as a principle of evil.

Another intellectual current which was of paramount importance was utilitarianism. Say, Comte and Dunoyer were all familiar with the works of Bentham as well as with pre-Benthamite French utilitarians, and the principle of utility played an important part in their own thinking.

Utility was, of course, the basis of Say's political economy, the source of value. Say, unlike many utilitarians, shied away from the concept of an individually measurable utility. For him the utility of an object or service was rigorously measurable only within a social context. Say eschewed individual evaluation since it was subject to the caprices of single person, and was therefore arbitrary. The only concept of value which economics could embrace as rigorously scientific was that which was generated in the social market process of supply and demand.[28]

Comte applied a similar concept to his study of law. From the beginning he embraced the principal of utility as the motive for human action. Although Comte rejected the notion of innate ideas, he did believe that the basic stimuli of pleasure and pain had been placed within man by nature to propel him towards the preservation of the individual and the conservation of the species. Man's capacity to reason and learn from experience had been the source of his immense progress.[29] Outside the context of subjugation through conquest, men associated to further their interests. Any such association entailed setting limits upon the actions of the individuals involved, essentially proscriptions of those actions which were judged to impede the success of the association. In an organized society, these limits emerge as laws; the will to obey them is the virtue of justice.[30] Thus, utility was anterior to law and justice, which become realized through a process of social consensus, a social evaluation of certain patterns of behavior.[31]

Insofar as Dunoyer was an adherent of the doctrines of political economy, he treated the concept of utility in a manner identical to that of Say and Comte. However, his emphasis upon historical development tended to treat utility, like liberty, as emerging from a determined historical, rather than timeless or time-independent, social process. The actual differences here, however, were more apparent than real.

Utility theory also supplied the liberals with a position from which to attack the natural law and contract theories of society which were the basic tools of 18th century radicalism. By the early 19th century, systems of natural law had fallen into great disfavor among the liberals, who viewed them generally as embodying the worst aspects of metaphysical speculation. Comte condemned the elaborations of the natural law theorists as vague and arbitrary, new revelations inviting new theologies. Likewise, contract theories were thrown onto the same scrap heap as the natural law. They were historical roadblocks to critical inquiry and the progress of the social sciences.[32]

II

Having completed this all too brief discussion of some of the important intellectual notions which were influential among the liberals of early 19th century France, I will now examine how these various ideas flowed together in the development of the doctrines of *industrielisme.* I will discuss the *industriel* critique of contemporary society, its view of government and its perception of the evolution of society towards a more just future.

In the early issues of their first journal, *Le Censeur* (1814–1815), we see Comte and Dunoyer generally moving in the common stream of turn of the century liberalism. Their first articles expressed a frank admiration for the virtues of ancient society, especially by comparison to the vices of modern society. Dunoyer, in an argument reminiscent of Constant, contrasted the patriotism and public spirit of the ancient republics with the caste spirit and egotism of modern society. He compared the modern situation to the darkest period of medieval history, a period marked by chaotic despotism having no concept of national spirit or public good.[33] Comte likewise praised the ancients; they were better policed than the citizens of modern societies, certainly better than the inhabitants of medieval society who existed in a state in many ways little better than savagery.[34]

Comte extolled the great legislators of the ancient world who were able to give unity and direction to the legal, moral and religious codes of their republics, harnessing them to the service of the warrior state.

Needless to say, Comte and Dunoyer were not calling for a return to the forms and spirit of the ancient republics nor appealing to the concept of organic unity for its own sake, as in the style of the later Saint Simon. Rather, what they desired was that the institutions of modern France be rebuilt in the image of society as it existed. The nature of that society was clear; it was the Third Estate of Abbé Sieyès, a society of peace and prosperity wherein the actions of production and exchange augmented enjoyments and established relationships of harmony and attachment.

At this time, the emphasis was upon legalistic, constitutional solutions. Though Comte did not go so far in his admiration of the organic unity of the ancient world as to recommend the establishment of a state religion, he did recommend the promulgation of a code of law and morality " . . . in which would be entered all the dispositions which might have some influence upon the public and private conduct of the citizens".[36] The purpose of this code would be to form the conduct of the citizen upon the basis of the common interest, " . . . to convince men that their individual interest can be found only in the general interest".[37] Dunoyer echoed this sentiment in his belief " . . . that a religious observation of the law [the Charte] is the only regime which can give us a truly national character, and allow us, finally, a real and durable happiness".[38] Such statements must be understood within the context of the times. Comte and Dunoyer were not calling for the subordination of the individual to the state. On the contrary, they were calling for the subordination of the predatory class interests of the newly re-established privileged orders to the general interests of a society based upon industry and commerce. Dunoyer's use of the phrase "national character" reflects the revolutionary meaning of the concept of nation as the "common order", the vital element of modern society which had developed out of the subject classes of the feudal system. This was a common element in the *idéologue* tradition. The old *idéologue*, Destutt de Tracy, in his *Commentaire sur l'esprit des lois de Montesquieu,* condemned Montesquieu's classification of constitutional forms and opposed to it his own division of regimes into the two categories of national- and private right.[39]

De Tracy's ideas on government, it should be noted, were more than just echoes of the slogans of 1789. His critique of Montesquieu's political theory evinces a deeper concern with more fundamental principles of government and a growing skepticism concerning the importance of consitutional forms. This was part of the heritage of disappointed revolutionary liberalism which the men of Say and De Tracy's generation carried with them and imparted to the young men of the Restoration period. It was more than just feigned scientific restraint that caused Say to assert that the form of a government had no effect upon the prosperity of a society, that any well administered state could prosper.[40] There was, here, the desire to sweep away all pedantic arguments concerning superficial form and get right to basic fact. When Comte and Say discussed government it was to elucidate upon the consequences of given acts. Insofar as any government was assumed to be capable of any given act, the form of that government was a matter of indifference.

As the reader may rightly suspect, neither Say, Comte nor Dunoyer were as agnostic concerning constitutional forms as I have painted them here. Say admitted to a belief in the importance of the form of government on several occasions, despite repeated assertions concerning the well administered state in his treatises.[41] Certainly, Comte and Dunoyer's main emphasis during the period of *Le Censeur* was upon reform within the legal, constitutional framework of the Charte. What I wish to emphasize is the concern for principle versus form which was a vital component of the liberal, *idéologue* tradition and which achieved its greatest triumphs in the development of the doctrines of *industrielisme* during the period of *Le Censeur européen* (1816–1819). It was during this period that the political and historic visions of revolutionary liberalism were pulled together into a cohesive and forceful whole based upon the solid foundations of the political economy of Jean-Baptiste Say. Prior to this, the liberals' aloof assertions of a scientific indifference to governmental forms were contradicted by their obvious anxieties concerning political and social reform. Later, in the *industrielisme* of Say, Comte and Dunoyer, the concept of governmental forms was integrated into a larger vision of the evolution of society.[42]

The third edition of Say's *Traité d'économie politique* (1817) was the subject of a long review by Charles Comte in the first two volumes of *Le Censeur européen.*[43] The sense of the review was an unqualified endorsement of the method and content of Say's thought. Indeed, Comte made Say's method the basis of his own later study of law. With Say, Comte viewed the delineation of the chains of cause and effect which link phenomena as the fundamental aspect of the modern scientific method.[44] Comte, like Say and like Condorcet before him, held that the laws discovered in the observation of social phenomena were as necessary and inflexible as the laws of physics. This belief instilled in him a firm faith in the onward march of truth, since a false system would always destroy those who clung to it too persistently, "... because nature, acting through constant and invariable laws, ends inevitably by conquering the obstacles one opposes to it."[45] Later Comte would qualify this notion of the irresistible progress of truth in one respect. He would note that ignorance must always resort to force to sustain itself.[46]

The most important consequences resulting from the marriage of political economy and liberal social and political thought stemmed directly from J. B. Say's conception of value. Say, like most classical economists, believed that exchange resulted in the transfer of two equal quantities of value.[47] As I have noted above, this stemmed from Say's concept of value as a social phenomenon. Unlike other classical theorists who based the equivalence of exchange values upon absolutist natural justice notions such as the labor theory, Say realized that any concept of value must base itself upon the actions of individuals. He merely wished to steer clear of complexities resulting from the vagaries of human passion and caprice. Hence his emphasis on value as arising from a large-scale social process. In his desire to achieve scientific purity, what Say was interested in was the value which society set upon an object or a service. Say may be faulted here for more than bad psychology. It was this fundamentally flawed notion of value which barred him from formulation of a concept of marginal utility. However, he must be credited with a clear recognition of the fact that social process or value formation was ultimately based upon the movements of individual actors within the marketplace. Moreover, Say held that in order to reveal a scientifically meaningful social value, the movements of these individual actors had to be voluntary.

The truly revolutionary aspect of Say's thought derived from this vision of an economic system which resulted from the concurrence of voluntary actions of individuals in the marketplace. In Comte's words: " . . . if each rational man were able to employ his talents and his capital in the manner which he judged to be most conducive to his own interests, at the same time respecting the rights of his fellows to do likewise, the public wealth would increase continually. . . . Each man is the best judge of his own interests." Comte emphasized Say's assertion that acting in one's own interests meant acting in the interests of society as a whole.[48]

From this developed a happy (but by no means unique)[49] union of economic theory and a radical social-political vision. The notion of the fundamental, peaceful harmony of interests among the productive classes of society was no longer merely a polemical assertion of the liberals hurled against the power and position of the privileged classes, but a fully scientific notion of the nature of things. Added to this was the already clear notion that the position of privilege derived necessarily from the authority, that is the force, of government. If the actions of government could be subjected to the rigors of economic analysis, it could be demonstrated that government action must seek justification only by proving that the utility produced exceeded the utility taken from society.[50] Hence, the continued existence of a class structure which did not correspond to the voluntarily expressed needs of a society, one which could only continue its existence through the exercise of force, must necessarily result in a net decrease in social utility and, hence, be fundamentally unjust.

Economic analysis gave a force and universality to liberal social theory which it might otherwise have lacked. This historic vision that the privileged orders were anachronistic vestiges living parasitically within the body of the emerging commercial, industrial society was, perhaps, an effective enough attack against the position enjoyed by these remnants of the great feudal orders. But, since it contained in and of itself no clear notion of the fundamental mechanism of society, it was lacking in at least two respects. First, it put forth no picture of a truly just society which was not vulnerable to the assertion that it was simply the artificial and speculative product of the would-be reformer's imagination. Second, it could not formulate any program by which the just society was to be attained which was not reminiscent of the historically suspect methods of political revolution.

Nevertheless, the basic class concept apparent in the early issues of the *Censeur européen* was the one which had appeared repeatedly in the liberal tradition from before the Revolution, that of the fundamental opposition of two basic groups, the warrior and the industrial classes.[51] We see again a reassertion of the same revolutionary concept of nationhood[52] and the proclamation that it was upon the basis of industry that the modern nations would stand.[53] In one article, Augustin Thierry repeated virtually point for point the exposition of Abbé Sieyès.[54] However, we see increasingly the development of an analysis directed less against the historically derived concept of a ruling warrior class and more towards the notion of a generalized governing class. This development was the result of the injection of economic analysis into the elaboration of social theory.

Since "all society rests upon industry. . . ," it followed that the conditions most favorable to the development of industry were most favorable to the development of society.[55] Hence, the direct applicability of political economy to a scientific examination of society. The political economy of J. B. Say demanded that, for the maximum production of utility, market relationships must be established by the voluntary actions of individuals.[56] Thus, the old dichotomy of society could be reformulated in the following manner: " . . . there are but two nations . . . [,] the men of liberty and the men of power . . . [57] those who produce [must] be organized to resist those who administer."[58]

Ultimately, what the liberals were working towards was a radical identification of society with the market system. Society did not simply rest upon industry; industry was society itself. Destutt de Tracy developed this principle in his *Commentaire sur l'esprit des lois de Montesquieu* (1817):

> . . . since labor is everything for us, our sole means of action, I will have deceived myself if this truth were not the basis of all social science, and if it did not decide all the questions of this nature.[59]

> . . . since exchange is society itself, it is the unique tie between men, the source of all our moral sentiments and the first and most powerful course of the development of their mutual sensibility and reciprocal good will.[60]

After 1817, this idea was repeated continually in the writings of Say, Comte and Dunoyer.[61]

There springs from this the development of two related ideas. The first and least radical conclusion, though even some liberals balked at its full implications,[62] was that the operations of government were subject to the compass of economic calculation. Thus any regime which did not provide the best product at the best price automatically opened itself to criticism for having forced a decrease in social utility and hence of having committed a fundamental injustice.[63] This is the notion most commonly associated with classical 19th century laissez-faire. It was the ideological base of the nightwatchman state. The second, more radical conclusion stemmed from the identification of force as the antithesis of industry. Industry derived from labor and the peaceful, voluntary cooperation of individuals. Those who wished to survive without labor had to resort to force. Ideally, in the liberal tradition, good government protected persons and property against the pretensions of force; however, historically, force had been the very principle of government, and governors had been the greatest exploiters.

In the seventh and eleventh volumes of *Le Censeur européen*, Comte and Dunoyer produced three articles devoted to an analysis of those classes which depended upon the government for their existence. Comte began with his article, whose title sounds quaintly humorous to modern ears, "On the Multiplication of Paupers, Officeholds and Pensioners." He opened this essay with a reassertion of the basic notion of two classes of men, the producers and the privileged idle who live off them. His intention was to analyze the laws that regulated the growth of these classes. His principal tool was that common instrument of classical demographic analysis, the Malthusian Law of Population.[64]

Since population was regulated by the availability of the means of subsistence, it followed that, if one nation was conquered and consequently exploited by another, then the population of the conquered nation would decrease in direct proportion to the degree to which it was exploited by the conqueror.[65] The same conclusion would hold if the two nations occupied the same geographic area. Therefore, extending the analogy, tribute taken to support unproductive functionaries and pensioners had to be seized from producers, thereby acting to reduce the productive segment of society and encouraging the increase of idlers.[66] What had been created was an army of parasites ever willing to back up the demands of the state for more tribute. Dunoyer followed an exactly similar line of thought in his "The Influence of Public Salaries on the Functions of Government" and in his article on the public debt.[67] The man favored by the largesse of the state was " . . . the natural ally of power."[68]

Comte went on in his analysis to note the effects of this form of exploitation upon society as a whole. As the productive classes are extinguished, the standard of living is diminished, the search for booty becomes more frantic. The favored classes are taught to look upon work with distaste, they are made " . . . to consider all the goods of society as a property to which they have an incontestable right . . . "

There results " . . . a growth of this spirit of pretended equality which forms one of the most active elements of demagoguery and which ends inevitably in the birth of military despotism."[69]

This brings us back to the historic view developed by Constant in his *De l'esprit de conquête*. The thrust of Constant's argument was that military institutions were alien to the needs and mentality of the modern world. To impose such institutions upon a commercial nation would be to pervert and ultimately to disintegrate its civilization. Comte, rather, ascribed specific patterns of thought and behavior not to whole civilizations but to classes within society whose relative positions reflect the level of that society's civilization. Modern society was characterized by the dominance of the producer class, but, Comte warned, the principle of force if left unchecked would tend necessarily towards the growth of an idle exploiter class uniquely congenial to the establishment of an aggressive, military despotism, which is to say, to the regression of society towards the barbarism and servitude of the ancient world.

This identification of force as the antithesis of industry and, what is more, as fundamentally destructive of the modern social order was the second and most radical idea to be evolved in the development of the *industrielisme* movement. In 1818, Augustin Thierry produced for *Le Censeur européen* an article which was perhaps the most concise and most radical summing up of the doctrines of the *Industriels*. The article was a review of Destutt de Tracy's *Commentaire sur l'esprit des lois de Montesquieu.* Theirry began by asserting with De Tracy the identity of society and the market system and incorporating this concept into the liberal vision of history. He noted that civilization and servitude in history were separable phenomena; they were the product of two distinct classes.[70] With the development of European history, "it was in losing their powers that the actions of governments [have] ameliorate [d]."[71]

Unlike many liberals who were willing to concede that some government activities outside of the production of pure security (especially in the areas of education and public works) could be productive of utility and hence justifiable, Thierry felt such thoughts to be chimerical. Individual efforts " . . . would almost always achieve the same ends at less cost." Therefore, government efforts would almost always be less productive than individual enterprise; more often than not, government efforts would be entirely "sterile and unproductive." Most taxes were a pure loss to society as soon as they entered the treasury.[72]

On examining the production of security, Thierry was led to question the very existence of state power. He believed firmly that absolute power created ineffaceable evils inimical to the development of civilization. Since good civil order depended upon the degree of individual independence, could there be any question that an ideal civil order was one from which power had been eliminated?[73] The power and potential evil of a state official was incalculably greater than that of a single individual however criminally intentioned. Thierry questioned whether such men should be allowed to exist; after all, " . . . the excesses of the police are far more fatal than the absence of the police."[74]

We see here in outline the basic evolutionary schema of social development of the radical liberals of Restoration France and its fundamentally anarchistic implications. Civilization developed with the gradual disintegration of power and its replacement by the peaceful, voluntary relationships of the marketplace. Though some liberals put a term to this development, finding a necessity for maintaining some political relationships within society, the logical end of the notion that " . . . the more the spirit of commerce increases, the more the spirit of spoliation is diminished . . . ,"[75] was a society in which everyone worked and no one governed and in which the social structure was determined by the voluntary arrangements of free individuals.

The basic question which follows from this is what did the liberals envision as the class structure of this most just of all societies? Predictably, ideas followed closely the line of their thinking on the natural evolution of society. Comte discussed this in his article, "On the Organization of Society Considered in its Relationships with the Means of Subsistence of Peoples." Comte noted that a society will always tend to put into roles of leadership those men who are perceived as having contributed most towards the general utility. As the warrior states of antiquity chose the best military types as leaders, modern industrial society should choose its leadership from among the best of its industrial classes.[76]

This concept was, of course, closely related to the notion of nationalism in the revolutionary and *idéologue* traditions. In Comte's article, it was also a limited endorsement of the restricted franchise of the *monarchie censitaire*, a franchise based upon the payment of taxes on property. This reflects the general liberal distaste for the results of revolutionary experiments with universal suffrage and their complete rejection of the absolute power attached to it by doctrines of popular sovereignty.[77]

Comte's discussion, however, went further than an examination of constitutional reform. Drawing on his original analogy with ancient societies, Comte asserted that modern society should be " . . . organized in such a manner that each has an influence and a rank in the state proportional to his utility, to his absolute value . . . "[78] Knowing how closely Comte's ideas followed those of J. B. Say, we realize that this concept of "absolute value" can have but one derivation, that is from the natural, voluntary processes of the marketplace. These processes can be viewed as evolving a natural hierarchy within society, a natural aristocracy. Comte believed firmly in the necessity of such an aristocracy, if " . . . by the word *aristocracy* we mean merely the subordination established among men by their mutual needs; this aristocracy is natural, since it derives from the nature of men."[79]

The liberals felt that the hierarchy of a natural society would, among other things, reflect itself in inequalities of wealth, albeit moderate ones. Say felt that the happiest society was that which had the fewest extremes of wealth, with a large middle class and small numbers of very rich and very poor.[80] Say felt that such a society would be the inevitable development of industrialism.

De Tracy and Dunoyer seemed to have been far more impressed with the dangers of inequality, due in large part to their more pessimistic views on the inevitability of poverty. With De Tracy this can be traced directly to faulty economic thinking.[81] De Tracy saw, with the gradual elimination of domination, the vast expansion of industrial enterprise bringing in its wake growing inequalities of wealth. He saw these inequalities as the sovereign vice of modern civilization, since they led back directly to a growth of inequalities of power, and hence a reversal of the basis of modern society.[82]

Dunoyer, for his part, was ever conscious of the limitations of progress inherent within society itself. One of the most important of these limitations was the Malthusian Law of Population. In Dunoyer's thinking the major limiting factor in the development of civilization was the ignorance and vice of the masses. Political liberation alone could not create real liberty, since alone it could not free men from the bonds of poverty and passion. The "inseparable miseries" of the lower classes stemmed at least in part from their lack of restraint in marriage.[83] Even given an equal division of wealth to begin with, Dunoyer felt that there would soon develop a small rich class, a larger middle class and an even larger lower class, some living in real misery.[84]

It must be realized, however, that Dunoyer saw these evils as arising from a given state of society rather than being the inevitable result of the market system. Some light may be shed on this by examining a dispute which broke out between Say and Dunoyer in 1827.[85] Dunoyer was obviously concerned with the recurrence of industrial crises, and equally concerned with the ability of Say's economic analysis to explain them. He was impressed with certain aspects of Sismondi's work on crises. Though he rejected Sismondi's analysis and conclusions,[86] he did accept Sismondi's fundamental observation, that these crises were examples of the general glut, the phenomenon of general overproduction which Say so fervently denied could exist.[87] That Dunoyer could accept the existence of the general glut, all the while maintaining the truth of Say's Law of Markets, is testimony not so much to sloppy economic thinking, but to a desperate desire to come to grips with a very troublesome economic phenomenon while maintaining the framework and conclusions of orthodox economic thought.

Dunoyer saw two basic causes for the glut. One was the ignorance and improper calculations of entrepreneurs.[88] The second was the unequal distribution of wealth in society.[89] The first cause Dunoyer saw as the natural consequence of the novelty of industrial society. Its effects would tend to diminish naturally with the progress of the entrepreneurial art and the development of better means of communication. The second cause Dunoyer traced to the historically ordained division of wealth which the industrial era had inherited from its predecessors. This inequality derived from " . . . the primitive expropriation of the most numerous class of society, [and] from the state of servitude in which they have been held through the centuries . . . "[90] Reversing Sismondi's conclusions, Dunoyer denied the government any role in meeting the problem. In fact, Dunoyer saw government, through oppressive taxation, restrictions and protectionist measures, as a continuing source of the inequities which contributed to the formation of industrial crises. Only the growth of industry could bring about a more equitable division of wealth. He warned, however, that an equitable division of wealth would be an unequal division. Each would be rewarded in proportion to his productive services; " . . . this partition is . . . in the nature of things."[91]

This dispute between Say and Dunoyer suggests the absolutely vital role which a clear understanding of economic phenomena plays in the elaboration of a viable social theory. This can be seen clearly in the development of various rival social theories which took place in France in the period between 1820 and 1845.

In 1817, Henri de Saint Simon, then enjoying the most liberal phase of his erratic career,[92] developed in his *Industrie* ideas similar to those of Say, Comte and Dunoyer, concluding one article with a turn of phrase which, with the benefit of foresight, could be viewed as portentous for the development of economic thought. In Letter eight of his "Lettres à un american", Saint Simon set out on his recurrent and habitual search for a "general principle of politics". He noted: "Of all those who have tried their hand at this task, the savants who have written on political economy seem to me to have done the most useful work." He commended in particular the work of J. B. Say. One aspect of Say's writing, however, struck him as incongruous. Say specifically denied that political economy was a science of administration, arguing in fact that, from a strictly scientific point of view, the form of a particular government was a matter of little consequence.[93] This struck Saint Simon as a contradiction, since " . . . political economy is the true and unique foundation of politics . . . " Indeed, " . . . each man, in his social relationships, ought to consider himself as exclusively engaged in a company of workers.

. . . Politics, therefore, is . . . *the science of Production*."[94] Not only did Saint Simon here miss Say's point entirely, but he fell back into the pattern of 18th century policy science which Say and other liberals were trying so assiduously to avoid. We should note the interesting ambiguity of the statement, "politics is the science of production". Not only does it suggest the question of which is to be subordinated to the other, but it denies the fundamental liberal notion that the actions of production would replace the activities of politics. Where liberals such as Say, Comte and Dunoyer saw the natural evolution of society bringing about the gradual replacement of political by market relationships, the later doctrines of Saint Simonian socialism discarded the market system and replaced it with the essentially political relationships of a highly articulated, hierarchical and authoritarian social system.

Social theorists who rejected the political economy of Say were forced to base their social and political visions upon rival economic systems, such as those of Sismondi or Ricardo, generally suffering thereby from the weaknesses inherent in those systems. Those who rejected economics altogether were forced to ground their systems upon the speculative doctrines of vague social-historical sciences which offered little firm support for their demands for the "organization of labor based upon the principle of association" and for the "reconstitution of property" other than in strident assertions of social and economic egalitarianism.[95]

III

I have emphasized the basic anarchism in the thought of Comte, Dunoyer and Say, and it can not be stressed too much that this anarchistic vision was firmly rooted in an evolutionary concept of social development. These men were not anarchists of the smash-the-state type. Politically, they fit quite well into the liberal republican and constitutional monarchist circles of the July Monarchy. (It should be noted that both Comte and Dunoyer entered government service after 1830.) For them the abrogation of the government and the establishment of the state of pure liberty was not the single ultimate reform, but rather a result to be achieved through a series of partial reforms of the more basic conditions of human existence and a gradual uplifting of the population through education. That their ultimate vision of society was anarchistic cannot be denied. I will attempt to support this important assertion through an examination of some of their later writings.

Of the three, Say and Comte were the most explicit in their endorsement of a society without government. In his theory of law, Comte observed that, " . . . the principal elements of force in social laws existed in the very heart of society (*la population*); they existed in their needs, in their affections, in their judgments and in their ideas."[96] Civil law was merely the description of a natural order of things anterior to it. At most, an act of legislative or executive fiat could only make mandatory for all what had first been the consensus of the vast majority.[97]

Both Say and Comte agreed that law contrary to the social consensus could be imposed and maintained only by means of force. "An artificial order sustains itself only through compulsion and cannot ever re-establish itself without violence and injustice."[98] Force, for Comte, was the principle of slavery and the antithesis of liberty. The exercise of domination necessarily would lead to the immiseration of society and its reversion into barbarism.[99] Exploitation would destroy industry and create the privileged idle classes which are the support of despotism and aggression.[100]

Although Comte's *Traité de legislation* concentrated on an examination of the effects of institutions of pure chattel slavery, he hastened to point out that, " . . . there exists the greatest analogy between peoples subjected to the regime of slavery, peoples still existing in barbarism and peoples subjected to the most despotic of governments . . . "[101] Moreover, since the principles of slavery and liberty were opposed antithetically, there could be no compromising one with the other; " . . . it is impossible to pass from one regime to the other if one does not abandon completely the principle of the first to adopt the principle of the second."[102]

Here entered the inevitable dynamic of force, which, if allowed to operate, must necessarily work towards the degradation of society. Noting this, Comte observed that " . . . the government, so feeble when it attempts to do good, often possesses an immense influence for evil. From this, we could conclude that the less it makes itself felt, the more the people prosper."[103] The obvious consequence of this line of thought was " . . . that a people already civilized had no need, in order to be happy, other than not to be despoiled and to be left to itself. It would do better by the sole force of its customs and the instinct which directs it towards its conservation and prosperity than could all our clever politicians with their systems supported by their armies and their innumerable agents."[104] Clearly, here the qualifying phase is a "*people already civilized*". This underlines the basic evolutionary notion of the interconnectedness of liberty and the level of civilization in the thinking of these men.

Comte's theories of law were accompanied by a fairly well developed historical theory based primarily upon the works of contemporareous historians and observers of primitive societies. Dunoyer criticized what he viewed as the excessive environmental determinism of Comte's system.[105] In truth, this criticism was unjust. All Comte had asserted was the purely common sense notion, dating from Condorcet at least, that civilization would develop first and fastest in those areas which were naturally most congenial to human life and productivity, a notion which Dunoyer himself developed in his *Liberté du Travail*.[106] Comte's critique of Montesquieu should have dispelled any suspicion that he wished to fix the determinants of human progress strictly within man's physical environment.[107]

Oddly enough, Dunoyer's historical vision as elaborated in the various editions of his major treatise, had, at least outwardly, a much heavier flavor of economic determinism. There were, however, two threads in Dunoyer's scheme of history. One emphasized the necessary course which a progressive development of civilization must take. The other emphasized the responsibility of the individual actors within society to seek their liberation not simply in demands for political reform, but in individual efforts which would enlarge their knowledge, expand their productivity and increase their morality.

From his study of history, Dunoyer concluded: " . . . that in the course of these diverse states of civilization which I have described, and in its progressive movement towards the present, the species was little determined by ideas of reason or justice; it did nothing more than cede to necessity. . . . " Each stage of civilization created within itself the conditions which would direct men towards the next stage in a necessary and determined succession.[108]

This deterministic outlook derived from Dunoyer's firm belief in the doctrines of political economy and the faith that political economy elaborated a series of laws which were constant throughout time. On the gross scale, away from the random whims of individual actors, the broad sweeps of human history could be made intelligible and could be shown to follow a basic pattern explicable within the framework of economic doctrines.[109]

On the individual scale, Dunoyer wished to point out to each member of society his own personal responsibility for the advancement of civilization. His rigorous insistence that peoples were at bottom responsible for their own despotic governments brought down on him the attacks of Charles Comte and Benjamin Constant who felt that the oppressor must assume the greatest blame for the degradation of the people.[110]

Nevertheless, there was not much distance here separating the thought of Say, Comte and Dunoyer. Say was suspicious of historical theorizing; he felt that one's main concern should be with the present. He disliked the deterministic view of history developed by the Saint-Simonians, and like Dunoyer, emphasized the responsibility of the individual for progress. "Undoubtedly," he admitted, "a part of our troubles derives from our condition and from the nature of things, but most of them are of human making. On the whole, man makes his own destiny . . . " Say would at least agree that the present condition of man represented an intermediate stage lying somewhere between barbarism and true civilization.[111]

Say and Comte saw society as naturally progressive and wished to emphasize the autonomous effects of power which, if allowed to operate unchecked, would plunge society back into the depths of tyranny and barbarism. Dunoyer agreed in principle, but he wished to establish a more intimate causal connection between a given state of society and the amount of power which could be exercised in social relationships. Dunoyer emphasized that, with the development of liberty, which was the ability to exercise one's faculties more fully, there devolved upon the individual a greater responsibility for his own self-improvement. We can discern in Dunoyer's development of this notion a polemical purpose, one that becomes clearer when viewed against the backgroud of the radical and revolutionary political movements which surfaced in France during the later years of the July Monarchy.

Necessarily, the primary means of reform endorsed by the liberals was education. Education was the natural complement of their evolutionary, anti-power thinking. Moreover, an examination of the thinking of Say, Comte and Dunoyer on education reveals the role which they saw government playing in the final development of modern civilization.

From Say and Destutt de Tracy, Comte and Dunoyer had inherited a deep distrust of revolution and the faith in education which was an important element in the *idéologue* tradition. Revolution historically had led only to the consolidation and concentration of power.[112] Likewise, constitutionalism was viewed as merely another form of power brokering. " . . . To correct power the reformers seek only to act upon power; each acts in his own manner, but they all direct their action from the same point."[113] The best way to put a tyrant out of office is by educating his dupes, the victims of oppression. Comte elaborated on what he saw as the major obstacles to the development of a liberal society. First were the habits bred of domination, the intellectual and psychological dependence upon authority. Secondly, there were the natural inclinations of human emotion, the passion to dominate and the craving for security. Finally, there were the purely venal calculations of the profits of power. These were the ultimate supports of power in society.[114] Dunoyer held that one of the greatest errors of past reformers had been that " . . . they thought if possible to supply by organizational artifacts what the people lacked in enlightenment and experience." Liberal institutions could not create liberal habits and patterns of thought. Only a long and difficult evolution through education could succeed.[115]

The field of education seems to have been one area where the liberals were the weakest in their resolve to exclude the action of government. Although they unanimously attacked the government's monopoly of education, they admitted that the government should provide at least some form of basic education. This was not a matter of permanent public charity, but a temporary measure aimed at the better policing of society by defusing demogoguery and inculcating restraint in the lower classes whom ignorance might otherwise render "turbulent and ferocious."[116]

This conclusion is a reflection of the role which the liberals saw government playing in the development of society. Dunoyer observed that, "The essential object of government is to cooperate . . . in a development of our faculties, applying itself to check disorderly and evil tendencies."[117] Say concurred in this notion of government as a necessary, but temporary, defensive measure meant to preserve the social body.[118] The weakening of the power of government followed in step with the growth of the market system. Hence, the recent emergence of representative government was not an arbitrary or accidental thing, but " . . . the necessary fruit of the economic progress of modern societies."[119] In Say's final analysis, the mechanisms of the market system were the vital organs of society; government was merely one of the accidental organs " . . . whose existence or non-existence does not rigorously affect the existence of the social body."[120]

Dunoyer's view was similar, although his constant and inflexible emphasis upon the inherent limitations of social progress lent a pervasive air of pessimism to his later writings which tended to obscure his vision of the emerging society. It must be remembered in this regard that Dunoyer lived much longer than Say or Comte. He witnessed during the 1840s the growth to strength of various egalitarian republican and socialist movements. For him, the state at least was one final bulwark against the rising tides of social insurrection.[121]

Nevertheless, the final goal was as clear to Dunoyer as it was to Say and Comte, though perhaps he looked to a far more distant future than they. For him, "The individual . . . is the ultimate object of society. Society's only object is the growth, the elevation and the betterment of the existence of the individual. Far from demanding the sacrifice of individuals to these great abstractions we call societies the object assigned to all collective entities is the well-being of individuals."[122]

Despite the minor differences which may have separated them, Charles Comte, Charles Dunoyer, and Jean-Baptiste Say all shared the same burning faith in the final triumph of progress in the emergence of a truly libertarian society. In the end, they would have all agreed with Say's conclusion: "Although the ameliorations which are possible are immense, those which do occur are slow and limited. Nevertheless, the future is ours."[123]

NOTES

1. Alexander Goldenweiser, "Evolution, Social," *Encyclopaedia of the Social Sciences* (New York: Macmillan, 1937), p. 657.
2. Thomas Paine, "Common Sense," *The Life and Writings of Thomas Paine* (New York: Citadel Press, 1961), p. 14.
3. Paine, "Common Sense," p. 4.
4. Joseph Schumpeter, in his essay on Karl Marx, criticized what he saw as the "uncritical confidence" of some theorists "in the explanatory value of the element of force and of the control over the physical means with which to exert force." Cf. Joseph A. Schumpeter, *Ten Great Economists* (New York: Oxford University Press, 1951), p. 20. Say, Comte and Dunoyer had too realistic an appraisal of the elements

within society which tend to support the use of force in social relationships to be vulnerable to this criticism. This is not true of other, later radical theorists who worked without benefit of economic understanding. Cf. note 96.

5. Abbé Sieyès, "What is the Third Estate?" *The History of Western Civilization, Selected Readings,* VIII (Chicago: University of Chicago Press, 1971), p. 127.
6. This interpretation of the political theory of the absolute monarchy is a severe oversimplification of a series of lectures delivered by Keith Baker at The University of Chicago on the history and ideology of the French Revolution.
7. Abbé Sieyès, "Third Estate," pp. 127–129, 140, 154.
8. Condorcet, *Esquisse d'une tableau historique des progrès de l'esprit humaine* (Paris: Bovin, 1933), pp. 79–80.
9. Condorcet, *Esquisse*, p. 253.
10. Peter Gay, *The Enlightenment*, Volume II (New York: Alfred A. Knopf, 1969), pp. 323–324.
11. Jean-Baptiste Say, *Traité d'économie politique*, Tome I (Paris: Deterville, 1819, Fourth edition), pp. xiii–xv.
12. Charles Comte, *Traité de legislation*, Tome I (Paris: A. Sautelet et Companie, 1826), pp. xii, 10–11, 101. Charles Dunoyer, "Esquisse d'un cours d'economie et morale," *Revue encyclopédique*, 26 (1825), p. 24.
13. Peter Gay, *Enlightenment*, II, p. 378.
14. Hayek notes in his "Counter-Revolution of Science" that the French Revolution was a product of the natural law theory of the 18th century rather than a product of a Smithian understanding of the market mechanism. He further stated that the collectivist view of history began with the assertion by Condorcet that the development of the moral and intellectual faculties of men is subject to natural laws. One of his theses is that this view of the development of the race poisoned much of the early social sciences in France and led directly to the social engineering concepts of the Saint-Simonians. Cf. Hayek, "The Counter-Revolution of Science," *Economica*, 8 (1941), pp. 11, 13.
    It seems clear, however, that all the liberals of the early 19th century were influenced by Condorcet to some degree, especially in regard to his idea that the methods of the natural sciences were applicable to the social sciences. Dunoyer's ideas on the development of the race, which paralleled Condorcet's, did not prevent him from being a staunch defender of political economic orthodoxy. The key seems to have been not so much in the scientific method as it was understood at the time (for indeed very often the liberal theorists did not entirely understand what they meant by the "scientific method") or even in Condorcet's assertion that the development of human faculties was subject to certain laws, but in the perception of the workings of the social process which a particular theorist posessed. Say's vision was utilitarian, individualistic, and voluntaristic, and he emphasized the role of market mechanisms. The vision of the Saint-Simonians was utilitarian, authoritarian, and collectivist. It was based upon an historical vision which emphasized the ordered and necessary progression of social states through history.
15. G. P. Gooch, *History and the Historians in the Nineteenth Century* (Boston: Beacon Press, 1968), pp. 156–157. The work of Chateaubriand is generally recognized as one of the key influences in the development of historical studies in early 19th century France. He was later praised by Augustin Thierry as the source of his historical inspiration.
    In a later work, Dunoyer remarked upon the influence which Montlosier's work, *De la Monarchie francaise*, had upon his own thinking. This statement could be discounted somewhat in that part of Dunoyer's purpose was to discredit Saint-Simonian claims to precedence and preeminence in the *industrielisme* movement. Cf. Dunoyer, "Esquisse historique des doctrines auxquelles on a donne le nom d'Industreelisme, . . . " *Revue encyclopédique*, 33, pp. 372–374.
16. Peter Gay, *Enlightenment*, II, p. 395.
17. Say, *Traité*, I, p. lxxv.
    Say, *Cours complete d'économie politique practique* (Paris: Rapilly Librairie, 1828) Tome I, pp. 49, 51. Say, "De l'influence des futurs progres des connaissances economique sur le sort des nations," *Revue encyclopédique*, 37, pp. 23–25.
18. Peter Gay, *Enlightenment*, II, pp. 380–383.
19. Benjamin Constant, *De l'esprit de conquête* (Paris: Librairie Bernard Grosset, 1918), p. 12.
20. Constant, *De l'esprit de conquête*, pp. 18–20.
21. Dunoyer, "Equisse historique . . . d'Industrielisme," *Rev. enc.*, pp. 370–371. Cf. Dunoyer, "De l'esprit public en France," *Le Censeur*, 1, no. 4, pp. 156f, and *Le Censeur*, 1, no. 6, pp. 217f.
22. Constant, *De l'esprit de conquête*, p. 50.
23. Dunoyer, "De l'influence de l'opinion sur la stabilité des gouvernements," *Le Censeur*, 6, pp. 141f.
24. Dunoyer, *Oeuvres de Charles Dunoyer*, Tome II (Paris: Librairie de Guillaumin et Companie, 1870), p. 254. This piece is a rewrite of an article which appeared in the *Journal des débats* on April 24, 1828. It is an example of the later, more developed thought of Dunoyer on social evolution.
25. It is generally recognized that the emphasis upon reform through education was an important part of the *idéologue* tradition. This reflects the strong influence of Condorcet's developmental theory. Cf. Destutt de Tracy, *Commentaire sur l'esprit des lois de Montesquieu* (Liege: J. F. Desoer, 1817), pp. 24–26.
26. Comte, *Traité de legislation*, I, pp. 338–339.
27. This observation is supported by Leonard Liggio in a typescript draft of his paper on Comte and Dunoyer. Liggio cited Picavet's work, *Les Idéologues* (Paris, 1891). Cf. Liggio, "Charles Comte and Charles Dunoyer," MS, p. 28.
28. Say, *Traité*, I, pp. 2–5.
    Say, *Cours*, I, p. 17.
29. Comte, "Des disputes des mots," *Le Censeur*, I, pp. 230–231.
30. These notions were present in Comte's earliest writings, Cf. Comte *Le Censeur*, I, pp. 230–233. Also Cf. Destutt de Tracy, *Commentaire*, p. 4.
31. Comte, *Le Censeur*, I, p. 235.
32. Comte, *Traité de legislation*, I, pp. 120–121, 128–140. We should note here Schumpeter's view of utilitarianism as merely another stage in the development of natural law theory: "The program of deriving, by light of reason, 'laws' about man in society from a very stable and highly simplified human nature fits the utilitarians not less well than the philosophers or the scholastics; and if we look at this human nature and

the way in which it was supposed to work, . . . we realized that the affinity goes much farther." Schumpeter, *History of Economic Analysis* (New York: Oxford University Press, 1968), pp. 130–134. Also, Comte's formulation of utility as the basis of society does admit to a contract theory interpretation; however, he was too sensitive to historical realities to agree to the concept of a primordial social consensus in the same fashion as Rousseau or Paine.

33. Dunoyer, "De l'esprit public en France," *Le Censeur*, I, no. 4, pp. 156–157, 165.
34. Comte, "D'un moyen de donner de la stabilite à nos institutions . . . " *Le Censeur*, I, pp. 273–304.
35. Comte, "De la situation de l'Europe, de cours de ses guerres, et le moyens d'y mettre fin." *Le Censeur*, III, pp. 7–8.
36. Comte, *Le Censeur*, I, p. 300.
37. Comte, *Le Censeur*, I, p. 274.
38. Dunoyer, *Le Censeur*, I, p. 171. Cf. Henri de Saint Simon, "Reorganisation de l'Europe . . . " *Le Censeur*, III, pp. 334f. Arguing from essentially the same grounds as the liberals, Saint Simon called for a program to defend the Charte.
39. Destutt de Tracy, *Commentaire*, p. 12.
40. Say, *Traité*, I, pp. ix–x. Cf Comte, *Traité de legislation*, I, pp. 347–351.
41. Say, "Review of Francis Place's *Illustrations and Proofs of the Principle of Population*," Rev. enc., 37, p. 30.
42. This basic observation that *industrielisme* resulted from the synthesis of traditional streams of liberal historical and political thought and the economic analysis of J. B. Say is hardly original on my part. Élie Halévy developed it in his essay on "Saint-Simonian economic doctrine." Cf. Halévy, *The Era of Tyrannies* (New York: Doubleday and Company, 1965), pp. 27–34. It was noted again by Leonard Liggio in his paper on Comte and Dunoyer. Cf. Liggio, "Charles Comte and Charles Dunoyer," MS, p. 21.
43. Comte, *Censeur européen*, I, p. 175, II, pp. 167f.
44. Comte, *Traité de legislation*, I, pp. 17–18, 42–44. Say, *Traité*, I, pp. lxz. lxxv, 85n. Say, *Cours*, I, pp. 18–19.
45. Comte, *Censeur européen*, I, p. 163.
46. Comte, *Traité de legislation*, I, pp. 14–15. This passage virtually repeats that of *Censeur.*, 1, p. 163 written years earlier. On force and ignorance, cf. Comte, *Traité de legislation*, I, p. 16.
47. Say, *Traité*, I, pp. 13–15, 336n, II, p3n, 4–10. Say, *Cours*, II, pp. 208–210.
48. Comte, *Censeur européen*, I, pp. 200–203, II, p. 213.
49. The union of social, political and economic theories is not at all unique. Any number of examples spring to mind: Aristotle's defense of the slave economy, the Physiocrats' idealization of the absolutist, agricultural state, the use of Ricardo's theory to attack the privileged position of landowners under the Corn Laws, the radical theories of the Saint-Simonians, and of course, the social and economic analysis of Karl Marx.
50. Comte, *Censeur européen*, I, pp. 201–203.
51. Halévy develops this notion of the opposition of warrior and industrial classes quite thoroughly in his discussion of *industrielisme*. cf Halévy, *Era*, pp. 27–34.
52. Dunoyer, "Review of Thierry's 'Les Nations et ses rapports mutuels,'" *Censeur européen*, II, pp. 223–224, 226.
53. Dunoyer, *Censeur européen*, II, pp. 231–232.
54. T[hierry], "Des Factions," *Censeur européen*, III, pp. 1–8. Further analysis of the concept of the warrior class: Cf. Dunoyer, *Oeuvres*, II, pp. 27–28. Thierry, "Politique," *Industrie*, Tome I, 2e partie, *Oeuvres de Saint Simon*, II, pp. 17f. S[ay], "Review of Bentham's *Principles of Legislation*," *Censeur européen*, V, pp. 105f.
55. "Notice de *l'Industrie* du Saint Simon," *Censeur européen*, III, p. 372. This *notice* quoted from Saint Simon's work extensively.
56. Say, *Traité*, I, p. 5. Say, *Cours*, I, p. 17. Comte, *Censeur européen*, I, pp. 200–202, 203*n*. Dunoyer, "Review of Say's *Petit volume contenant quelques apercus sur les hommes et sur la societé*," *Censeur européen*, VII, p. 83.
57. Thierry, "Correspondences de B. Franklin," *Censeur européen*, IV, pp. 97f.
58. Thierry, "Un manuel éléctoral," *Censeur européen*, II, p. 111.
59. Destutt de Tracy, *Commentaire*, p. 245.
60. Destutt de Tracy, *Commentaire*, p. 392. Cf. Ch. C[omte], "Cours de Say . . . " *Revue encyclopédique*, 38, p. 634. Say, "Cours . . . ," *Revue encyclopédique*, 13, p. 249.
61. Cf. Say, "Cours . . . " *Revue encyclopédique*, 13, p. 249. Say, *Cours*, I, pp. 6–6, 50, 63, III, p. 174, V, p. 27. Dunoyer, "Esquisse historique . . . *d'Industrielisme*," *Revue encyclopédique*, 33, p. 369.
62. Dunoyer, *Oeuvres*, II, p. 485f. This essay was a rewrite of an article by Dunoyer which appeared in the *Journal des économistes* in December of 1852 and February of 1853. In it he defended the principle that economic calculation could and should be applied to all social activities. The main antagonists of the principle in the article were Victor Cousin and Michel Chevalier. Cousin felt that economic calculation should be excluded on principle from the fields of morals and politics (p. 485). Chevalier felt that in public affairs other factors had to be weighed in the balance with economic ones. Dunoyer countered that political economy was universally applicable, that it depicted " . . . the order in which all efforts (*travaux*) are naturally arranged in society to satisfy social needs" (p. 493).
63. Saint Simon, "Lettre VIII," *Industrie*, *Oeuvres de Saint Simon*, II, pp. 200–201. Cf Comte, "Review of *Industrie*," *Censeur européen*, III, pp. 200–201. Comte's grudging acknowledgement of Saint-Simon here perhaps denoted a certain amount of pique over Saint Simon's pretensions in claiming credit for himself in the elaboration of *industrielisme*. Cf. Dunoyer, *Oeuvres*, II, pp. 16, 43. Cf. Saint Simon, *Oeuvres de Saint Simon*, II, p. 132.
64. Comte, "Sur la multiplication . . . " *Censeur européen*, VII, pp. 1–6.
65. Comte, *Censeur européen*, VII, p. 16.
66. Comte, *Censeur européen*, VII, p. 17–20.
67. Dunoyer, "Sur l'influence . . . ," *Oeuvres*, II, p. 105f. Dunoyer, "Debt public . . . ," *Oeuvres*, II, p. 160f.
68. Dunoyer, *Oeuvres*, II, p. 162.
69. Comte, *Censeur européen*, VII, p. 68. Dunoyer, *Oeuvres*, II, p. 108. This passage shows the obvious influence of the formulation which Comte developed.

Dunoyer stated: " . . . where the government is a source of lucre, it must by the very force of things degenerate into tyranny."

70. Thierry, *Censeur européen*, VII, pp. 206, 223.
71. Thierry, *Censeur européen*, VIII, p. 230.
72. Thierry, *Censeur européen*, VIII, pp. 215-216.
73. Thierry, *Censeur européen*, VIII, pp. 232-234.
74. Thierry, *Censeur européen*, VIII, p. 241.
75. Destutt de Tracy, *Commentaire*, p. 392. Cf. Comte, *Censeur européen*, III, p. 195n.
76. Comte, *Censeur européen*, II, p. 38.
77. Dunoyer, *Censeur européen*, XI, pp. 134-135. J. B. Say, *Censeur européen*, V, p105f.
78. Comte, *Censeur européen*, II, p. 46. Comte here used the word "*état*;" I feel his usage of this term is synonymous with the term "society" rather than that of "government." When Comte and Dunoyer intended to refer to what we now think of as the "state apparatus" they used the terms "*gouvernement*" or "*administration*."
79. Comte, "Review of the Letters of Junius, No. 23," *Censeur européen*, II, p. 64n. Cf. Comte, *Traité de legislation*, IV, p. 536.
80. Say, *Cours*, I, pp. 118-120, IV, pp. 320-327.
81. Destutt de Tracy, *Éléments d'Idéologie* (Paris: Mme. V. Courcier, 1817). IV, pp. 287-329.
82. Destutt de Tracy, *Éléments*, IV, pp. 319-321, 329. Cf. Destutt de Tracy, *Commentaire*, p. 355.
83. Dunoyer, *Liberté du travail* (Paris: Guillaumin, 1845), I, p. 383.
84. Dunoyer, *Liberté du travail* p. 384.
85. Cf. Dunoyer, "Review of Say's *Traité* . . . (5th ed.)," *Revue encyclopédique*, 34, pp. 63-90. Dunoyer, "Review of Sismondi's *Nouveaux principes* . . . (2nd ed.)," *Revue encyclopédique*, 34, pp. 602-622.
86. Dunoyer, *Revue encyclopédique*, 34, pp. 602-606, 611.
87. Dunoyer, *Revue encyclopédique*, 34, pp. 80, 608-609.
88. Dunoyer, *Revue encyclopédique*, 34, pp. 80, 612.
89. Dunoyer, *Revue encyclopédique*, 34, pp. 613-614.
90. Dunoyer, *Revue encyclopédique*, 34, p. 617.
91. Dunoyer, *Liberté du travail*, p. 395, Cf. pp. 374, 449.
92. Note again Halévy, *Era of Tyrannies*, pp. 27-34. I disagree with Halévy's point that in the earliest phases of the *industrielisme* movement the attitudes of Saint Simon were identical to those of the liberals of *Le Censeur européen*. Not only does this discount almost all of Saint Simon's past history, but it ignores some suggestive indications in his writings of that period. Note Saint Simon's Letter VII, in *Industrie* (Oeuvres de Saint Simon, II, pp. 179-180). His emphasis was upon *organization* and *establishment* of the new society rather than the more evolutionary notions being developed by Comte and Dunoyer.
93. Saint Simon, *Industrie*, *Oeuvres de Saint Simon*, II, pp. 182-184.
94. Saint Simon, *Industrie*, *Oeuvres de Saint Simon*, II, pp. 185, 187-189.
95. Cf. P. M. Laurent. "De la politique exterieure et interieure de la France depuis la révolution de 1830," *Revue encyclopédique*, 52, pp. 5-39. Laurent, "De la moderation politique," *Revue encyclopédique*, 52, pp. 564-592. Laurent, "Le tiers-état et les proletaires," *Revue encyclopédique*, 56, pp. 241-258. Cf. Reynaud, "De la société saint-simonnienne," *Revue encyclopédique*, 53, pp. 9-36. Reynaud, "De la necessité d'une representation speciale pour les proletaires," *Revue encyclopédique*, 54, pp. 1-20. Reynaud, "De l'aristocratie. Du principe de l'autorité legislative," *Revue encyclopédique*, 56, pp. 5-37. Cf. Pierre Leroux, "Du progrès legislatif," *Revue encyclopédique*, 56, pp. 259-276. Leroux, "De la loi de continuité qui unit le dix-huitième siècle au dix-septième," *Revue encyclopédique*, 57, pp. 465-538. Leroux, "Cours d'économie politique fait à l'Athenee de Marsailles," *Revue encyclopédique*, 60, pp. 94-150. Jules Leroux, "De l'économie politique considerée comme science," *Revue encyclopédique*, 57, pp. 529-543; 58, pp. 30-80. If nothing else a close examination of these articles should impress the reader with how many of the concepts later incorporated into the Marxian social analysis were current among the radicals of the July Monarchy. Most of these articles are from the period 1831-1833.
96. Comte, *Traité de legislation*, I, p. 396, Cf. pp. 402-403.
97. Comte, *Traité de legislation*, I, pp. 336, 471. Comte, "On the monopoly of education," *Revue encyclopédique*, 44, pp. 545-574.
98. Say, *Cours*, I, p. 273.
99. Comte, *Traité de legislation*, III, pp. 99, 119n, 140-143, IV, pp. 71-73.
100. Comte meant here the noble class of slave owners and the idle urban proletariat which he saw as the necessary product of the slave economy. The proletariat consisted of the remnants of the industrious classes which escaped personal servitude, but whose economic independence was destroyed by the expansion of slavery and the consequent impoverishment of society. Cf. Comte, *Traité de legislation*, IV, pp. 73-75, 360-361.
101. Comte, *Traité de legislation*, IV, p. 441.
102. Comte, *Traité de legislation*, IV, p. 484.
103. Comte, *Traité de legislation*, I, p. 448, Cf. pp. 480-481.
104. Comte, *Traité de legislation*, I, p. 460.
105. Dunoyer, *Liberté du travail*, I, pp. 75-81.
106. Cf. Comte, *Traité de legislation*, III, pp. 246-247. Cf. Dunoyer, *Liberté du travail*, I, p. 106.
107. Cf. Comte, *Traité de legislation*, I, pp. 74-98.
108. Comte, *Revue encyclopédique*, 26, p. 648. Cf. Dunoyer, *Liberté du travail*, I, p. 320.
109. Cf. Dunoyer, *Liberté du travail*, I, pp. 102-280. This is Dunoyer's basic historical scheme.
110. Comte, *Traité de legislation*, I, pp. 58-59. Constant, "Charles Dunoyer . . . ," *Revue encyclopédique*, 29, pp. 418-419.
111. Say, *Cours*, I, pp. 118-119, V, pp. 286-287. Say, *Revue encyclopédique*, 37, p. 19.
112. Dunoyer, *Oeuvres*, II, p. 36.
113. Dunoyer, *Oeuvres*, II, pp. 95-97. Cf. pp. 38, 41. Dunoyer is quoting here from Say's *Oeuvres divers*, *Collection des principaux économistes* (Paris, 1848), pp. 667-716.
114. Comte, *Censeur européen*, III, pp. 203-206.
115. Dunoyer, *Liberté du travail*, III, pp. 378-380.
116. Comte, *Censeur européen*, II, pp. 208-216. Say, *Traité*, II, pp. 307-308. Say, *Cours*, I, pp. 45-46., III, p. 193. Dunoyer, *Oeuvres*, II, pp. 71-74.
117. Dunoyer, *Liberté du travail*, I, p. 295.
118. Say, *Cours*, I, p. 188. Say, *Revue encyclopédique*, 37, p. 30.

119. Say, *Cours*, V, p. 123.
120. Say, *Cours*, V, pp. 331–332. Cf. pp. 343–350.
121. Cf. Dunoyer, *Liberté du travail*, I, p. 124*n*.
122. Dunoyer, *Liberté du travail*. I, pp. 309–310.
123. Say, *Cours*, IV, p. 452.

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COMMENT ON THE FRENCH LIBERAL SCHOOL*

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There exists today in Anglo-American economics a veritable "conspiracy of silence" regarding the works and achievements of the French Liberal School of Economics. This is at once a sad commentary on the state of disinterested historical scholarship in the economics profession and a resounding confirmation of Thomas Kuhn's theory of scientific progress and its applicability to the social sciences[1,2]. Needless to say, one does not undermine the "conspiracy" merely by displaying familiarity with Say's Law of Markets in the course of extolling the achievements of John Maynard Keynes; nor even by giving a tolerable rendition of Bastiat's "Petition of the Candlemakers" to a class of undergraduates, accompanied, of course, by the caveat that it does not apply to the "infant industry" case. Let us, then, breach the "conspiracy" forthwith and wholeheartedly by setting the School in historical perspective and noting its most prominent members.

The birth of the French Liberal School coincides with the publication in 1803 of Jean-Baptiste Say's *Traité d'économie politique*[3]. The death of the irrepressible Gustave de Molinari in 1912, reinforced by the advent of World War I, which carried in its wake the dissipation of the classical liberal *Weltanschauung*, marks the School's demise, although its influence had begun to wane before the close of the 19th century. During the century of its life, the Liberal School thoroughly dominated French economics. From 1830 to World War I, the prestigious Chair in political economy at the Collège de France was held exclusively by its members, namely, Say, the Italian Pellegrino Rossi, Michel Chevalier, and the latter's son-in-law Paul Leroy-Beaulieu, in that order. Other distinguished members included Count Destutt de Tracy, Charles Dunoyer, Frédéric Bastiat, the Swiss A. E. Cherbuliez, J. G. Courcelle-Seneuil, J. A. Blanqui, Joseph Garnier, Léon Say, Yves Guyot, Maurice Block, Pierre Emile Levasseur, and of course the Belgian-born Molinari.

In its later years, the School became known as the "Paris Group",[4] because it exercised complete control over various publications, organizations, and institutions in Paris such as the Journal des Économistes, the Collège de France, and the new dictionary. The Paris Group and the whole Liberal School were well described by Schumpeter as "anti-étatistes"[5]. According to Schumpeter, the Paris Group in particular,

> . . . indulged in a belief to the effect that the main business of economists is to refute socialist doctrines and to combat the atrocious fallacies implied in all plans of social reform and of state interference of any kind. In particular, they stood staunchly by the drooping flag of unconditional free trade and laissez-faire[6].

In fact, the Paris Group's domination of French economics was so thoroughgoing and its cleaving to extreme laissez-faire principles so unyielding and therefore politically unpalatable, that the French government itself sought to undermine its influence. So it was that in 1878, when the government established chairs in political economy in the law faculties of all French universities, it took pains to insure that not all these chairs were manned by individuals in sympathy with the Paris Group. This served to shake the Liberal School loose from its position of unquestioned authority, and the ensuing thirty-five years saw the progressive decline of its influence in French economics, ". . . though the

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little knot of laissez-faire stalwarts, not less remarkable for longevity than for strength of conviction, held out like Leonidas' Spartans at Thermopylae''[7].

However, the maltreatment of the French Liberal School does not stop short with the not-so-benign neglect afforded it by present-day Anglo-American economists. The unfortunate fact is that the School has fared badly even at the hands of English-speaking economists who have been cognizant of its contributions. J. E. Cairnes, in an otherwise just critique of Bastiat's non-value-free methodology and ''service'' theory of value, characterized the French Liberal School as follows:

> . . . the most characteristic doctrines of the English school of Political Economy . . . have found some of their most powerful champions and most skillful expositors on the other side of the Channel; and . . . such men as Say, Duchâtel, Garnier, Courcelle-Seneuil, and Cherbuliez, while contributing not a few original and important developments to economic doctrine, . . . have been the interpreters to their countrymen of Adam Smith and Malthus, Ricardo and Mill[8].

Now, Cairnes' statement leaves the impression that Say *et al.* were hard at work elaborating, refining, and extending the Ricardian-Classical paradigm, indeed that they stood on the shoulders of the giants of the English Classical School. A more unjust representation of the facts is hardly conceivable. The economists of the Liberal School labored within a unique paradigm which diverged radically from that of the Classical School. This paradigm was nourished by a long and glorious tradition which reached back through Condillac, Turgot, Quesnay and Cantillon to the Scholastics. This tradition was only partially absorbed by Adam Smith and later bastardized by the Ricardian-Classical School through hazy thinking and inept exposition. Thus, Say's seminal *Traité* was not merely a rigorous systematization of Smith's brilliant but diffuse insights, but rather an attempt, brilliant in its own right, to provide the Smithian perceptions with a firm basis within the Cantillon-Quesnay-Turgot tradition.

It was Joseph Schumpeter who first pointed out that Say's work ''grew purely from French sources'' and lay squarely within the great Cantillon-Turgot tradition.[9] Furthermore, it was Schumpeter who defended Say's work against the oft-repeated charge of ''superficiality'' mouthed by the Ricardian-Classical economists and their neoclassical descendants. And yet, it was also Schumpeter who haughtily dismissed the French Liberal School as unscientific and analytically incompetent. Of the whole School, Schumpeter wrote:

> . . . owing partly to the practical turn of their minds and their too exclusive concentration upon economic policy, they lacked interest in purely scientific questions and were in consequence almost wholly sterile as regards analytic achievement[10].

Of Charles Dunoyer:

> But in spite of all the genuine brilliance — coupled with strong sense — that we find in Charles Dunoyer's *De la Liberté du Travail* (1845), we cannot rank it as a scientific performance. ... The book adds nothing either to our knowledge or to our control over the facts[11].

Of Bastiat:

> Nor should it be averred that there are no good ideas at all in the book [*Harmonies économiques*]. Nevertheless, its deficiency in reasoning power or at all events, in power to handle the analytic apparatus of economics, puts it out of court here. I do not hold that Bastiat was a bad theorist. I hold that he was no theorist[12].

Of the Paris Group:

> But what does count for us is the fact that their analysis was methodologically as ''reactionary'' as was their politics. They simply did not care for the purely scientific aspects of our subject. J.-B. Say and Bastiat, and later on a little diluted marginal utility theory, satisfied their scientific appetite[13].

Surpassing even Schumpeter in haughtiness is Henry William Spiegel who implicitly dismisses the entire Liberal School by proclaiming that '' . . . there was little scientific work that would have continued the tradition of Say''[14]. However, not all English-speaking commentators have deprecated the achievements of the School. In 1871, the great subjectivist revolutionary, William Stanley Jevons, wrote in the concluding paragraph of his pathbreaking work, *The Theory of Political Economy*[15].

> There are valuable suggestions towards the improvement of the science contained in the works of such writers as Senior, Cairnes, Macleod, Cliffe-Leslie, Hearn, Shadwell, not to mention a long series of French economists from Baudeau and Le Trosne down to Bastiat and Courcelle-Seneuil: but they are neglected in England, because the excellence of their works was not comprehended by David Ricardo, the two Mills, Professor Fawcett and others who have made the orthodox Ricardian school what it is[16].

Jevons expatiated more passionately on the same theme in the Preface to the Second Edition of the same work penned in 1879:

> . . . I am convinced that the doctrine of wages, which I adopted in 1871, is not really novel at all, except to those whose view is bounded by the maze of the Ricardian economics. The true doctrine may be more or less clearly traced through the writings of a succession of great French economists, from Condillac, Baudeau and Le Trosne, through J.-B. Say, Destutt de Tracy, Storch and others, down to Bastiat and Courcelle-Seneuil. The conclusion to which I am ever more clearly coming is that the only hope of attaining a true system of economics is to fling aside, once and for ever, the mazy and preposterous assumptions of the Ricardian school. Our English economists have been living in a fool's paradise. The truth is with the French school, and the sooner we recognize the fact, the better it will be for all the world, except perhaps the few writers who are too far committed to the old erroneous doctrines to allow of renunciation[17].

It is clear that Jevons' favorable assessment of the Liberal School stems from his clear recognition of the unique tradition in which it was rooted. But this leaves us with the enigma of Schumpeter whose awareness of the importance of the Cantillon–Turgot–Say tradition did not preclude him from impugning the scientific merit of the French Liberal School. The answer to the puzzle lies with Schumpeter's belief that " . . . in the high heavens, Say's true successor was indeed the great Walras".[18] Schumpeter never tired of stressing that Say's work was "the most important of links in the chain" that led from the "Econometricians" of the French tradition, i.e. Boisguillebert, Cantillon, Quesnay and the Physiocrats, through Turgot to Walras' conception of a mutually-determined general equilibrium system[19]. Accordingly, Schumpeter rated as Say's greatest contribution to analytic economics " . . . his conception of economic equilibrium, hazy and imperfectly formulated though it was"[20]. From this point of view, the French Liberal School can be regarded as Say's successors only on the "less exalted level" of "'applied economics', attitudes in economic policy, systematic arrangement and . . . the lower ranges of economic theory"[21].

Schumpeter thus championed the French tradition primarily because " . . . the Cantillon–Quesnay tableau was the first method ever devised in order to convey an explicit conception of the nature of economic equilibrium",[22] and, as such, bore within itself the seed of the later Walrasian–Paretian concept of general economic equilibrium. But surely, as even Schumpeter realized, the Cantillon–Quesnay–Turgot tradition was distinguished by more than the mere recognition of the "circular flow of economic life". In delineating the distinctive features of this tradition, one cannot ignore the fact that it embodied the value and price theory of the latter Scholastics which stressed the mutual benefit of voluntary exchange and the central role of utility and scarcity in the determination of market prices.[23] Nor can its identification of and emphasis upon the crucial role of the entrepreneur in an uncertain world be left out of account[24]. The point is that Say and the French Liberal School, steeped in this tradition as they were, absorbed much more than the circular flow concept. They absorbed a method of approach that was, implicitly at least, subjectivist and individualist. And herein lies the reason for Schumpeter's disparagement of the Liberal School.

Say and especially Destutt de Tracy fashioned the loose approach they inherited into an explicitly praxeological methodology. To Destutt, a thoroughgoing praxeologist, political economy is no more and no less than the logical tracing out of the effects of the will, i.e. "the general and universal faculty of finding one thing preferable to another"[25]. Accordingly, he considered his own brilliant performance, *A Treatise on Political Economy*:

> . . . not a mere treatise on political economy . . . It is a treatise on the will, forming a sequel to a treatise on the understanding. My intention is much less to exhaust all the details of the moral sciences, than to see how they are derived from our nature, and from the conditions of our existence, in order to detect with certainty the errors which may have slidden into them by not ascending to this source of all we are and all we know[26].

Moreover, in this work, Destutt delivered a trenchant praxeological critique of the use of probability theory in the social sciences which embodied the Misesian insight that probabilities can only be calculated for homogeneous classes of events and that this homogeneity is necessarily absent from social phenomena. In Destutt's words:

> Assuredly the degrees of the capacity, of the probity of men, those of the energy and the power of their passions, prejudices and habits, cannot possibly be estimated in numbers. It is the same as to the degrees of

influence of certain institutions, or of certain functions, of the degrees of importance of certain establishments, of the degrees of difficulty of certain discoveries, of the degrees of utility of certain inventions, or of certain processes. I know that of these quantities, truly inappreciable and innumerable in all the rigour of the word, we seek and even attain to a certain point, in determining the limits, by means of number, of the frequency and extent of their effects; but I also know that in these effects which we are obliged to sum and number together as things perfectly similar, in order to deduce results, it is almost always and I may say always impossible to unravel the alterations and variations of concurrent causes, of influencing circumstances, and of a thousand essential considerations, so that we are necessitated to arrange together as similar a multitude of things very different, to arrive only at those preparatory results which are afterwards to lead to others which cannot fail to become entirely fantastical[27].

Thus, it was not a deficiency of analytical prowess that forever barred the Liberal School from entering the "high heavens" of mutually-determined equilibrium systems but keen insight into the methodological underpinnings of the social sciences. For the modern subjectivist, then, Schumpeter's epithet "unscientific" as applied to the French Liberal School translates into the shibboleth "unscientistic".

NOTES

1. Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (Chicago: University of Chicago Press, 1970).
2. On the applicability of Kuhn's theory to the sciences of human action, particularly economics, see Murray N. Rothbard, "Ludwig von Mises and the Paradigm for Our Age," in *idem., Egalitarianism as a Revolt against Nature* (Washington, D.C.: Libertarian Review Press, 1974).
3. See the English edition, Jean-Baptiste Say, *A Treatise on Political Economy*, trans. by C. R. Prinsep (1880; rep. ed. New York: Augustus M. Kelley, 1963).
4. For a discussion of the Paris Group, see Joseph A. Schumpeter, *History of Economic Analysis*, ed. by Elizabeth Boody Schumpeter (New York: Oxford University Press, 1954), pp. 840–843.
5. *Ibid.*, pp. 497, 841.
6. *Ibid.*, p. 841.
7. *Ibid.*, p. 843.
8. John E. Cairnes, "Bastiat", in *idem*, *Essays in Political Economy* (1873; rep. ed. New York: Augustus M. Kelley, 1965), p. 313.
9. Schumpeter, *History*, pp. 491–492.
10. *Ibid.*, p. 497.
11. *Ibid.*, p. 498.
12. *Ibid.*, p. 500.
13. *Ibid.*, p. 841.
14. Henry William Spiegel, *The Growth of Economic Thought* (Englewood Cliffs, N.J.: Prentice-Hall, 1971), p. 340.
15. W. Stanley Jevons, *The Theory of Political Economy*, ed. with an introduction by R. D. Collison Black (Baltimore, Md.: Penguin Books, 1970).
16. *Ibid.*, p. 261.
17. *Ibid.*, pp. 67–68.
18. Schumpeter, *History*, p. 497.
19. *Ibid.*, pp. 492, 828.
20. *Ibid.*, p. 492.
21. *Ibid.*, p. 497.
22. *Ibid.*, p. 242.
23. On the doctrines and analysis of Cantillon, the Physiocrats, and Turgot, see *ibid.*, pp. 209–249.
24. *Ibid.*, pp. 222, 492.
25. Count Destutt de Tracy, *A Treatise on Political Economy*, trans. by Thomas Jefferson (1817; rep. ed. New York: Augustus M. Kelley, 1970), p. 38.
26. *Ibid.*, p. 107.
27. *Ibid.*, p. 25.

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SOCIAL SCIENTISTS, SCHOOLING, AND THE ACCULTURATION OF IMMIGRANTS IN 19TH CENTURY AMERICA*

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I

The last several years have witnessed a remarkable outpouring of criticism of the American system of public education. While the usual attacks on the quality of the instruction, the character of the curriculum offerings and the cost efficiency of its operations continue to be the concern of many, several critics have begun to challenge the very fundamental character and purposes, the very legitimacy, of the traditional public, or common schools[1]. Considering its almost total monopoly over the use of public funds, and its control over roughly 90% of the school age children, some critics see the public schools as an actual or potential instrument of corporate capitalism, of the educational bureaucracy, of an increasingly manipulative State; some see them as instruments of social, cultural and moral homogenization, designed to weaken and even destroy racial, ethnic, religious and personal cultural diversity. Some believe that though the public school ideologists have consciously intended to use the school to promote new values and for social control of the diverse masses, the schools have not in fact been able to do so. Others feel the system to be so corrupt that they advocate "deschooling"; the abolition of the schools as social institutions, or at least their separation from the State. As the distinguished elder statesman of American education, Robert Hutchins, cried:

> Nobody has a kind word for the public school, the institution that only the other day was looked upon as the foundation of our freedom, the guaranty of our future, the cause of our prosperity and power, the bastion of our security, and the source of our enlightenment[2].

In preparing for a defense of the public school system, Hutchins tried to find the basic justification for the continuance of the public school monopoly and came to the conclusion that:

> The purpose of the public schools is not accomplished by having them free, universal and compulsory. Schools are public because they are dedicated to the maintenance and improvement of the public thing, the *res publica*; they are the common schools of the commonwealth, the political community. They may do many things for the young; they may amuse them, comfort them, look after their health, keep them off the streets. But they are not public schools unless they start their pupils toward an understanding of what it means to be a self-governing *citizen* of a self-governing *political* community.

The distinguished Russell Professor of Education at Teachers College, Columbia University, Dr. R. Freeman Butts, agrees with Hutchins and is even more explicit as to the full significance of the public schools as an instrument of the State:

> . . . to achieve a sence of community is the essential purpose of public education. This work cannot be left to the vagaries of individual parents, or small groups of like-minded parents, or particular interest groups, or religious sects, or private enterprisers, or cultural specialties ... . I believe the chief end of American public education is the promotion of a new civism appropriate to the principles of a just society in the United States and a just world community ... . We require the renewal of a civic commitment that seeks to reverse and overcome the trend to segmented and disjunctive "alternatives" serving narrow or parochial or racist interests[3].

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Hutchins' and Butts' subordination of the individual's right to total freedom in the content and means of his education seems to mock the libertarian traditions of American democracy and the reality of the culturally pluralistic character of American society. It seems more spiritually akin to Plato's *Republic* or modern totalitarianism than to the individualism and racial, religious and cultural diversity that characterize the reality of American daily life. Yet the fact is that Hutchins and Butts are more closely allied to, and representative of, an ideology that can be traced to the earliest days of the American Republic, to some of the most important and influential of the Founding Fathers, principally to Benjamin Franklin, Benjamin Rush and Thomas Jefferson, all three signers of the Declaration of Independence, and fathers of the American Republic and of the American system of common schools.

II

The passion for homogeneity in race, religion and culture was very strong among American colonists; the history of the colonial period is replete with ethnic and religious conflicts; the multi-cultural character of New York and Pennsylvania were accidents of history or due to the influence of the Quaker founders of the latter state. New England was particularly unfriendly to aliens, religious dissenters, or anyone who did not conform to the official sense of propriety. The preference for a homogeneous society took on greater significance, however, after the American revolution had united the disparate colonial societies into one nation with a common government and citizenship. Although the most cosmopolitan of men, Franklin, Rush and Jefferson shared their contemporaries' dislike and fear of a heterogeneous culture in America.

Benjamin Franklin was the first American to envision and propose a voluntary union of the British American colonies. His plan was offered in a letter sent to his business partner in 1751 and later appeared in more elaborate form in 1755 as a pamphlet which was distributed to the members of the American Philosophical Society, the principal grouping of political, social and natural scientists and philosophers of America, which Franklin himself had founded, and of which Jefferson and Rush were later active members. It is significant that it was in this pamphlet, outlining his vision of an American union, that Franklin chose to argue against any further immigration of non-English peoples into the American colonies. His specific target was the German settlers in Pennsylvania who had thwarted Franklin's efforts to create military defenses in the colony by joining the Quakers in refusing to vote a military bill in the assembly. Franklin demanded of his readers:

> Why should the Palatine boors be suffered to swarm into our settlements and, by herding together, establish their language and manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a colony of aliens, who will be so numerous as to Germanize us, instead of our Anglifying them?[4].

But this outburst was more than a mere fit of pique; it was part of a conscious hostility to the multi-ethnic character of Pennsylvania society which the New England born and raised Franklin could not wholly accept. It was also a reflection of his Anglo-Saxon racism which was expressed so clearly in the same pamphlet:

> The number of white people in the world is proportionately very small. All Africa is black or tawny; Asia chiefly tawny; America (exclusive of newcomers) wholly so. And in Europe the Spaniards, Italians, French, Russians and Swedes are generally of what we call a swarthy complexion; as are the Germans also, the Saxons only excepted, who with the English make up the principal body of white people on the face of the earth.

Franklin concluded by asking why America should

> . . . in the sight of superior beings darken its people? Why increase the sons of Africa by planting them in America where we have so fair an opportunity, by excluding all blacks and tawnys, of increasing the lovely red and white? But perhaps I am partial to the complexion of my country for such partiality is natural to mankind[5].

Thomas Jefferson, writing more than 30 years later, in the midst of the Revolution, expressed equal concern for the effects of possible large scale European colonization in the new American republic. He equated political unity with cultural homogeneity and doubted if non-English immigrants were compatible with the successful development, or survival of an American republic.

> It is for the happiness of those united in society to harmonize, as much as possible, in matters which of necessity they must transact together. Civil government being the sole object of forming societies, its administration must be conducted by common consent. Every species of government has its specific principles. Ours are perhaps more peculiar than those of any other in the universe. It is the composition of the freest principles of the English constitution, with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet from such we are to expect the greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or if able to throw them off, it will be in exchange for an unbounded licentiousness, passing as usual from one extreme to another. It would be a miracle were they to stop precisely at the point of temperate liberty. These principles, with their language, they will transmit to their children. In proportion to their numbers, they will share with us the legislation. They will infuse into it their spirit, warp and bias its direction, and render it a heterogeneous, incoherent, distracted mass ... . May not our government be more homogeneous, more peaceful, more durable (without such emigrants)[6]?

Jefferson's views, as expounded in the above lengthy passage from his *Notes on Virginia*, succinctly summarize the fears and analytic elements which would appear again and again throughout the 19th and 20th century whenever the question of immigration and naturalization of aliens was a subject of public discussion. Ethnic, religious or cultural pluralism was viewed as a threat to political community. Jefferson's foreboding was frequently quoted. The anti-foreign views of Washington, Adams, and other founding fathers were similarly used. The notion that Europe was a cesspool of vice, corruption, ignorance and despotism was a commonplace of American mythology, and Europeans who came to America were viewed as carriers of these evils[7].

Jefferson's views on the place of blacks in American society also prefigure the thought of later generations. While Franklin clearly opposed further importation of black slaves for racial and cultural reasons, and personally preferred to have white rather than black servants in his household, towards the end of his life he supported the abolition of slavery also. Yet he was apparently convinced that free blacks could not be trusted to be free of some white supervision, for the program he presented as President to the Pennsylvania Society for the Abolition of Slavery in 1789 included recommendations that the society assume legal guardianship over all free black apprentices, superintend the school instruction of younger free blacks and form a "committee of Inspection who shall superintend the morals, general conduct, and ordinary situation of the free Negroes . . . "[8].

While Franklin supported the suppression of the slave trade and abolition, Jefferson went further and advocated the removal of all Negroes from American society. He believed that the "deep divisions" between blacks and whites would, if they were left in the same society, produce civil convulsions that would never end "but in the extermination of the one by the other race". This potential violence was due to "the deep rooted prejudices entertained by whites, ten thousand recollections by the blacks of real injuries sustained" and such "real distinctions" which nature had made, i.e. color, figures, hair, odor and sexual characteristics. While Jefferson thought that blacks were equal to whites in ability to remember things, he believed they were inferior to whites in reasoning power, and "dull, tasteless and anomalous in imagination". Though Jefferson carefully added that the question still required further scientific examination, he advanced "the suspicion" that blacks were inferior to whites in body and mind, a view that would increasingly take hold of the American imagination in the course of the 19th century[9].

Benjamin Rush (1745–1813), a physician, chemist, protegé of Franklin, politician and educational reformer, shared the enthusiasms of Franklin's later life. His own view of the Germans in Pennsylvania was somewhat more conscious of their virtues, but he too saw their predilection for their native German language as a serious problem in their acculturation to American ways. Echoing Franklin and Jefferson, Rush declared that "Freedom can exist only in a society of knowledge. Without schooling mankind is incapable of knowing their rights and where learning is confined to a few people, liberty can be neither equal nor universal"[10]. In a plan submitted to the legislature of Pennsylvania in 1786, Rush proposed the establishment of a state-wide system of publicly supported free schools in each township, four "colleges" which would be located at Philadelphia, Carlisle, Lancaster and Pittsburgh, and a state university to crown the system. At first, he urged that instruction be in the English language; but in a later edition of his plan he accepted a bilingual curriculum and the designation of one college, at Lancaster, for the Germans, recognizing that this was necessary if any progress was to be expected in educating the dissident cultured people. This was required in order that "our schools of learning by producing one general and uniform system of education will render the mass of the people more homogeneous and thereby fit them more easily for uniform and peaceable government". Rush's plan for Pennsylvania was similar in purpose and structure to Jefferson's earlier Bill for the More General Diffusion of Knowledge presented to the Virginia legislature in 1779. But whereas Rush hoped his plan would lead to the assimilation of the Germans into the Anglo-American culture of the rest of the inhabitants, Jefferson's plan specifically excluded blacks from its benefits, reflecting his view that they were unassimilable[11].

The assumption that a free society could not endure without an educated citizenry was to become a commonplace of all later discussion of democracy and education in American society.[12] It was explicit in the writings of Jefferson and Rush, of Franklin and almost every other person interested in public affairs. Nor was it really new in the late 18th century, though one would think from its continuous repetition that each writer thought he had made a great new discovery. The writings of the 17th century English Puritans, the Commonwealthmen, are full of such notions. The free primary education was one of the demands of the Levellers; James Harrington in his *The Commonwealth of Oceana* (1650) urged that free schools be opened for all youth between nine and fifteen years of age under the direction of the magistrates rather than parents for the future health of the state; John Molesworth, an Irish admirer of John Locke, insisted that good learning was a "great antidote against the plague of tyranny" and linked good government with the learning of the people. Molesworth's views circulated widely in the colonies and his work was read by Jefferson shortly before he introduced his education plan to the Virginia legislature[13].

The stress on the connection between republican or "good" government and a system of widely diffused education among the citizenry opened the way for the emergence of the baneful appearance of Spartan–Platonic conceptions of the State's role in education. Rush urged that

> Next to the duty which young men owe to their Creator, I wish to see a SUPREME REGARD TO THEIR COUNTRY, inculcated upon them ... . Our country includes family, friends and property, and should be preferred to them all. Let our pupil be taught that he does not belong to himself, but that he is public property. Let him be taught to love his family, but let him be taught, at the same time, that he must forsake and even forget them, when the welfare of his country requires it. He must watch for the State as if its liberties depended upon his vigilance alone ... . He must be taught how to amass wealth, but it must be only to increase his power of contributing to the wants and demands of the State ... . I am satisfied that the most useful citizens have been those youth who have never known or felt their own wills till they were one and twenty years of age, and I have often thought that society owes a great deal of its order and happiness to the deficiencies of parental government, being supplied by those habits of obedience and subordination which are contracted at schools[14].

In 1797 the American Philosophical Society conducted a contest for the best essay on the best system of education "adopted to the genius of the government of the United States". One of the two winners of the contest, Samuel Harrison Smith, displayed views similar to the admirer of the Lacedamonians, Benjamin Rush. Smith boldly argued that "society must establish the right to educate and acknowledge the duty of having to educate all children". Smith noted that while many state constitutions already recognized this right and obligation, few had in fact done much to put the principle into practice. As for the rights of parents to educate their children, Smith argued that

> . . . Error is never more dangerous than in the mouth of a parent . . . and that prejudices are as hereditary as titles; (education) was so momentously important (that it) must not be left to the negligence of individuals ... . By education remote from parental influences, the errors and vices of the parents may cease to be entailed

upon the child ... . The most solemn attention must be paid to avoid instilling into the young mind any ideas or sentiments whose truth is not unquestionably established by the undissenting suffrage of the enlightened and virtuous part of mankind"[15].

The latter were to be ensconced in a national board of education, according to Smith, composed of fourteen members elected for life by the faculty of the national university, with the task of creating and administering a national system of public schools, choosing the teachers, curriculum and all texts. Smith was undoubtedly influenced in part by the debate in the French National Assembly on the creation of a national system of education, for he quotes approvingly one French legislator who succinctly captured Smith's own viewpoint in saying: "It is proper to remind parents that their children belong to the State, and that in their education, they ought to conform to the rules which it prescribes"[16].

Another early American nationalist, Jeremy Belknap, a minister, historian and educator, a founder of the Massachusetts Historical Society, also adopted the Spartan model, arguing that

> That sentiment of Lycurgus that "children belong to the State more than to the parents" ought to be deeply engraved on the heart of every person who is concerned in making or executing the laws . . . [17].

He specifically called attention to the need for public support for educating the poor, for "if it is the duty and interest of the State to avail itself of the capacities of all its citizens, it is then its duty and interest to cultivate their capacities". This theme was echoed by Archibald DeBow Murphey in his proposal to establish a complete system of free public schools in the state of North Carolina in 1817. Urging the need to utilize the "capacities" of the poor, he argued that

> Poverty is the school of genius . . . from which school generally come forth those men who act the principal parts upon the theatre of life ... . But it is a school which if left to itself, runds wild; vice in all its depraved forms grows up with it. The State should take this "school" under her special care, and nurturing the genius therein given to it an honorable and profitable direction. Poor children are the peculiar property of the State, and by proper cultivation they will constitute a fund of intellectual and moral worth which will greatly subserve the public interest[18].

Rush summarized the view of many of his contemporaries in a peculiarly mechanistic metaphor. The system of free public schools was necessary, he said, to "convert men into republican machines. This must be done if we expect them to perform their parts properly in the great machine of the government of the State". The wills of the people must be "fitted to each other by means of education before they can be made to produce regularity and unison in government[19]".

Rush had one great fear, however, that "the establishment of nurseries of virtue and knowledge in every part of the state", and the "attempt to give the minds of our citizens a virtuous and uniform bias in early life", would be vain if the State continued to admit and confer equal privileges of citizenship on the "annual refuse of the jails of Britain, Ireland and our sister States". The identification of foreigners with the criminal class of Europe was to have a long history in American folklore, and the vision of an essentially homogeneous society is hidden behind Rush's cry to the legislature of Pennsylvania: "Can nothing be done to preserve our morals, manners and government from the infection of European vices?"[20]

Still another problem that was to loom large in the minds of the early exponents of public education and republican education, was the diversity of religious sects and the tradition that education was the responsibility and the right of parents and the churches. Jefferson, as befitted the champion of disestablishment of the church from the State and complete religious toleration for all sects, proposed that all sectarian doctrines be forbidden in the curriculum of the schools, and that morals and theology were the prerogatives of the home, the Church or private study at institutes convenient to the university. This attitude was almost wholly rejected by Jefferson's contemporaries, though it would in the 20th century tend to become the norm in public schools. Franklin, like Jefferson, was essentially a Deist who publicly espoused Christian morals, if not Christian theology. His morals were, like everything else in his life, arrived at by reason and utilitarian criteria. The schools he founded were non-denominational in curriculum and government, with little more than some formal reading in ethics. Benjamin

Rush, however, deliberately challenged the notion of religiously neutral schools. He rejected the notion that religious training of youth would prejudice their minds, and ought to be left until the later stages of their education. He condemned the "fashionable" liberality which refused to associate with any specific sect, and urged parents and teachers to use their influence to ensure sectarian loyalty among the children in their charge. Rush insisted that the Bible be among the books studied in school, and prophesied that if it were neglected in the schools, it would soon be read only in the churches, and eventually only in the courts of justice. The religion he recommended was Christianity, that of the New Testament, for "all its doctrines and precepts are calculated to promote the happiness of society and the safety and well-being of civil government. A Christian cannot fail of being a Republican[21]".

In New England with its largely homogeneous religious allegiance, and on the western frontier where the scattered settlement patterns left all the established churches weak in numbers at any spot, the public schools became true common schools in which a non-sectarian but definitely Protestant morality based on Bible reading became the norm. In states with considerable diversity of religious sects, the appearance of public nonsectarian schools was delayed until the 1830s; church schools, frequently with some state subsidies, remained dominant, as they had been in colonial times.

Thus, within the lifetimes of the founding fathers of the American republic, certain attitudes on the relationship between the schools, education and republicanism had developed which would be reflected time and again in later speeches, books and debates. Hostility toward, and fear of, racial, ethnic or cultural diversity characterized the writings of Jefferson, Franklin, Rush and their contemporaries. A view of Europe and Europeans as identical with all kinds of political, personal and social vice and ignorance expressed itself in opposition to the emigration of non-English peoples to America, and in the view of schooling as the principal agent of acculturation of foreign elements into a homogeneous American society which was seen as the repository of all the virtues and the hope of mankind. Education was to be the means by which the new political society was to be created; a republican education which was morally non-sectarian, Protestant and culturally Anglo-American in character, deliberately stripped of the cosmopolitanism of he classical Latin and Greek oriented curriculum, and boldly utilitarian and scientific in orientation. The confident belief that republican, non-sectarian and American education could effect a moral, political and cultural change upon the children of the dissident immigrants was based on the widely held view that man's character is determined by his experience or environment. Based on Lockeian psychological theories, the American educators were determined to create a cultural environment of their own choosing, even if it meant forcible removal of children from "foreign" cultural influences, or the suppression by law of such corrupt European vices as drinking beer and whiskey, or dancing and gaming on the Sabbath. The school would train and police youths[22].

III

Considering the prestige and great political skills of Franklin, Jefferson and Rush, it is somewhat surprising that their ideas on public education did not fully come to fruition until the late 1830s and 1840s. Jefferson's plan for a system of public education in Virginia did not materialize; Rush's plan for Pennsylvania also was abortive, as was Murphey's for North Carolina; in New York the state government set up a common school fund between 1795 and 1800, and again from 1825, but left the initiative to local towns which had to match the state's funding; if this system proved haphazard upstate, the city of New York was left without any true public school system until 1841, private and church schools serving the needs of its heterogeneous inhabitants. Despite the recommendations of every President until Jackson, Congress never established a national university. Even in New England where a system of tax-supported schools could be traced back into the 17th century, public support of common schools was weak and the laws were frequently ignored. In the late 1820s Boston, which spent more for its schools than all the other towns in the state, enrolled less than half of all the school aged children. In the South, no system of public education existed at all. It was not until the 1830s that the educational theories of the founding fathers reappeared to give a new impetus, vigor and effectiveness to a movement for the establishment of a free public school system[23].

It is not accidental that the revival of the public school reform movement coincided with a sudden upswing in the numbers of immigrants arriving from Europe, especially from Germany and Ireland. Between 1790 and 1810 the number of immigrants has been estimated to have averaged less than five thousand annually; the Napoleonic wars reduced it even further until 1816–1817. Even so it did not exceed 20,000 until 1828 and averaged about 22,000 until 1832, when it suddenly jumped to more than 60,000. By the period 1836–1837 it averaged 76–80 thousand. By 1841 it renewed its rise and hit an all time record of 104,565 in 1842. All this took place before the great exodus from Ireland during the potato famine; in the years of 1845–1850 over 1.3 million aliens passed through American ports seeking a new life in America. In the decade between 1845 and 1854, 1.2 million Germans and 1.5 million Irish entered the United States. Generally speaking, about 80% of these immigrants were beyond school age and thus not subject to acculturation through the schools. Under the easy laws of the time, federal citizenship could be acquired after five years of residence; there were no literacy or educational requirements, and frequently local politicians were said to generously waive even the existing minimal requirements in order to swell the number of electors who could vote for them[24].

This new wave of immigration was not welcomed by the conservative native Americans. The Irish were traditionally a despised subject race, and were for the first time overwhelmingly Catholic peasants; the Germans were very diverse, some Roman Catholics, others Old Lutherans, or other persecuted dissident sects, and even a sizeable body of German Jews. While the bulk of the Germans moved into the new lands in the West, the Irish were generally so poor and so unskilled even at farming that they huddled together in the cities and towns of the East, creating a desperately impoverished urban proletariat. Worse still, from the viewpoint of the native Americans, the Irish soon learned to use their vote as a lever in political and economic struggle, creating the very image of the ignorant, vice-prone alien that the founding fathers had so feared[25].

In 1835 Lyman Beecher (father of the novelist Harriet B. Stowe) expressed the general hysteria that claimed so many native Americans during this period; he thought the crisis for American society lay in the future cultural character of the West (the Ohio, Missouri and upper Mississippi valleys), the focus particularly of the German immigrants. The West would determine the future of the whole nation; the influx of aliens to the West, "the greater part unacquainted with our institutions, unaccustomed to self-government, inaccessible to education, and easily accessible to prepossessive and inveterate credulity and intrigue" and "easily embodied and wielded by sinister design" would overpower the American population. Beecher especially feared the Catholic clergy and their influence on the masses. "While the Protestant clergy were congenial to liberty, the Catholic system was adverse to it." Beecher's solution? "Educate!"

> The integrity of the Union demands special exertions to produce in the nation a more homogeneous character and bind us together by firmer bonds. A remedy must be applied to this vital defect of our national organization. But what shall that remedy be? The consolidation of the state governments would make a despotism. But the prevalence of pious, intelligent, enterprising ministers through the nation, at the ratio of 1 to 1000, would establish schools and academies and colleges, and habits and institutions of homogeneous influence. These would produce a sameness of views and feelings and interests which would lay the foundation of our empire upon a rock[26].

The scientist, painter and inventor, Samuel F. B. Morse, became convinced that the immigration was the vanguard of a plot by the Czar, the Emperor of Austria and the Pope to destroy America, the last bastion of liberty. The Catholic immigrants, "hard-working, mentally neglected and poor", however well disposed they might be to the country that protects them, were not fitted, in Morse's opinion, to act with political judgment in a new country. He argued that

> Every unlettered Catholic immigrant that comes into the country is adding to a mass of ignorance which it will be difficult to reach by any liberal instruction ... . Republican education were it allowed freely to come in contact with their minds would doubtless soon furnish a remedy for an evil for which in the existing state of things, we have no cure[27].

Morse was here alluding to the fact that Catholics were not attending such public schools as already existed, and after the great New York school conflict of 1841, the Catholic Church would attempt with great success the difficult task of creating its own Catholic parochial school system financed entirely without public taxation. The public school system would be rejected not only because it was Protestant in fact, but also because it was non-sectarian in theory, hence contrary to Catholic traditions of education[28].

In Boston in 1835 H. Bockum reported to the American Institute of Instruction that the German population of America lacked "moral excellence", were ignorant, superstitious and prone to treat with levity or indifference the high moral conceptions characteristic of American womanhood. He claimed that the older German immigrants, from the 18th century, were not only deprived of the light their fathers enjoyed, but were excluded from the intelligence and virtue of the American people. Worse still, they were extremely hostile to any system of common schools which "they suspect will exclude or be unfriendly to their language and customs." (They were right in their suspicions; the Pennsylvania legislature which established the state public school system in 1834 mandated the use of English alone as the language of instruction.) Bockum believed, however, that in 50 years, the Pennsylvania Germans would be absorbed by the English speaking population, as were the Dutch in New York. But he thought the division by language and feeling of the Germans in the West would continue with all its evil consequences unless "we attend carefully to the intellectual wants" of the immigrants. If education were compulsory, progress would be assured; but as free and voluntary action was required by American liberalism, the future was in the hands of the virtuous and intelligent leadership[29].

Beecher, Morse and Bockum were signaling the opening of a new phase in American intellectual and social history. The task of saving America's moral and cultural values by education of the poor, the foreigners, their children, the ignorant and vicious, was about to be accomplished through the instrumentality of free public schools. And the principal manipulators of the instrument of acculturation were to be the true custodians of American culture and values — the sons of New England. In 1834 Caleb Cushing sounded the tocsin for the American Institute for Instruction; as the union of intellectual and moral instruction was the only true basis of public education, he took particular pride in the moral and intellectual heritage of New Englanders whose Puritan ancestors began the system of schools which were the means of creating a literate, intelligent and moral people whose influence was already uplifting American society elsewhere[30]. The following year, to the same audience, R. Parks claimed that "of all the blessings transmitted by our forefathers of New England", none was more important than the common schools; to them New Englanders were indebted for their civic and religious liberty and "the general diffusion of knowledge, competence and contentment" that made New Englanders "more intelligent and happier than any other people on the globe[31]".

The new civilizing mission was grasped with enthusiasm by the New Englanders; hundreds of missionaries were sent to the West to establish churches and schools, academies and colleges; New Englanders played prominent roles in all the legislatures of the Western states in creating their respective state-financed public school systems and universities; ministers, their wives and daughters frequently served as school masters and mistresses; they served as the cadre for every conceivable social reform movement, from abolition of slavery to prohibition of alcoholic spirits and imposition of strict sabbath laws. But the foundation of their cultural mission was acculturation of the immigrants[32].

Prof. E. D. Mansfield, a specialist in constitutional law, warned the College of

Teachers in Cincinnati in 1835 that so long as immigrants remained a "distinct social race, their children will grow up to maturity, come to the polls, with the same notions, prejudices and peculiar views which their fathers entertained". The only efficient way to prevent this was education. "Let us take their children then, and educate them in the same schools with our own, and thus amalgamate them with our community". Further, Mansfield declared

> It is altogether essential to our national security, strength and peace, if not even to our national security that the foreigners who settle on our soil should cease to be Europeans and become Americans; and as our national language is English, and as our literature, our manners, and our institutions are of English origins, and the whole foundation of our society English, it is necessary that they become substantially Anglo-Americans ... . We must become one nation[33].

Another speaker addressing the same professional society spoke for most of his fellow native Americans, saying

> (Our) community is not a compound but an unconsolidated mass; and to acquire uniformity, it must be subjected to the crucible and the schoolmaster is the chemist who can burn out fine gold from crude and discordant materials. It is only, Sir, on the children and youth of our immigrant population that we can act with effect. The feelings, modes of thinking and customs of the parents are so fixed that they can at most be slightly modified, and if their vernacular tongue is different from our own, they will prefer to use it still. As native Americans, it is our duty to prevent the entailment of these upon our children and the hereditary establishment among us of a distinct race of foreigners[34].

His parting shot was the reminder that "Pennsylvania by not attending in due time, is compelled to cherish in her bosom an exotic population".

Thus, we see again that, in the early years of the creation of the free public school system through the Middle Atlantic and Mid-western regions, the link between the need for an educated citizenry in a republican political community, and the need for a culturally homogeneous society to sustain that republican political system, clashed with the existence of multi-ethnic, multi-religious immigrant communities, and gave to the public school system the task of acculturation or "amalgamation" in the name of national security, order and morality.

IV

William Torrey Harris dominated American education from the Civil War into the Progressive Era. It was Harris who built the structure of bureaucratic public education on the foundations established earlier in the century by the pioneer exponents of government education. Soon after moving from Connecticut to St. Louis in 1857, Harris became a school principal and a disciple of Hegel (through contact with German immigrants in St. Louis). Harris became superintendent of schools in St. Louis in 1868, and from 1889 to 1906 he was United States Commissioner of Education. The National Education Association, of which he was a founder, became a major transmitter of his ideas across the country. Harris became a leading opponent of the ideas of Herbert Spencer, and founded in 1867 the *Journal of Speculative Philosophy* (which he edited for 22 years) to put forward the Hegelian viewpoint. He considered the libertarian ideas of Spencer to need the correction of the authoritarian support for the existing order expressed in Hegelianism. The existing order was buttressed, as were the existing order's authorities, by the concept of inevitability in Hegelianism. Hegelian philosophy "subordinated the individual to existing social institutions by maintaining that his true, spiritual self, which was constantly in conflict with his natural or physical self, could be realized only by adjusting himself to the divinely appointed environment and institutions that were in actual existence". Central to Harris' thinking was the necessity for the individual to subordinate himself to the state, official religion, etc. Education had the role of subordinating the natural self to the spiritual self. Harris felt that the state was the greatest human institution because the state was the carrier of culture[35].

In the Hegelian unfolding of history, Harris saw the American state as having a special mission as successor to the Hebrews, Greeks, Romans, and English. The bureaucratic public school, the introduction of which to America was so much the work of Harris, was the central instrument for education of people in the aims and duties of the state. For Harris, the American constitution was the central part of

American history, and he proposed that colonial history, up to the writing of the American constitution should form history instruction and end there. Civics would concentrate on discussion of the constitution. Great national heroes who created the American state formed a significant part of history instruction. Since a major problem for the success of the American state was the immigrant population in the cities, education was to be the means by which the immigrant populations were deprived of their own cultures and their natural selves, and given an American or spiritual self. Education would provide the discipline and proper habits that would make the immigrant accept and obey the existing institutions and political authorities. The cultural differences of the immigrants were viewed as criminal behavior, and without the schools to assimilate and Americanize them, the children of immigrants would continue in their parents' culture, and thus be criminals too. In the great domestic political crises of the 1870s and 1890s, in which immigrants played a leading part in the militancy of labor, the bureaucratic public school was viewed as the instrument by which the future dangerous populations of the cities, the children of immigrants, would be civilized — i.e. disciplined, silenced, habituated to regularity[36].

The rise of the cities in America, filled as they were by immigrants, created fears for the stability of the state. Effective compulsory education, mainly directed at the cities, according to Henry J. Perkinson, in *The Imperfect Panacea*, was the response. In New York, the compulsory education laws applied to New York City and Brooklyn only; in Maryland, to Baltimore; and in Missouri, to St. Louis. Compulsion reflected the refusal to allow Americanization to occur naturally and by the selection of the citizen[37].

The earlier abolition of the freedom of the citizen, by imposition of compulsory monetary support of schools, prefigured the abolition of the freedom of parents or children to be free from imposed, organized schooling. The argument was made that it was only right after denying the freedom of the citizen to support or not support education, to then deny the freedom of those for whom the citizen's money was taken for the goals of education. Since the citizen was compelled to pay for the joint protection of his person and property — for such was the justification of the school system — the state had the obligation to reciprocate by forcing the attendance of those who were to be educated in respect for authority and political institutions. The ultimate in compulsory attendance was the reform school, for the habitual reluctant to attend public school. Perkinson noted:

> Compulsory education laws exploded school enrollments. The number of five- to eighteen-year-olds enrolled in school rose from six and a half million in 1870 to fifteen and a half million by 1880; a rise from 57 percent to over 72 percent of the age group . . . Compulsory education laws not only brought more children to the schools but keep them there for longer periods of time.[38]

The bureaucratic public school thus required a system of administration and supervision for the larger number of teachers, truant officers, and clerks. "In addition to truant officers the policy of the city required a vast amount of paper work: age certificates, school certificates, working papers, and employment tickets had to be designed, filled in, and issued. To handle the myriad forms and affidavits the superintendent acquired a number of assistant superintendents, replete with clerical staffs. Increasingly superintendents became preoccupied with money. Schoolkeeping was becoming big big business." In late 19th century America, politics was the growth business. The expansion of the federal government was matched by the expansion of the state and city governments. There was an explosion of bureaucratic personnel in America. Public education provided a major part of that explosion of bureaucracy and later of the personnel for the other sectors of bureaucracy[39].

Michael B. Katz, in *Class, Bureaucracy, and Schools*, has indicated the need in the history of American education for a thoroughgoing revision of the official view that the public school system was the moral and progressive necessity modern educational historians present. Katz noted that the core of the public school system is bureaucracy, and with bureaucracy, a class system in education, as bureaucracy causes class division in all areas of compulsory activity. Bureaucracy in education was not considered necessary by many Americans in the 19th century. Then, as now, there were men who believed that there were other ways to conduct life in modern society. Katz notes:

> It is thus difficult to accept the proposition that bureaucracy is the only means through which social tasks can be accomplished . . . bureaucracy is inevitable only when men confront certain problems with particular social values and priorities. It is not industrialization that makes bureaucracy inevitable but the combination of industrialization and particular values. It is because of the mix of setting and priorities, not because of the setting alone, that we have bureaucracy as the dominant form of social organization[40].

Katz describes how the victory of public education in the 19th century blacked out the historical reality that the voluntary education model was thought to be the form in which education would develop. The early nineteenth century American movement to reject mercantilism — in tariffs, government banks, government roads and government education — led to the emergence of a strong liberal policy to develop voluntary education. Government restrictions and subsidies were removed from human activities so that voluntary effort could reach its fullest manifestation.

Edward Hitchcock, president of Amherst College, stressed that voluntarism provided the necessary basis for the "flexibility of essentially private institutions and the variability of American conditions". Katz continues:

> "Freedom from governmental interference with our literary institutions" as a basic principle underscored the right of the parent to select his child's education, which, in turn, found expression in the establishment of academies of varying types, suited to varying tastes. To exchange this mild anarchy for a state system of secondary schools would produce a "treadmill system" that was nothing but a "wretched substitute". The other line emanating from the original premise related the individuality of the American character to the varied degress of civilization across the country. Both arguments called for an educational system that could sensitively reflect and adequately provide for personal and cultural idiosyncracies[41].

The rise of the American city was the excuse frequently used to replace voluntarism with the bureaucratic public school. The American city tended to be populated with immigrants, who, as all immigrants, moved to improve their economic condition. These immigrant urban people continued to be viewed as the causes of immorality — i.e. different cultural attitudes. Schools would be the means to upgrade the city's culture and reduce the tensions due to economic differences in society. "In that setting, the first problem of the schools became, very simply, to ensure the regular attendance of all children upon a prolonged, systematic, and carefully structured formal education." The rule of the parent was negated. In place of the parent was a bureaucratic structure to conduct classes, keep rolls, investigate absences, and administer the whole system[42].

Bureaucratic education's purpose was to inculcate values and habits in young people who had different values and different habits. The values were set by clergymen, men of letters and employers. All wished the urban population to be orderly, respectful, compliant, docile, punctual and submissive. Centralization, public superintendents of education, systematization, and professionalism, based on tax support and compulsory attendance, were the means to these ends because voluntarism permitted the parents or private school administrators to choose and select these values instead of the dominant group in society. The class basis of bureaucratic school systems was reflected in the habits and values inculcated. Katz, after detailing the status and moral anxiety of the bureaucratic school advocates, adds:

> Herein lies an irony: Schoolmen who thought they were promoting a neutral and classless — indeed, a *common* — school education remained unwilling to perceive the extent of cultural bias inherent in their own writing and activity. However, the bias was central and not incidental to the standardization and administrative rationalization of public education ... . [Their rejection of decentralization] stemmed equally . . . from a gut fear of the cultural divisiveness inherent in the increasing religious and ethnic diversity of American life. Cultural homogenization played counterpoint to administrative rationality. Bureaucracy was intended to standardize far more than the conduct of public life.
> . . . It was, after all implicit in the "common" of "common school" that education should forge social unity by blurring cultural distinctiveness — the familiar idea of the melting pot.
> What is less obvious, although closely related, is the racist implication of such a point of view. If an attitude that considers one group to be different from and inferior to another in some basic and essential fashion can be labelled racist, then we are forced to the conclusion that racist sentiment scarred the origins of public education. For it is in precisely those terms — difference and inferiority — that school people perceived lower-class children ... . It approached this

> task from a racist perspective on its clientele. Thus racism, like antisexuality, is integral, and not incidental, to the very structure of public education ... . It was partly to deal effectively with the problem of the urban poor that bureaucracy developed as the mode of organizing urban schools. The racism thus integral to bureaucratic structure became even more deeply entrenched ... [43].

The challenging, radical social science in 19th century America was the work of Herbert Spencer. Spencer's philosophical anarchism was reflected in his first book, *Social Statics* (1850). It was directed at the positivism of Benthamism. Spencer emphasized natural rights based on the ethics of the right of each man to do as he pleased as long as he did not violate the equal rights of another man. Spencer opposed the injustice of historical land ownership, and supported rights of women and children as well as the universal right to ignore the state. Spencer saw society moving from a barbarian or military phase to an industrial or pacific phase. The industrial society was based on contract and the elimination of status, which was due to the existence of legislation. Through contract and the elimination of legislation, the rights of life, liberty and property were secured, and a new type of character emerged which was peaceful, independent, kindly and honest. The movement of society from status to contract would make possible the growth of the human mind. The homogeneity of status society would give place to the heterogeneity of contract society. In a society based on contract, not only would the injustices caused by the imposition of status disappear, but the replacement of voluntary for compulsory relations would emphasize individual responsibility and altruistic attitudes. Concerning public education, Spencer, in his *Principles of Ethics* (I, p. 545), said:

> We have fallen upon evil times, in which it has come to be an accepted doctrine that part of the responsibilities are to be discarded not by parents but by the public — a part which is gradually becoming a larger part and threatens to become the whole ... . The political ethics now in fashion makes the unhesitating assumption that while each man, as parent, is not responsible for the mental culture of his own offspring, he is, as citizen, along with other citizens, responsible for the mental culture of all other men's offspring![44].

In the 1860s a leading disciple of Spencerian social science, Edward Livingston Youmans, arranged for D. Appleton and Company to found *Appleton's Journal* in 1867. The journal ran a large number of articles on Spencer's thought, as well as popularizers of Spencer such as Youmans. In 1872 Youmans founded the *Popular Science Monthly* which sold eleven thousand copies per month. Its early issues contained, in serial form, Spencer's *The Study of Sociology*, which was published as a book in Appleton's International Scientific Series. *The Study of Sociology* presented Spencer's conception of the practical value of social science. The book was a landmark for the development of sociology in the U.S. Spencer emphasized a science of sociology which would teach men to think of social causation in a scientific way. Spencer emphasized the increasingly heterogeneous nature of industrial society and the great complexity of social relations. For Spencer, it was absolutely impossible to have the benefits of modern industry if attempts were made to interfere with the natural, and very complex, relations which existed in society. Injustices which remained from status society created a problem of how best to redress them, but he wished to emphasize that compulsion and control would interfere with progress and make prosperity impossible. A science of society should indicate the social behavior which interfered with progress, starting with attitudes of social control, compulsion, status and the bases of status, legislation. For Spencer, sociology showed that legislation damaged the new character and new human nature, and restored the retrogressive attitudes of status society — aggression, egoism, injustice. Spencer felt that sociology showed that legislation or any state financial aid for education, poverty, or privileged professions was as unjust as legislation for tariffs, state authorized banks, or other privileged groups. From this perspective, Youmans attacked the recently created American Social Science Association for failing to undertake and present a "strict and passionless study of society from a scientific point of view". Instead of a scientific perspective, the association was recommending legislation, compulsion instead of contract, and causing havoc in social relations by restoring attitudes of status[45].

The Spencerian position was called "so utterly progressive" even though its insistence on abstinence from state action has been called conservative; its "chief conclusion was that positive functions of the state should be kept to the barest minimum, it was almost anarchical, and it was devoid of that center of reverence and authority which the state provides in many conservative systems". The Spencerian view of a contract society was presented by Yale professor, William Graham Sumner, in *What Social Classes Owe to Each Other*:

> The social structure is based on contract, and status is of the least importance. Contract, however, is rational — even rationalistic. It is also realistic, cold and matter-of-fact. A contract relation is based on a sufficient reason, not on custom or prescription. It is not permanent. It endures only so long as the reason for it endures ... .
>
> Whether social philosophers think it desirable or not, it is out of the question to go back to status or to the sentimental relations which once united baron and retainer, master and servant, teacher and pupil, comrade and comrade.[46].

Three times Sumner put his academic position in peril due to his support of Spencerian views. First, he tried to use Spencer's *The Study of Sociology* as the text in a course. Yale's president objected, and a public controversy ensued, in which Sumner sought to resign. Later, he was threatened with removal because of his stand against the status legislation of protective tariffs which gave profits to industrialists at the expense of the ordinary consumer. Finally, his leadership in opposition to the Spanish–American war and American conquest of the Philippines brought the most serious threat to Sumner's position at Yale. Sumner and other American Spencerians were committed to the Jeffersonian–Jacksonian tradition of voluntarism and equality before the law. Taxation and state interference introduced compulsion and bureaucracy which was the foundation of class[47].

Spencer had predicted in 1882 that immigration to America would bring an intermixture of European peoples to produce a finer type, more able to surmount difficulties than existed formerly. John Fiske, another disciple of Spencer, was optimistic about the immigrants' role in American life because the decentralization and localism of America provided opportunities to adopt American customs without surrendering whatever immigrants wished to keep of another culture. But, the growth of radicalism, generally associated with immigrants, and increasing conflict by organized labor, created an attitude of despair, and fear that the immigrant would not be able to adapt to American institutions. Of course, a major problem was the emergence of contradictory institutions in America; the tradition of individualism and diversity was being challenged by the growth of uniform institutions and a larger state bureaucracy based on centralization. The immigrant could easily fit into the traditional America of diversity, but not very easily into the new emerging America of uniformity. Much of the scholarly base of this new viewpoint came from American graduates of German universities. Many younger Americans went to Germany to study the emerging social sciences, and returned to fill the posts at the blossoming universities and to found new scholarly societies, like the American Economic Association and the American Historical Association, in the 1880s.

The influence of the German Historical School on American historical, economic and sociological studies was immense. Defending big government and native, organized labor, these younger social scientists saw the immigrant as an opponent of centralization and uniformity, and as undermining the traditional respect for authority and standard of living of American workers. For them, the primitive homogeneity that Spencer spoke about was to be the norm for modern societies, rather than Spencer's heterogeneity. Under the inspiration of German-trained economists such as Richard T. Ely, the American Economic Association was founded on the credo: "We regard the state as an agency whose positive assistance is one of the indispensable conditions of human progress." Edmund J. James, Edward W. Bemis and Richard Mayo-Smith, leading economists, emphasized the necessity of cultural homogeneity for a modern developed state. In 1888, the American Economic Association offered a prize for the best essay on "The Evil Effects of Unrestricted Immigration". Mayo-Smith, in *Emigration and Immigration*, called attention to the discord threatening America due to lack of homogeneity in a nation of immigrants. He believed that immigration in the midst of the social and economic crises in which America found itself was "endangering America's free, self-reliant, orderly culture, the unique economic well-being of its working people, and the prestige of industrial pursuits". In 1890 the president of the American Economic Association warned that a new tide of "races of . . . the very lowest stage of degradation" was arriving[48].

Lester Ward,[49] a scholar-bureaucrat in the federal government, was the author of *Dynamic Sociology* (1883) which challenged the laissez-faire concepts of Spencerian and Sumnerian sociology. Ward favored the German system of tariffs, state ownership of industry, compulsory education, etc. He viewed laissez-faire as unproductive because it permitted human nature to go its own way rather than scientifically directing and channeling activity. In 1906 Ward became the first president of the American Sociological Association. Ward in *Dynamic Sociology* held that scientific work was best performed by the state and that this applied much more to education: "all educational work should be intrusted to the state".

> There exists no natural desire for education. Even admitting the natural craving of the youthful mind for knowledge, this would never be sought in any of the ways in which education required it to be conferred ... . State education is far better for the pupil. It is distinguished fundamentally from private education in dealing with all in a strictly impartial manner ... . This is a work which can not be trusted to individuals. It can neither be left to the discretion of children, of parents, nor of teachers. It is not for any of these to say what knowledge is most useful to society. No tribunal short of that which society in its own sovereign capacity shall appoint is competent to decide this question.[50].

A major criticism of the Spencerian optimism regarding immigration came from the Eugenicists. In England, Francis Galton gave strong support to the importance of heredity. A major problem which Galton saw was the necessity of gathering and publicizing eugenic data; this gave a major impetus to the application of statistics. In the early 20th century "National Eugenics" was studied at the University of London, where Galton in his will later established a professorship of Eugenics, to which Karl Pearson was appointed. Pearson was a leading Darwinist Socialist who used socialism and Darwinism to attempt to gain class harmony in a socialist-welfare state. Pearson urged the teaching of "veneration for the State". These views had a strong impact on American social scientists. American economists became active members of the immigration restriction movement. These younger economists, many influenced by socialist ideas similar to Pearson's, were concerned about class disharmony evidenced by militant trade union activity. This labor unrest was viewed as non-American and the result of alien influences due to increased immigration.

A leading economist, Francis A. Walker ("Restriction of Immigration", *Atlantic Monthly* (June, 1896), p. 828) said of immigrants:

> They have none of the ideas and aptitudes which would fit them readily and easily to take up the problems of self care and self government, such as belong to those who are descended from the tribes that met under the oak tree of old Germany to make laws and choose a chieftain.

Henry Pratt Fairchild, Prescott Hall and Thomas Carver among economists were members of the Immigration Restriction League. Carver declared: "It is notable of our own country, that the ideas of universality and non-nationality abound mostly among individuals of dominated races finding refuge there. ... These foreign elements [are] largely anarchist and socialist." Irving Fisher was president of the Race Betterment League and the Eugenics Society. Another economist, Frank Fetter, declared: "Great changes in thought are impending, and these will include the elimination of the unfit . . . and the conscious improvement of the race. Under the touch of the new science of eugenics, many of our most perplexing problems would disappear, making possible the better democracy which we are just beginning to seek"[51].

Eugenic ideas influenced psychology. Psychologists like Henry Goddard, Lewis Terman and C. C. Brigham, emphasized the lack of democratic values among immigrants, and encouraged the use of the educational system to inculcate basic habits of discipline and work, while selecting and further educating the elements in the population with proper intelligence. William McDougall, trained by Francis Galton, combined instinctual theory with Darwinism in *Is America Safe for Democracy*? published when McDougall came to the chairmanship of the Harvard Psychology department[52]. Henry Goddard translated the Binet Scales into English and held that intelligence was a genetically determined single unitary function. Terman's student Otis adapted the Binet test to test army inductees during World War I; these were used to show the genetic inferiority of Eastern and Southern European peoples. These findings were summarized by C. C. Brigham for the use of Congress in establishing immigration restrictions and immigration quotas. Brigham later founded the Educational Testing Service at Princeton[53].

Through intelligence testing, the schools were to be able to group students according to their mental capacities and fit them to the needs of the industrial system. The more dominant racial and intellectual groups would be channeled into the universities and higher technical institutes. The elaborate work involved in such testing and tracking would provide further justification for an expanded bureaucracy, and social efficiency would become the justification for an increasing control and manipulation over people's lives[54].

In conclusion, we hope to have shown that the views of Robert Hutchins and R. Freeman Butts, who see the health and safety of the American political community as vitally linked with the work of the public school system, have deep roots in the ideological conceptions of American political and social philosophers. So does the fear that cultural pluralism would produce political disintegration, the triumph of vice and ignorance and the failure of republicanism. No longer able to use the Church to shape and police the political, moral, social and intellectual culture of the American people, American intellectuals found a useful substitute in the State controlled public school system.

The interesting question for the future is whether American social scientists and philosophers will abandon the notion of a culturally homogeneous society as the foundation of the national political community, or will they accept the notion of the social reality and positive libertarian virtues of a culturally pluralistic society and undertake the task of reshaping the political system to conform to the needs of such a society. The acceptance of this challenge may affect the fate of democratic society in the United States, and has equal significance for our Canadian neighbors. But it also relates directly to the most difficult problems in international relations, where cultural imperialism, the desire to reshape others' manners and morals, ideas and political systems, in one's own national image of truth, justice and morality, constitutes the principal threat to the peace, even the survival, of human civilization.

NOTES

1. See Ivan Illich, *Deschooling Society* (New York, 1970); Joel H. Spring, *Education and the Rise of the Corporate State* (Boston, 1972); Christopher Jencks, *Inequality: Reassessment of the Effect of Family and Schooling in America* (New York, 1972); Michael B. Katz, *Class, Bureaucracy and Schools* (New York, 1971); William Rickenbacker, ed., *The Twelve Year Sentence: Radical Views of Compulsory Education* (LaSalle, Ill., 1974).
2. Robert M. Hutchins, "The Schools Must Stay", *The Center Magazine* (Jan/Feb. 1973).
3. R. Freeman Butts, "The Public Schools: An Assault on a Great Idea", *The Nation* (April 30, 1973).
4. Quoted in Carl van Doren's *Benjamin Franklin* (New York, 1961), p. 218.
5. *Ibid.*
6. Thomas Jefferson, *Notes on the State of Virginia* (New York: Harper Torchbook edition, 1964), p. 83. Also quoted in Dr. Samuel Busey's *Immigration: Its Evils and Consequences* (New York, 1856), pp. 7–8.
7. Howard Mumford Jones, *O Strange New World* (New York, 1952), pp. 322–327.
8. Matthew T. Mellon, *Early American Views on Negro Slavery* (Boston, 1934–Mentor, 1969), pp. 5–28.
9. *Ibid.* pp. 85–123. See also Jefferson's *Notes on Virginia*, pp. 132–134, 137–138; and Merrill D. Peterson, *Thomas Jefferson and the New Nation: A Biography* (New York, 1970), pp. 152 ff.
10. See Rush's *A Plan for the Establishment of Public Schools and the Diffussion of Knowledge in Pennsylvania* (Philadelphia, 1786), in Wilson Smith, ed., *Theories of Education in Early America 1655–1819* (Indianapolis, 1973), pp. 240–256. Also Lyman Butterfield, "Benjamin Rush as a Promoter of Useful Knowledge," *Proceedings of the American Philosophical Society* 92 (1948), 26–36.
11. *Ibid.* Also Peterson, *Jefferson*, pp. 145–152.
12. Lawrence Cremin, *American Education: The Colonial Experience 1607–1783* (Harper Torchbook edition, New York: 1970), pp. 419–428; on Jefferson, pp. 436–443. Also Russell B. Nye, *The Cultural Life of the New Nation, 1776–1830* (New York, 1960), pp. 153–156.
13. Cremin, pp. 419–428.
14. Rush in Smith, ed., *Theories of Education*, pp. 247–248.

15. Samuel Harrison Smith, *Remarks on Education* (Philadelphia, 1798). See p. 66 and also p. 39.
16. *Ibid.* pp. 80 ff. and footnote on p. 39.
17. Charles W. Cole, "Jeremy Belknap: Pioneer Nationalist", *New England Quarterly* 10 (1937), pp. 743-751.
18. Archibald DeBow Murphey, *Report on Education* in Smith's *Theories of Education*, pp. 361-383.
19. Rush in Smith's *Theories of Education*, pp. 251-252.
20. *Ibid.*, p. 256.
21. *Ibid.*, pp. 244-246.
22. See Lord Kames, *Loose Hints Upon Education* (Edinburgh, 1781), in Smith's *Theories of Education*, pp. 127-142; and in the same source, Thomas Jefferson's letter to Thomas Law, 1814, pp. 313-318.
23. Merle Curti, *The Social Ideas of American Educators* (Paterson, N.J., 1963), pp. 24-28; Joseph J. McCadden, *Education in Pennsylvania* 1801-1835 (Philadelphia, 1937, Arno Press, 1969), pp. 1-112; Stanley K. Schultz, *The Culture Factory: Boston Public Schools 1789-1860* (New York, 1973), pp. 69-92.
24. Friedrich Kapp, *Immigration and the Commission of Emigration* (New York, 1870, Arno Press, 1969), pp. 12-14; Marcus Lee Hansen, *The Atlantic Migration 1607-1860*, (Cambridge, Mass, 1940).
25. Hansen, *Atlantic Migration*, pp. 120 ff.; William V. Shannon, *The American Irish* (New York, 1963), pp. 135-145.
26. Quoted in Richard Lyle Power, "A Crusade to Extend Yankee Culture", *New England Quarterly*, 13 (1940), pp. 638-653.
27. Samuel F. B. Morse, *Foreign Conspiracy Against the Liberties of the United States* (New York, 1844), in David Brion Davis, ed., *The Fear of Conspiracy* (Ithaca, 1971), pp. 98-99.
28. Diane Ravitch, *The Great School Wars: New York City 1805-1973* (New York, 197), Chapters 1-7; Vincent P. Lannie, *Public Money and Parochial Education* (Cleveland, 1968).
29. H. Bockum, "The State and Prospects of the German Population of this Country", *Proceedings of the American Institute for Instruction, 1835* (Boston, 1836); pp. 91-98.
30. Caleb Cushing, "Introductory Lecture", *Proceedings of the American Institute for Instruction, 1834* (Boston, 1835), pp. 1-27.
31. R. Park, "On Religious Education", *Proceedings of the American Institute for Instruction, 1835* (Boston, 1836), pp. 99-110.
32. Timothy L. Smith, "Protestant Schooling and American Nationality 1800-1850", *Journal of American History* 53 (1967), pp. 679-695; Richard L. Power, "A Crusade to Extend Yankee Power, "*New England Quarterly* 13 (1940), pp. 638-653; Joseph McCadden, "New England Founders of Pennsylvania's School System", *Education* 56 (1936), pp. 375-378.
33. Report to the College of Teachers, Cincinnati 1835, as quoted in Allen O. Hansen, *Early Educational Leadership in the Ohio Valley* (Bloomington, Ill., 1923; Arno, 1969), pp. 21-24.
34. *Ibid.* p. 24.
35. Merle Curti, "William T. Harris, The Conservator", in *The Social Ideas of American Educators* (New York, 1935), pp. 310-347; John L. Cliften, *Ten Famous American Educators* (Columbus, 1933), pp. 197-198.
36. Curti, *op. cit.*, pp. 336-345.
37. Henry J. Perkinson, *The Imperfect Panacea: American Faith in Education 1865-1965* (New York, 1968), pp. 69-70, 169-171.
38. *Ibid.*, pp. 70-71 and 75.
39. *Ibid.*, pp. 72-73, 161.
40. Michael B. Katz, *Class, Bureaucracy and Schools* (New York, 1971), pp. xxii, 45-46.
41. *Ibid.*, pp. 22-28.
42. *Ibid.*, pp. 30-31.
43. *Ibid.*, pp. 39-40.
44. Richard Hofstadter, *Social Darwinism in American Thought* (Boston, 1958), pp. 3-8, 31-50; Henry Steele Commager, ed., *Lester Ward and the Welfare State* (Indianapolis, 1967), pp. 205-206.
45. Hofstadter, pp. 22-23, 35-47.
46. *Ibid.*, pp. 7, 51-66.
47. *Ibid.*, pp. 11.
48. *Ibid.*, pp.. 143-157; John Higham, *Strangers in the Land* (New York, 1971), pp. 21-22, 31-33, 40-41.
49. Hofstadter, *op. cit.*, pp. 67-84.
50. Commager, *op. cit.*, pp..57-59.
51. T. N. Carver and H. B. Hall, *Human Relations* (Boston, 1923), p. 76; *American Economic Association Publications*, 3rd series, vol. 8, 90-92.
52. Bernard Semmel, *Imperialism and Social Reform* (Garden City, 1968), pp. 24-38; Hofstadter, *op. cit.*, pp. 160-165.
53. C. C. Brigham, *A Study of American Intelligence* (New York, 1923); Higham, *op. cit.*, pp. 275-276.
54. E. A. Ross, *Civic Sociology* (New York, 1931), pp. 289-296; E. A. Ross, *The Old World in the New* (New York, 1914), passim; E. A. Ross, *Roads to Social Peace* (Chapel Hill, 1924), pp. 48-56; Raymond B. Callahan, *Education and the Cult of Efficiency* (Chicago, 1962), pp. 97-98.

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THE FOREIGN POLICY OF THE OLD RIGHT*

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The categories of "right" and "left" have been changing so rapidly in recent years in America that it becomes difficult to recall what the labels stood for not very long ago. In the case of the left, this has become common knowledge, and we are all familiar with the contrasts between "Old Left" and "New Left", as well as with the rapid changes that the "new" Left itself has been undergoing. But in the case of the right-wing, which has rarely been an object of careful scrutiny by journalists or historians, no such categories have come into play. The "Right" is now largely identified with the Buckley-*National Review*-Goldwater-Reagan conservative movement, as well as the less reputable and more "extreme" Birch Society variant. As a result of this identification, the deep changes which have occurred in the right have been largely ignored. The purpose of this paper is to sketch a very different "right-wing", a right that we can well label the "Old Right", since it was the dominant conservative force in American politics and political thought until approximately the mid-1950s, a right that was replaced by the currently familiar movement which we might label the "New Right", albeit it is no longer very new. It is our contention that the "Old Right" was different enough in concept and program to deserve the difference in terms, and, further, that there are many striking resemblances between its outlook and that of the New Left. Here there is only space to concentrate on the foreign policy of the Old Right.

The major thrust of the Old Right, set forth consistently by its theoreticians and of course more fuzzily by its political figures, was a deep hostility and antipathy to government power. Big government, government intervention, social and economic, foreign and domestic, were considered to be invasions of the liberty of the individual and a grave and increasing threat to freedom in America. The Old Right favored the liberty of the individual as its central principle, and advocated a free-enterprise and free-market economy as the economic corollary and application of that principle. The menace to that liberty was its polar opposite: intervention and control by coercive government.

The Old Right applied its aversion to government to foreign policy as well as domestic. It held the increasing interventions of the American government in the affairs of other nations to be illegitimate, and even imperialist, intrusions that benefited neither the American people nor the world as a whole. It held such intervention to be destructive of peace, and as posing a potentially grave menace in fastening Big Government upon Americans at home. War was considered legitimate only for strict self-defense, and hence the foreign policy of the Old Right was American neutrality in foreign quarrels, or to use the interventionist pejorative, "isolationist".

I

The Old Right emerged as a fully-formed ideological and political movement in the mid and late 1930s, as an opposition to the New Deal, first in its domestic and then in its foreign manifestations. As in all large-scale political movements, the Old Right was a mixture of complex strands; it was certainly not a monolith. This diversity was enhanced by its overriding definition as a movement *in opposition*, as a coalition movement coming to oppose the New Deal in all of its aspects. But despite

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this necessarily negative cast, the opposition was clearly to burgeoning Big Government; and the other side of that coin of opposition was a commitment to the positive virtues of individual liberty unhampered by government coercion.

The purest, and most ideological, strand of the developed Old Right was a commitment to individualism — to individual liberty, to roughly *laissez-faire* economics, and to an anti-interventionist foreign policy. Not only was opposition to war and imperialism a heritage of such English *laissez-faire* liberals as Cobden, Bright, and the Manchester School, but the lead in opposition to America's war against Spain had been taken by such *laissez-faire* leaders as William Graham Sumner and the founder of the Anti-Imperialist League, the Boston merchant and publicist Edward Atkinson. Such *laissez-faire* individualists as Senators William E. Borah (Rep., Idaho) and James A. Reed (Dem., Mo.), and intellectuals such as Oswald Garrison Villard, editor of the *Nation*, and individualist libertarians such as Albert Jay Nock and Francis Neilson, participated strongly in the opposition to World War I. Joined by one of the leading intellectuals of the 1920s, the individualist H. L. Mencken, they also took the lead in criticizing the Versailles-imposed world that had emerged after the war.[1]

The newly formed Old Right of the 1930s was a coalition of radical individualists, such as Nock and Mencken, who had been considered "leftists" during the war and the 1920s, and conservative Democrats and Republicans, such as Herbert Hoover, who came to resist the developed corporate state of the New Deal despite his own previous giant strides in the same direction. The new right-wing particularly denounced the aggrandizement of the Executive, the federal bureaucracy, and the office of the President under the New Deal.

During and after World War I, "isolationism", or opposition to American wars and to the Versailles system, had often been dubbed as "left-wing". Thus, as late as the mid-1930s, to the rightist Mrs. Elizabeth Dilling pacifism and opposition to war was *per se* an unpatriotic evil; to Mrs. Dilling, such old progressives and individualists as Senators Burton K. Wheeler and William E. Borah, as well as young Robert A. Taft, were vital parts of the pervasive Communistic "Red Network".[2]

And yet, in a few short years, the ranking of isolationism on the ideological spectrum underwent a sudden and dramatic shift. As the Roosevelt Administration moved rapidly towards war in the late 1930s, in Europe and the Far East, the great bulk of the liberals and the Left "flip-flopped" dramatically on behalf of war and foreign intervention. In the course of this mass conversion, gone virtually without a trace was the old insight of the Left into the evils of the Versailles treaty or the urgent need for its revision. Not only that; but to the liberals and the Left the impending war against the Axis powers became a great moral crusade, a "people's war for democracy" and "against fascism" — outrivalling in the grandiloquence of their rhetoric the Wilsonian apologia for World War I which these same liberals and radicals had vehemently repudiated for two decades. Indeed, in their new-found historiography, the liberals and left cast F.D.R. in a newly constructed Pantheon of "strong", war-making Presidents, in the line of Lincoln and Woodrow Wilson.[3]

For the new interventionists it was not enough to champion a new-found cause; they also felt called upon to castigate their old allies, day in and day out, as "reactionaries", "Fascists", "anti-Semites", and "followers of the Goebbels line". Joining with great enthusiasm in this campaign of vilification, at least for most of the period, was the Communist Party and its allies. Before and during World War II, the Communists were delighted to plunge into their newfound role as American superpatriots, proclaiming that "Communism is twentieth-century Americanism."

The pressure upon those liberals and progressives who continued to oppose the coming war was bitter and intense. Many personal tragedies resulted. Thus, Dr. Harry Elmer Barnes, the leading militant of World War I revisionism, was unceremoniously relieved of his popular column in the New York *World-Telegram* as the result of severe pressure by pro-interventionist advertisers.[4] Typical of the treatment accorded to those liberals who held fast to their principles was the purgation from the ranks of liberal journalism of John T. Flynn and Oswald Garrison Villard. In his regular column in the *Nation*, Villard had continued to oppose Roosevelt's "abominable militarism" and his drive to war. For his pains Villard was forced out of the magazine which he had long served as a distinguished editor. In his "Valedictory", in the issue of June 22, 1940, Villard declared that "my retirement has been precipitated . . . by the editors' abandonment of the *Nation*'s steadfast opposition to all preparations for war, to universal military service, to a great navy, and to *all* war, for this in my judgment has been the chief glory of its great and honorable past." The reply of the *Nation's* editor, Freda Kirchwey, was characteristic: such writings as Villard's, she wrote, were frightening, and constitute "a danger more present than Fascism", for his policy was "exactly the policy for America that the Nazi propaganda in this country supports".[5]

John T. Flynn, in his turn, was ejected from his popular and long-running column, "Other People's Money", in November, 1940; the column had appeared continuously in *The New Republic* since May, 1933. Once again, the now pro-war editors could not tolerate Flynn's continuing attacks on war preparations and on the artificial economic boom induced by armaments spending.

Neither did the old-time libertarian leaders fare much better. When the libertarian and isolationist Paul Palmer lost his editorship of the *American Mercury* in 1939, H. L. Mencken and Albert Jay Nock lost their monthly opportunity to lambast the New Deal. His national outlet gone, Mencken retired from politics and into autobiography and his study of the American language. Apart from a few essays in the *Atlantic Monthly*, Nock could only find an outlet in the isolationist *Scribner's Commentator*, which folded after Pearl Harbor and left Nock with no further opportunity to be heard.

But Albert Nock had managed to get in a few blows before the changing of the guard at the *Mercury*. Nock had warned that the emerging war in Europe was the old story of competing imperialisms, with the Liberals available, as before, to provide an ideological cover with Wilsonian rhetoric. Nock commented scornfully that "make the world safe for U.S. investments, privileges, and markets" far better expressed the real intent of the coming American intervention than the old Wilsonian "make the world safe for democracy". "After the sorry sight which American Liberals made of themselves twenty years ago", Nock acidly declared, they are ready once again "to save us from the horrors of war and militarism [by] plunging us into war and militarism." Decrying the growing hysteria about the foreign Enemy, Nock pinpointed the true danger to liberty at home: "no alien State policy will ever disturb us unless our Government puts us in the way of it. We are in no danger whatever from any government except our own, and the danger from that is very great; therefore our own Government is the one to be watched and kept on a short leash."[6]

The opponents of war were not only being shut out from liberal journals, but from much of the mass media as well. For as the Roosevelt Administration moved inexorably toward war, much of the Eastern Establishment that had opposed the New Deal eagerly made its peace with the administration, and moved into positions of power. The new reconciliation was symbolized by the return to a high government post of prominent Wall Street lawyer Dean Acheson, who had departed his post of Undersecretary of the Treasury in the early 1930s in high dudgeon at Roosevelt's experimental monetary schemes; and of Acheson's mentor Henry Lewis Stimson as Secretary of War.

Although Eastern business was solidly in the Roosevelt camp as part of the war coalition, the pro-interventionist forces were yet successful in pinning the "extreme Right-wing" label on all the isolationists. There were two major reasons for this success. One was the successful capture of liberal journals by the pro-war forces, who continued to denounce the isolationists as "reactionaries" and tools of the Nazis. The accusers were led by columnist and radio commentator Walter Winchell, then at the beginning of his long-time career as calumniator of all dissenters to American war crusades. Publicist Dorothy Thompson accused the isolationist America First Committee of being "Vichy Fascists", and Secretary of the Interior Harold L. Ickes publicly pinned the label of

"Nazi fellow travellers" on isolationist leaders General Robert E. Wood and Charles A. Lindbergh, and even on his old friend Oswald Garrison Villard. And *Time* and *Life*, whose publisher Henry Luce was an ardent champion not only of American entry into the war but also of the "American Century" that he envisioned as emerging from the war, went so far as to claim that Lindbergh's and Senator Burton K. Wheeler's salutes to the American flag were mimics of the fascist salute.[7] And in a best-selling book, *Under Cover* (1943), lauded by the New York *Times*, John Roy Carlson, a secret agent of the pro-war Friends of Democracy, lumped isolationists, anti-Semites, and actual pro-Nazis together, in a potpourri of guilt by association, as constituting the "Nazi underworld of America". So virulent was this campaign that, near the end of the war, John T. Flynn was moved to write an anguished pamphlet in protest, *The Smear Terror*, which, however, could only find its way as a privately printed and therefore virtually unknown pamphlet.

Another reason that the interventionists could successfully dub isolationists as right-wingers is that much of Mid-Western business, not tied to investments in Europe and Asia, were free to reflect the isolationist sentiments of their region. In the business world, the interventionist–isolationist struggle was largely an Eastern vs Mid-Western split. Thus, the America First Committee, the leading anti-war organization, was founded by young R. Douglas Stuart, scion of the Chicago Quaker Oats fortune, and some of the leading supporters of America First were General Robert E. Wood, head of Sears, Roebuck of Chicago, and Colonel Robert R. McCormick, of the great McCormick fortune, and publisher of the Chicago *Tribune*. And the isolationist leader in the Senate, Robert A. Taft, came from the most prominent family in Cincinnati. The Eastern journalists were able to use this split in the business world to spread the image of their opposition as narrow, provincial, small-minded, and reactionary Mid-Westerners, not attuned as they themselves were to the great, cosmopolitan world of Europe and Asia.

Taft was particularly exercised at being dismissed by the Establishment–left–liberal alliance as an ultra-conservative and representative of big business. On the eve of Pearl Harbor, young Arthur M. Schlesinger, Jr., ever ready to pin the "business" label on all opposition to liberalism, attacked the Republican party in the *Nation* as reflecting a business community dragging its heels on entry into the war. In a rebuttal that appeared the day before Pearl Harbor, Senator Taft sharply corrected Schlesinger's view of the locus of "conservatism" within the Republican party:

> The most conservative members of the party — the Wall Street bankers, the society group, nine-tenths of the plutocratic newspapers, and most of the party's financial contributors — are the ones who favor intervention in Europe .... The war party is made up of the business community of the cities, the newspaper and magazine writers, the radio and movie commentators, the Communists, and the university intelligentsia.[8]

Driven out of the media and journals of opinion by their erstwhile allies, condemned as reactionaries and Neanderthals, the left and liberal opponents of war found themselves forced into a new alliance with individualists and with *laissez-faire* Republicans from the middle west. Damned everywhere as "ultra-rightists", many of the old liberals and leftists found themselves moving "rightward" ideologically as well; in many ways, this move "rightward" was a self-fulfilling prophecy by the pro-war left. It was under this pressure that the final forging of the "Old Right" was completed. And the vanguard role of the Communist Party in vilifying these anti-war progressives understandably turned many of them not only into classical liberals but into almost fanatical anti-Communists as well. This is what happened to John T. Flynn, what happened to some extent to Charles A. Beard, and what happened to such former sympathizers of the Soviet Union as John Chamberlain, Freda Utley, and William Henry Chamberlin. To a large extent, it was their uncomfortable isolationist position on the war that started such leading Trotskyists as Max Schachtman and James Burnham down the road to the later global anti-Communist crusade.

John Dos Passos, a lifelong radical and individualist pushed from "extreme left" to "extreme right" by the march of the New Deal, expressed his bitterness about the war in his postwar novel, *The Grand Design:*

> At home we organized bloodbanks and civilian defense and imitated the rest of the world by setting up concentration camps (only we called them relocation centers) and stuffing into them
>
> American citizens of Japanese ancestry . . . without benefit of habeas corpus ... .
>
> The President of the United States talked the sincere democrat and so did the members of Congress. In the Administration there were devout believers in civil liberty. "Now we're busy fighting a war; we'll deploy all four freedoms later on," they said ... .
>
> War is a time of Caesars . . .
>
> And the American people were supposed to say thank you for the century of the Common Man turned over for relocation behind barbed wire so help him God.
>
> We learned. There are things we learned to do but we have not learned, in spite of the Constitution and the Declaration of Independence and the great debates at Richmond and Philadelphia
>
> how to put power over the lives of men into the hands of one man
>
> and to make him use it wisely.[9]

Calumny, social obloquy, private espionage, were not the only hardships faced by the isolationist "Old Right". As soon as the United States entered World War II, the Roosevelt administration turned to the secular arm to crush any remnants of outspoken isolationist dissent. In addition to routine FBI harassment, such isolationists as Laura Ingalls, Ralph Townsend, and George Sylvester Viereck were indicted and convicted for being Japanese or German agents. William Dudley Pelley, along with other isolationists, was tried and convicted in Indianapolis for "sedition" under the Espionage Act of 1917. The Smith Act of 1940 was used, first to convict 18 Minneapolis Trotskyists of conspiracy to advocate overthrow of the government (to the great glee, it might be noted, of the Communist Party) and then to move, in the mass sedition trial of 1944, against an ill-assorted collection of 26 right-wing isolationist pamphleteers on the charge of conspiring to cause insubordination in the armed forces. The prosecution of those who were universally described in the press as the "indicted seditionists", was pursued with great zeal by the Communist Party, by the pro-war liberals and the Old Left generally, and by the Establishment media. To their chagrin, the trial fizzled as a result of the spirited legal defense led by a leading isolationist defendant, Lawrence Dennis, generally labelled by the liberals as the "leading American intellectual fascist". In their neglected and detailed account of the trial, Dennis and Maximilian St. George, an attorney for another of the defendants, saw the irony in the fact that "many of the defendants, being fanatical anti-communists", had openly supported the Smith Act under which they were indicted. "The moral", St. George and Dennis added, "is one of the major points of this book: laws intended to get one crowd may well be used by them to get the authors and backers of the law. This is just another good argument for civil liberties and freedom of speech."[10]

All in all, the Old Right was understandably gloomy as it contemplated American entry into World War II. It foresaw that the war would transform America into a permanent Leviathan State, into a domestic totalitarian collectivism suppressing civil liberties at home and imposing an unending global imperialism abroad, pursuing the phantom of what Charles A. Beard called "perpetual war for perpetual peace". None of the Old Right saw this vision of the coming America more perceptively than John T. Flynn in his brilliant work, *As We Go Marching*, written in the midst of the war he had tried so much to forestall.[11]

After surveying the polity and the economy of fascism and national socialism, Flynn bluntly saw the New Deal, culminating in its wartime embodiment, as the American version of fascism, the "good fascism" in sardonic contrast to the "bad fascism" we had supposedly gone to war to eradicate. Flynn charged that the New Deal had finally established the corporate state that big business had been yearning for since the turn of the twentieth century. "The general idea", Flynn wrote, "was first to reorder the society by making it a planned and coerced economy instead of a free one, in which business would be brought together into great guilds or an immense corporative structure, combining the elements of self-rule and government supervision with a national economic policing system to enforce these decrees ... . This, after all, is not so very far from what business had been talking about ... ."[12]

The New Deal had first attempted to create such a society in the NRA and AAA, mighty engines of "regimentation" hailed by labor and business alike.[13] Now the advent of World War II had reestablished this collectivist program — "an economy supported by great streams of debt and an economy under complete control, with nearly all the planning agencies functioning with almost totalitarian power under a vast bureaucracy."[14] After the war, Flynn prophesied, the New Deal would attempt to expand this system permanently into international affairs. He predicted that the great emphasis of vast governmental spending after the war would be military, since this is one form of government spending to which conservatives would never object, and which workers would welcome for its creation of jobs. "Thus militarism is the one great glamorous public-works project upon which a variety of elements in the community can be brought into agreement."[15] The post-war policy, Flynn predicted, would be "internationalist" in the sense of being imperialist. Imperialism, which "is, of course, international . . . in the sense that war is international", will follow from the policy of militarism: "we will do what other countries have done; we will keep alive the fears of our people of the aggressive ambitions of other countries and we will ourselves embark upon imperialistic enterprises of our own."[16] Imperialism will ensure the existence of perpetual "enemies": "We have managed to acquire bases all over the world .... There is no part of the world where trouble can break out where . . . we cannot claim that our interests are menaced. Thus menaced there must remain when the war is over a continuing argument in the hands of the imperialists for a vast naval establishment and a huge army ready to attack anywhere or to resist an attack from all the enemies we shall be obliged to have."[17]

A planned economy; militarism; imperialism; for Flynn what all this added up to was something very close to fascism. For Flynn warned:

> The test of fascism is not one's rage against the Italian and German war lords. The test is — how many of the essential principles of fascism do you accept . . . ? When you can put your finger on the men or the groups that urge for America the debt-supported state, the autarchical corporative state, the state bent on socialization of investment and the bureaucratic government of industry and society, the establishment of the institution of militarism as the great glamorous public-works project under which it proposes to regulate and rule the world . . . then you will know you have located the authentic fascist . . . [18]

II

There is no space here to detail the resurgence of individualist thought that began during World War II, and flowered in the decade after the war, or the contributions of Frank Chodorov, the leading disciple of Nock; Isabel Paterson, formerly book reviewer of the New York *Herald-Tribune*; the economist Ludwig von Mises; F. A. Hayek, author of the best selling *Road to Serfdom*; or the Foundation for Economic Education. Here we can only focus on the leading part that the resurgent Old Right played in opposition to the development of the Cold War, immediately after the war and during the Korean conflict.

In recent years, revisionist historians have reassessed the views of the major Old Right political leader, Robert A. Taft, and have even concluded that — e.g. on such matters as foreign aid — Senator Taft was a more consistent anti-imperialist and opponent of the burgeoning Cold War than Henry A. Wallace.[19] The problem with the exclusive focus on Senator Taft, however, is that it ignores the other Republican politicians of the "extreme Right" who were far more consistent than Taft in their anti-interventionist policies. In the Senate there was the No. 2 Republican Kenneth Wherry of Nebraska; and in particular there was the right-wing bloc in the House, led by such Old Right stalwarts as Howard H. Buffett of Omaha, who was to be Senator Taft's mid-western campaign manager in 1952, Clare Hoffman of Michigan, H. R. Gross of Iowa, Ralph W. Gwinn of New York, George Bender of Ohio, later Taft's floor manager at the 1952 convention and his successor in the Senate, and Frederick C. Smith of Ohio. This "extreme Right" also included Colonel McCormick's Chicago *Tribune*.

Thus, denouncing the Truman Doctrine on the floor of Congress, Howard Buffett first warned of the disastrous consequences of the looming Cold War at home:

> All over the world we would soon be answering alarms like an international fireman, maintaining garrisons,

> and pouring out our resources ... .
> In the meantime, what will have happened at home? Economy plans will have generally gone up in smoke, ...
> Attempts at economy would again be smeared as reactionary efforts to save dollars at the cost of the lives of American boys. Patriots who try to bring about economy would be branded as Stalin lovers.
> The misery of the people, from continued militarism and inflation, would soon become unbearable. And their regimentation and coercion, so lately thrown off, could be refastened in the name of stopping communism at home.

Buffett went on to prophesy some of the specific domestic consequences of the emerging Cold War. "Truth-telling would generally disappear in radio, press, and movie"; military conscription would soon be reimposed; "the regimentation and coercion" of price control would be reimposed; and savings would be wiped out by continuing inflation. Finally, Buffett questioned the morality as well as the efficacy of the global anti-Communist crusade. Buffett declared that:

> Our Christian ideals cannot be exported to other lands by dollars and guns. Persuasion and example are the methods taught by the Carpenter of Nazareth ... .
> We cannot practice might and force abroad and retain freedom at home. We cannot talk world cooperation and practice power politics.[20]

In that same year, 1947, Representative George Bender kept up a drumfire of criticism of the Truman Doctrine. Bender charged that the Truman Doctrine was a "reaffirmation of the nineteenth century belief in power politics." It is a resurgence of the post-World War I policy of encircling Soviet Russia by a "*cordon-sanitaire*", and a new policy of interventionism in Europe that will commit the United States ever further and more intensely to this unfortunate course. Bender also attacked Truman's corollary call for a military draft, and for engaging in "secret meetings for industrial mobilization". All this, charged Bender, was "part of the whole Truman doctrine of drawing off the resources of the United States in support of every reactionary government in the world". And while Taft himself wavered and compromised on foreign affairs, especially with regard to support of Chiang kai-Shek, Bender stood firm; warning Congress of the "intense pressure" of the China Lobby, Bender charged that the Chinese Embassy was pressuring the State Department into "all-out support of the present Fascist Chinese government".[21]

The last great "isolationist", anti-war stand of the Old Right was its determined opposition to the Korean War. This stand was all the more remarkable in the face of the fact that virtually the entire Left, including Henry Wallace, Senator Glen Taylor, Corliss Lamont, and the leadership of the Progressive Party, abandoned their anti-war stand in the name of the liberal shibboleth of United Nations' "police action" and collective security against "aggression". Only the Old Right stood fast. In early 1950, the isolationists in the House had dealt a severe blow to our mounting intervention in Asia by defeating the Truman Administration's $60 million aid bill for South Korea by a single vote. The historian Tang Tsou noted that "this was the first major setback in Congress for the administration in the field of foreign policy since the war."[22] It was only the determined efforts of Rep. Walter Judd (R., Minn.), veteran internationalist, former missionary in China and leader of the "China lobby" in Congress, that induced the House of Representatives to reverse its decision.

When the Korean War began, Representative Buffett was convinced, on the strength of classified testimony before the Senate by Admiral Roscoe Hillenkoeter, head of the CIA, that I. F. Stone was correct and that the United States was largely responsible for the eruption of the conflict. Senator Taft and Colonel McCormick denounced the American intervention in Korea, Taft being particularly exercised over what he held to be an unconstitutional aggrandizement of the war powers of the President. In contrast, the liberal journals, the *Nation* and the *New Republic*, previously critical of the Truman Doctrine and the Cold War, now joined up with enthusiasm. These two journals denounced Taft and McCormick for joining the Communist Party in their "defeatism" on the war. The *New Republic's* annual rating of Congressmen in 1950 hailed the Democrats for their staunchly "anti-Communist" voting record in foreign affairs (87%); while Senator Taft earned only a 53% score, and such more consistent isolationists as Senator Wherry received only a 23% mark on the *New*

Republic's "anti-Communist" scale. The *New Republic*, furthermore, scented a recrudescence of the bad old isolationism of the days of World War II. The magazine sourly noted that "there has historically been a working affinity between isolationists and legalists — the former attacked Roosevelt's 1941 destroyer deal as warmongering, the latter as dictatorship. There are signs that this coalition is again tightening."[23]

At the opening of the new Congress in early 1951, the Old Right isolationist forces, led by Senators Wherry and Taft, launched an attack on the war by submitting a resolution prohibiting the President from sending any troops abroad without prior approval by Congress. They criticized Truman's refusal to accept a ceasefire or to agree to peace in Korea, and warned that the United States did not have enough troops for a stalemated land war on the Asian Continent.

An intriguing attack on Senator Taft's foreign policy was now levelled by the influential war-liberal, and budding national security manager, McGeorge Bundy. Bundy expressed worry that Taft's solid re-election victory indicated popular support for limiting the executive's power to lead the United States into conflict without congressional sanction. Bundy opined that the normal statesman's pursuit of peace must be discarded and replaced by the power-wielder who applies diplomacy and military might in a permanent struggle against world Communism, in the form of limited wars alternating with limited periods of peace. Bundy criticized Taft for "appeasement" in opposing both the encircling of the Soviet Union by military alliances and the intervention in Korea. He also denounced the very idea of public criticism or questioning of the decisions of executive policy-makers, since the public merely reacted *ad hoc* to specific situations and was not fully committed to the executive policy makers' conception of the long-run national purpose.[24]

The last famous political thrust of the isolationist Old Right came during the debate on the Korean War, in the form of two, obviously coordinated, back-to-back speeches by Herbert Hoover and Joseph P. Kennedy, in late 1950, in response to the failure of the Truman Administration to make peace in Korea on the heels of its crushing defeat in North Korea at the hands of the Chinese. Hoover confined his opposition to the concrete strategy of the situation: insisting that any land war "against this Communist land mass" in Asia "would be a war without victory, a war without a successful terminal". Any such war "would be the graveyard of millions of American boys and would end in the exhaustion of this Gibraltar of Western Civilization".[25]

Joseph P. Kennedy's criticism was more far-reaching. Kennedy noted the continuity of his opposition to the Korean War with his isolationist stand in the second World War. Kennedy added that "I naturally opposed Communism but I said if portions of Europe or Asia wish to go Communistic or even have Communism thrust upon them, we cannot stop it. Instead we must make sure of our strength and be certain not to fritter it away in battles that could not be won." But the result of the Cold War, of the Truman Doctrine, and the Marshall Plan, was disaster, a failure to purchase friends and the threat of a land war in Europe and Asia. Kennedy warned that:

> . . . half of this world will never submit to dictation by the other half ... . What business is it of ours to support French colonial policy in Indo-China or to achieve Mr. Syngman Rhee's concepts of democracy in Korea? Shall we now send the marines into the mountains of Tibet to keep the Dalai Lama on his throne?

Economically, Kennedy added, we have been burdening ourselves with unnecessary debts as a consequence of the Cold War policy. If we weaken our economy "with lavish spending either on foreign nations or in foreign wars, we run the danger of precipitating another 1932 and of destroying the very system which we are trying to save".

Kennedy concluded that the only alternative for America is to scrap the Cold War foreign policy: "to get out of Korea", and out of Berlin and Europe. We could not possibly contain Russian armies if she chose to march through Europe, and, if Europe should then turn Communist, Communism "may break of itself as a unified force ... . The more people that it will have to govern, the more necessary it becomes for those who govern to justify themselves to those being governed. The more peoples that are under its yoke, the greater are the possibilities of revolt." And here Kennedy cited Marshall Tito as pointing the way for the eventual breakup of the Communist world: thus, "Mao in China is not likely to take his orders from Stalin . . . "

Kennedy realized that "this policy will, of course, be criticized as appeasement. [But] . . . is it appeasement to withdraw from unwise commitments .... If it is wise in our interest not to make commitments that endanger our security, and this is appeasement, then I am for appeasement." "The suggestions I make," Kennedy concluded, would "conserve American lives for American ends, not waste them in the freezing hills of Korea or on the battlescarred plains of Western Germany."[26]

The liberal response to this Hoover–Kennedy campaign, backed by Senator Taft, was instructive. The *Nation* charged that "the line they are laying down for their country should set the bells ringing in the Kremlin as nothing has since the triumph of Stalingrad. Actually the line taken by *Pravda* is that the former President did not carry isolationism far enough." And the *New Republic* summarized the isolationist position as holding that the "Korean War was the creation not of Stalin, but of Truman, just as Roosevelt, not Hitler, caused the Second World War". The *New Republic* was particularly indignant over the fact that the isolationists "condemned U.S. participation in Korea as unconstitutional and provided that the only funds available for overseas troops shipment should be funds necessary to facilitate the extrication of U.S. forces now in Korea". The *New Republic* saw the willingness of the right-wing to accept Soviet offers of a negotiated peace as akin to appeasement of Hitler. It warned that "Stalin, after raising the ante, as he did with Hitler, and sweeping over Asia, would move on until the Stalinist caucus in the *Tribune* tower would bring out in triumph the first Communist edition of the Chicago *Tribune*".[27]

One of the people who undoubtedly helped form the "Stalinist caucus" at Colonel McCormick's *Chicago Tribune* was George Morgenstern, chief editorial writer, and author of the first revisionist book on Pearl Harbor.[28] During the Korean conflict, Morgenstern published an article in the right-wing Washington weekly *Human Events*, which detailed the imperialist record of the United States from the Spanish-American war to Korea. Morgenstern noted that the "exalted nonsense" by which McKinley had justified the war against Spain was "familiar to anyone who later attended the evangelical rationalizations of Wilson for intervening in the European war, of Roosevelt promising the millenium . . . of Eisenhower treasuring the 'crusade in Europe' that somehow went sour, or of Truman, Stevenson, Paul Douglas, or the New York *Times* preaching the holy war in Korea."[29]

One of the most trenchant and forceful attacks on American foreign policy to emerge from the Korean War was levelled by the veteran conservative journalist, Garet Garrett. Garet began his pamphlet, *The Rise of Empire* (1952), by declaring: "We have crossed the boundary that lies between Republic and Empire." Explicitly linking his thesis with his pamphlet of the 1930s, *The Revolution Was*, which had denounced the advent of executive and statist tyranny within the republican form under the New Deal, Garrett once more saw a "revolution within the form" of the old constitutional republic. Garrett called Truman's intervention in Korea without a declaration of war, a "usurpation" of Congressional power. He was particularly exercised at the State Department's response to a query by the Senate Foreign Relations Committee on the power of the President to send troops into action abroad. The State Department had responded that "use of the congressional power to declare war . . . has fallen into abeyance because wars are no longer declared in advance". Garrett commented that, "Caesar might have said it to the Roman Senate", and warned that the statement "stands as a forecast of executive intentions, a manifestation of the executive mind, a mortal challenge to the parliamentary principle."[30]

Garett then adumbrated the criteria, the hallmarks for the existence of Empire. The first is the dominance of the executive power. The second, the subordination of domestic to foreign policy; the third, the "ascendancy of the military mind"; the fourth, a "system of satellite nations", and the fifth, "a complex of vaunting and fear", a vaunting of unlimited national might combined with continuing fear, fear of the enemy, of the "barbarian", and of the unreliability of the satellite allies. Garrett found each one of the criteria applying fully to the United States.

Having discovered that the U.S. had all the hallmarks of Empire, Garrett added that the United States, like previous Empires, feels itself to be "a prisoner of history". For beyond fear lies "collective security", and the playing of the supposedly destined American role on the world stage. Garrett concluded:

> It is our turn.
> Our turn to do what?
> Our turn to assume the responsibilities of moral leadership in the world.
> Our turn to maintain a balance of power against the forces of evil everywhere — in Europe and Asia and Africa, in the Atlantic and in the Pacific, by air and by sea — evil in this case being the Russian barbarian.
> Our turn to keep the peace of the world.
> Our turn to save civilization.
> Our turn to serve mankind.
> But this is the language of Empire. The Roman Empire never doubted that it was the defender of civilization. Its good intentions were peace, law and order. The Spanish Empire added salvation. The British Empire added the noble myth of the white man's burden. We have added freedom and democracy. Yet the more that may be added to it the more it is the same language still. A language of power.[31]

The last great political gasp of the isolationist Old Right came in the struggle for the "Bricker Amendment" to the U.S. Constitution. The Amendment was designed to prevent international treaties or executive agreements from becoming the supreme law of the land or overriding previous internal law or provisions of the Constitution. The Bricker Amendment was backed by conservative groups from the National Economic Council and the Committee for Constitutional Government to the Chamber of Commerce and the American Farm Bureau Federation, and by such writers as Frank Chodorov, an editor of *Human Events*, Garet Garrett, and former Rep. Samuel Pettingill; it was opposed by a coalition of liberals and the new Eisenhower Administration, which sent it down to defeat in the Senate in February, 1954.[32]

The fight for the Bricker Amendment, however, was the swan song of the Old Right. The mid-1950s saw a startling sea change in American conservatism. The death of Senator Taft dealt it a crippling blow, as had the defeat of the Taft forces at the 1952 convention. One by one, death or retirement removed the Old Right bloc from the House and Senate: Wherry, Bender, Buffett, Taber, Gwinn, Knutson, Hoffman, Frederick Smith, all disappeared from the scene. Among writers and intellectuals, the death of Colonel McCormick removed a vital isolationist force, as did the death of Garrett and the incapacitating illness of Chodorov. The right wing group, "For America", headed by Dean Clarence Manion, of the Notre Dame Law School, still called for entering "No Foreign War unless the safety of the United States is directly threatened." But this was only a hangover of passing days. A new breed was marching on the scene to take over and transform the American Right wing.

The New Right was led by William F. Buckley and *National Review*, which, from its establishment in 1955, immediately took charge of the American right-wing. Its wit, professionalism, and personal and financial resources were new on the conservative scene, and it had no real journalistic rival. With the departure of isolationists Chodorov and Felix Morley, moreover, *Human Events* now became a staunch supporter of the New Right and of the Cold War. *National Review* publisher William A. Rusher immediately proceeded to capture the nation's Young Republicans for the new conservatism, and Buckley presided over the creation of a young political-action arm, The Young Americans for Freedom, as well as the Conservative Party of New York. Moreover, the Buckley forces brought to the fore of right-wing leadership in the Republican party two internationalists: Senators Barry Goldwater, who had been an Eisenhower delegate at the 1952 convention, and William F. Knowland, who had been a follower of Earl Warren in California and who had voted against the Bricker Amendment. *National Review* also brought to the intellectual leadership of the right-wing a new coalition of traditionalist Catholics and of ex-Communists and ex-radicals whose major concern was the destruction of the god that had failed them, the Soviet Union and world

Communism. This change of focus from isolationism to global anti-Communism had been aided, in its early years, by the advent of Senator Joseph McCarthy, with whom Buckley had been allied. Before he launched his crusade, incidentally, McCarthy had not been considered a right-winger, but rather a middle-of-the-roader on domestic questions and an internationalist in foreign affairs.

By 1960, and the advent of the Goldwater movement, the swift transformation of the American Right had been completed; the right-wing was now what we are familiar with today. For the remnant of libertarians and isolationists remaining, it was once again time to look elsewhere for allies.

NOTES

1. Atkinson had written and mailed anti-war pamphlets to American troops engaged in conquering the Phillipines, urging them to mutiny. Atkinson's pamphlets were seized by the American postal authorities. On Atkinson, see Harold Francis Williamson, *Edward Atkinson: The Biography of an American Liberal, 1827–1905* (Boston, 1934, reprinted by New York: Arno Press, 1972); for Sumner's views see the classic essay, "The Conquest of the United States by Spain," in M. Polner, ed., *William Graham Sumner: The Conquest of the United States by Spain and Other Essays* (Chicago: Henry Regnery, n.d.) pp. 139–173.

   On Nock's contributions to individualism, see Robert M. Crunden, *The Mind and Art of Albert Jay Nock* (Chicago: Henry Regnery, 1964), and Michael Wreszin, *The Superfluous Anarchist: Albert Jay Nock* (Providence, R.I.: Brown University Press, 1971).

   On Mencken as a libertarian, see Murray N. Rothbard, "H.L. Mencken: the Joyous Libertarian," *New Individualist Review* (Summer, 1962), pp. 15–27. On Villard, see Michael Wreszin, *Oswald Garrison Villard: Pacifist at War* (Bloomington, Ind.: Indiana University Press, 1965).

   On the importance in the 1920s and '30s of the "Conservative Libertarianism of Henry L. Mencken and Albert Jay Nock," see Ronald Lora, *Conservative Minds in America* (Chicago: Rand McNally, 1971), pp. 84–106.
2. Elizabeth Dilling, *The Roosevelt Red Record and its Background* (Chicago: by the author, 1936).
3. For the record of the liberal "flipflop", see James J. Martin, *American Liberalism and World Politics* (2 vols., New York: Devin Adair, 1964).
4. Clyde R. Miller, "Harry Elmer Barnes' Experience in Journalism," in A. Goddard, ed., *Harry Elmer Barnes: Learned Crusader* (Colorado Springs, Col.: Ralph Myles, 1968), pp. 702–04.
5. Martin, *American Liberalism and World Politics*, pp. 1155–1156; Wreszin, *Oswald Garrison Villard*, pp. 259–263.
6. Albert Jay Nock, "The Amazing Liberal Mind," *American Mercury* (August, 1938), pp. 467–472.
7. See Wayne S. Cole, *America First* (Madison, Wisc.: University of Wisconsin Press, 1953), pp. 107–110.
8. Schlesinger, in *The Nation* (December 6, 1941); Taft, in *The Nation* (December 13, 1941); quoted in Martin, *American Liberalism and World Politics*, p. 1278.
9. John Dos Passos, *The Grand Design* (Boston: Houghton Mifflin Co., 1949), pp. 416–418.
10. Maximilian St. George and Lawrence Dennis, *A Trial on Trial* (National Civil Rights Committee, 1946), p. 83.
11. John T. Flynn, *As We Go Marching* (New York: Doubleday-Doran., 1944).
12. *Ibid.*, pp. 193–194.
13. *Ibid.*, p. 198.
14. *Ibid.*, p. 201.
15. *Ibid.*, p. 207.
16. *Ibid.*, pp. 212–213.
17. *Ibid.*, pp. 225–226.
18. *Ibid.*, p. 252.
19. Thus, see Henry W. Berger, "A Conservative Critique of Containment: Senator Taft on the Early Cold War Program," in D. Horowitz, ed., *Containment and Revolution* (Boston: Beacon Press, 1967), pp. 125–139; Berger, "Senator Robert A. Taft Dissents from Military Escalation," in T. Paterson, ed., *Cold War Critics* (Chicago: Quadrangle Books, 1971), pp. 167–204; and Ronald Radosh and Leonard P. Liggio, "Henry A. Wallace and the Open Door," in *ibid.*, pp. 76–113.
20. *Congressional Record*, 80th Cong., Part II (1947), pp. 2216–2217.
21. *Congressional Record*, 80th Cong. (1947), pp. 46–47, and 6562–6563. Also see Leonard P. Liggio, "Why the Futile Crusade?", *Left and Right* (Spring, 1965), pp. 43–44, reprinted in *Left and Right: Selected Essays, 1954–65* (New York: Arno Press, 1972).
22. Tang Tsou, *America's Failure in China, 1941–50* (Chicago: University of Chicago Press, 1963), pp. 537–538.
23. *The New Republic* (Sept. 4, 1950); *ibid.* (Jan. 15, 1951), p. 7. Also see Liggio, "Futile Crusade," p. 57.
24. McGeorge Bundy, "'Appeasement,' 'Provocation,' and Policy," *The Reporter* (Jan. 9, 1951), pp. 14–16; Bundy, "The Private World of Robert Taft," *The Reporter* (Dec. 11, 1951), pp. 37–39. Also see Liggio, "Futile Crusade," pp. 57–60.
25. Herbert Hoover, "Our National Policies in This Crisis," *Vital Speeches* (Jan. 1, 1951), pp. 165–167.
26. Joseph P. Kennedy, "Present Policy is Politically and Morally Bankrupt," *Vital Speeches* (Jan. 1, 1951), pp. 170–173.
27. *The Nation* (Dec. 30, 1950), p. 688; *The New Republic* (Nov. 20, 1950), p. 7; *ibid.* (Jan. 1, 1951), p. 5; (Jan. 15, 1951), p. 7. Also see Liggio, "Futile Crusade," p. 56.
28. George Morgenstern, *Pearl Harbor: Story of a Secret War* (New York: Devin Adair, 1947).
29. George Morgenstern, "The Past Marches On," *Human Events* (April 22, 1953). *Human Events* had been founded in 1944 by three leading pre-Pearl Harbor isolationists: Frank Hanighen, co-author of the best-known anti-militarist muckraking book of the 1930s, *Merchants of Death* [H. C. Engelbrecht and F. C. Hanighen, *Merchants of Death*] New York: Dodd, Mead, 1934)]; Felix Morley, distinguished writer and

former president of Haverford College; and Chicago businessman Henry Regnery.

30. Garet Garrett, *The People's Pottage* (Caldwell, Id.: Caxton Printers, 1953), pp. 124–125.
31. *Ibid.*, pp. 158–159, and 129–174.
32. See Frank E. Holman, *Story of the "Bricker" Amendment* (*The First Phase*) (New York: Committee for Constitutional Government, 1954).