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PARETO OPTIMALITY IN POLICY ESPOUSAL

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The concepts of Pareto optimality and Pareto-optimal change continue appearing in academic discussions as supposed criteria of policy and keys to a positive science of political economy. Much has been said against this idea, but the criticisms have been partial and scattered. The present paper seeks to systematize and extend them. (It incidentally stresses, in section IX, what the Pareto concepts *are* good for.) It risks the charge of being old-fashioned by openly espousing a basis for policy recommendations that the Pareto-optimizers themselves have been creeping back to, albeit unwittingly or under camouflage.

I. PRELIMINARY OBJECTIONS

First, for completeness, let us note several objections to the Pareto concepts as policy criteria that are too familiar or unimportant to require fuller discussion.

1. The Pareto optimum is not unique; in principle, there are infinitely many Pareto-optimal states.

2. Although any non-optimal position is dominated by other positions attainable by Pareto-optimal moves, there is no presumption that *any* optimum is preferable to *any* non-optimum. (In the Edgeworth box diagram, a point off the contract curve is not unequivocally worse than points on the contract curve outside the "football" of which if forms one tip.)

3. Many writings employing the Pareto concepts consider how an optimal corrective might be found for one particular distortion (due, perhaps, to externalities) or for a narrow range of related distortions. On the assumption that the distortions considered are the only ones in the whole economy, such an analysis can be a useful exercise or pedagogical device (see section IX below). It is less acceptable as a basis for real-world policy recommendations or even as mere decoration in a serious policy discussion. It runs afoul of the fact that "distortions" — so labeled from the standpoint of the most abstract kind of theory — exist all over the place in the real world. Correcting merely one or a few of them risks incurring the problems described by the general theorem of the second best.

4. Optimality does not stand still. Measures designed to correct certain distortions are themselves likely to have unforeseen effects on the supposed "givens" ("wants, resources, and technology") of the system. Events besides policy measures are also constantly changing the "givens" and thus the supposed optimum being sought. As Warren Nutter writes, "It is literally impossible to keep up with these changes analytically. What makes sense as a policy today, viewed in terms of the 'Paretian' standard, will make no sense tomorrow." It is perverse to judge "the 'betterness' of a policy on the basis of how far it advances a society toward an unattainable, inconstant goal."[1]

5. Invoking Pareto optimality has aspects of a bad joke. Gordon Tullock's example of the fraudulent charity that the donors believe to be legitimate illustrates the difficulty of handling situations in which people do not know the consequences of actions or policies.[14] The donors gain from feeling benevolent. The charity's promoters gain financially. Its supposed beneficiaries are simply unaffected. Its existence would seem not to violate Pareto optimality. An adequate assessment of the state of affairs in which such frauds can succeed would require returning to a broader basis of appraisal. Other examples of

the bad-joke aspect occur in economists' worry over externalities. The joke lies in concentration on a ridiculously small fraction of the ways in which people can harm or benefit each other, ways that happen to be associated with the production or consumption of economic goods.

6 Application of the Pareto criterion and the associated unanimity requirement in the real world is bedeviled by incompleteness and cost and waste of knowledge, costs of negotiation and enforcement, misrepresentation of preferences, the influence of emotional factors and of bargaining strength and tactics, and stubbornness motivated by hope for exceptional gain or desire for attention.[2] One could try to sidestep some of these difficulties by applying the Pareto criterion only on the "constitutional level" — a gambit appraised later in this paper.

7. The unanimity requirement has a status quo bias that mere disavowals do not dispel. Buchanan and Tullock say that any change in the social contract, "if it is desirable at all, can always find unanimous support, given the appropriate time for compromise". "Any change that secures unanimous support is clearly 'desirable', and we can say that such a change is 'in the public interest'. . . . However, we go further and state that, for *any* change *in* the public interest, unanimous support can be achieved."

From the proposition that any change which is "desirable" or "in the public interest" can command unanimous support, it follows rigorously that a change *in*capable of commanding unanimous support is *not* "desirable" or "in the public interest". In an earlier remark about proposals lacking unanimous support, Buchanan and Tullock say that "the welfare economist stops at the Pareto rule and disavows all claims to positive conclusions beyond its limits. He does not, however, normally suggest that collective action beyond the confines of the Pareto rule is undesirable; he is simply silent on such matters".[3] Yet Buchanan and Tullock break this silence in the remarks quoted, which are logically equivalent to saying that a change incapable of commanding unanimous support is undesirable. Their methodological principle, taken seriously, would imply a recommendation against all policy changes (except the few, if any, that could command unanimous support).[4] Continuity has value, of course; but it is suspicious that recommendations against change should flow from sheer methodology. An escape from this embarrassing bias might be sought in doctrines of unanimity "on the constitutional level" or of what might be called "honorary unanimous consent". But, as argued later, such an escape abandons the Pareto criterion.

II. PSYCHOLOGICALLY EFFECTIVE TERMS

However unintentionally, then, the concepts of Pareto optimality and Pareto-optimal change come to be used in ways that bring to mind Karl Brunner's remark, in another context, about "logically pointless but psychologically effective sentences".[5] Examples occur in the literature of "Pareto-optimal redistribution",[6] which elaborates on the familiar point that potential donors might themselves gain satisfaction from rises in the income or material well-being or utility levels of potential recipients of transfers, or from the recipients' additional consumption of specific "merit goods", such as housing, nutritious foods, medical care, or education. Each donor might be willing to make his contribution only on condition that his fellow potential donors contribute their supposed fair shares as well. Greater equality may be in the nature of a public good.[7] The familiar free-rider problem may arise: each potential donor has an incentive to shirk his own contribution and get a free ride on the redistribution accomplished by his fellows. Concealment of true intensities of tastes for redistribution, together with costs of negotiating and enforcing agreement, might well bar a voluntary solution. Coercion would be necessary to achieve the redistribution desired by the donors themselves.

Such discussions convey a vague impression that since transfers by government action would be necessary for Pareto optimality, a scientific and value-free argument for such redistribution has been found.[8] Such an idea appears to be one particular example of illegitimately sliding from a general-equilibrium context into partial analysis; if a particular policy would be necessary, among other things, for a Pareto optimum, then it is desirable almost without regard to those other necessary conditions. If a Pareto optimum would require payment of interest on international reserves, for example, that necessity appears as an argument relevant to the real world.[9]

III. THE "CONSTITUTIONAL" APPROACH TO AVOIDING VALUE JUDGMENTS

A rather different interpretation of the Pareto concepts searches for policy *packages* yielding gain for all or some persons and loss for none. Unanimous consent is not expected for each separate feature of a policy change, but only for the entire package, which will include compensation in other features or even in money for persons otherwise harmed. Actually, the ideal of unanimous agreement remains inapplicable. If I, as a purist adherent of the Pareto criterion, may recommend a policy package only when *everybody* favors it, then I am reduced to saying, emptily, that if I and everyone else favor it, then I favor and recommend it.

Weakening the criterion to one of *near*-unanimity would leave some questions dangling about whose opinions are not to count. To scorn dissenters from an overwhelming preference as holdouts for unfairly large gains, as childish publicity-seekers, or as oddballs does not square very well with an approach that shuns controversial value judgments. A more appetizing escape from a literal to an honorary unanimity criterion looks, then, for consensus in favor of the whole social-decision-making process and of the totality of policy measures evolving over time.[10]

With consensus remaining his key concept, though "on the constitutional level", the political economist can continue to invoke the Pareto criterion and to cherish the ideal of a nearly value-free political economy. Apart, perhaps, from a bow to "the individualistic ethic", he can still hope to avoid appraising policies in the light of his own values.

It is right, in my opinion, to call for economy in the appeal to value judgments. Hastily chalking up disagreement over policies to an impasse over values can cut short investigation and reasoning.[11] Confusing two kinds of disagreement — over values and over positive propositions — intertwines with confusion between actual or supposed success in influencing policy and success in achieving scientific generalizations.[12] Occam's Razor is a handy tool when value judgments come into policy discussions.

But attempts to banish value judgments, or programmatic pronouncements about doing so,[13] tend in their own way to undermine scientific standards. When value judgments go unrecognized, it is impossible to examine them and to show (as I believe to be almost always true) that policy disagreements do not trace to disagreement over ultimate or fundamental values.[14] All policy recommendations rest not only on positive propositions but also on conceptions, at least tacit, of desirable and undesirable states of affairs. Frankly to recognize this necessary role of value judgments is not to sanction a lesser degree of scientific rigor than the Pareto-optimizers want. It is simply to avoid self-deception.

Such self-deception bedevils weakened versions of the political economy of consensus. Doctrines envisaging tacit unanimous consent to the entire decision-making process rather than to specific proposals remain vague on just how any propositions about optimality on this constitutional level might be made operational or tested. Weakening the Pareto criterion into one of tacit unanimity seems, by the way, to abandon one of the original arguments for the requirement of actual unanimity — that it served as the only clear-cut test of whether the gains from a proposed policy measure would exceed the costs.[15]

What does constitutional or tacit consensus really mean, after all? To interpret any legislation enacted in conformity with the legal constitution as Pareto-optimal would empty the Pareto criterion of meaning. Perhaps some constitution is envisaged more pervasive or binding than the legal one — some social, ethical, or spiritual constitution, or some fundamental natural law — ; for the suggestion that people are consenting to the constitution by continuing to live in their society[16] could hardly refer to the legal constitution as it currently reads. But if some more pervasive constitution is envisaged, then all amendments to the legal constitution and even all revolutions consonant with the pervasive constitution would presumably count as Pareto-optimal on the constitutional level. Again the concept is empty.[17]

No one could expect all aspects of the social constitution, broadly interpreted, to be explicitly codified in full detail; for ethical or natural-law notions enter into it. Disparagement of the orthodox idea of moral restraints on political behavior[18] comes inappropriately, therefore, from writers who recognize the wisdom of constitutional restrictions, broadly conceived.

IV. THE NEED FOR ADVOCACY

If we cling to the idea of consensus as a test of desirability, we still must recognize that a sensible test requires *discussion*. The persons whose assessments of gain and loss are to count must understand a proposed policy measure and its probable consequences. The knowledge they need includes not only specific facts but also the relevant theories of economics and other disciplines. Yet fallacious theories are notoriously prevalent. People's untutored *opinions* about policies are unlikely to correspond closely to their *preferences* about results to be sought.

Ideally, experts with the relevant knowledge can help raise the quality of political discussion. Constructive discussion of a proposal requires advocacy by those who favor it. To say that the political economist should not advocate his proposal but merely explain its expected consequences is to make a thin and untenable distinction.

The danger of *policy drift* heightens the importance of forthright advocacy. In a two-party democratic system, at least, the parties tend to avoid distinguishing their positions sharply.[19] The kinds of choices that voters and politicians consider feasible (and, conversely, what positions they consider unrealistically extreme) are conditioned by how policy has been drifting. Discussion dominated by politicians does not adequately consider long-run repercussions and long-run compatibilities and incompatibilities among various objectives and measures. Major choices, such as ones concerning the general character of the economic and social system, may get made by default, as the cumulative result of piecemeal decisions whose overall tendencies were not realized when they were made.[20]

These facts point to a role for social philosophers who stand back from practical politics and current fashions in opinion and try, instead, to see how different lines of policy would affect the character of society. Their job is to consider the long run and the big picture and to speak on their own responsibility rather than as mouthpieces for some supposed consensus.

Granted, then, the need for advocacy, the question arises of its proper duration. After failing for how long to achieve unanimity (or honorary unanimity) is the social philosopher supposed to desist? No time limit seems obvious. A conscientious social philosopher would seem to have only one defensible test of whether he should continue advocating a policy — whether he considers the policy desirable enough to make his continued efforts in its behalf worth his while. To suggest, as an alternative criterion, the unanimous consent that people *would* give *if* they had been fully informed by thorough advocacy and full discussion would be to make an empty distinction.

V. PARETIAN VALUE JUDGMENTS

Equally empty would be an attempt to distinguish between discussion confined to positive analysis and discussion frankly extending to values. The Pareto criterion does not avoid value judgments.[21] To introduce this point, let us review a notable article by Amartya Sen.[22] Sen argues that no collective choice rule can simultaneously satisfy the following three conditions:

Unrestricted Domain: All attainable states for which individuals have preference rankings come within the domain of social choice.

The (weak) Pareto Criterion: If all individuals agree in their preference between two alternative states, then society holds that preference.

(Minimal) Liberalism: Each of at least two individuals may determine at least one choice, such as whether he himself sleeps on his back or his belly. (A fuller-fledged liberalism, according such decisiveness to more than two individuals and over more than one pair of alternatives apiece, would widen the scope for clashes between liberalism and the Pareto criterion; but Sen is content to show that clashes can occur *even* when liberalism is narrowly restricted.)

One of Sen's examples involves two persons and three mutually exclusive states of affairs. In the present altered format, states rank in each person's preferences as shown by how high on the page their alphabetical labels appear.

Person 1	Person 2
z = no one reads *Lady Chatterley's Lover*	x = 1 reads *LCL*
x = 1 reads *LCL*	y = 2 reads *LCL*
y = 2 reads *LCL*	z = no one reads *LCL*

In a social choice between states x and z, liberalism would suggest letting 1's preferences prevail, since he should not have to read the book if he does not want to. In a choice between y and z, similarly, liberalism would respect 2's preference about his own reading. The liberal social ranking, then, puts z over x and y over z. State y, handing the book over to 2, would seem to be the ideal outcome — except that state x is Pareto-superior. The Pareto principle and the principle of liberalism yield an inconsistency of choice.

The individual preference rankings may seem impossibly odd, but they can be rationalized. Person 1 is a prude who prefers that no one read the obscene book but who would rather read it himself than expose his supposedly more impressionable fellow-citizen to it. Person 2 would enjoy the book but would enjoy even more the thought of the prude's reading it.

Actually, the oddness of individual preference rankings should not be an issue. *Of course* particular configurations of preferences could sidestep a clash between the liberal and Pareto principles. The point is the possibility of clash. Sen comes close to making the crucial point that the very conception of a liberal society calls for distinguishing among the particular tastes of individuals, according some tastes more and some tastes less respect. "The ultimate guarantee for individual liberty may rest not on rules for social choice but on developing individual values that respect each other's personal choices." "While the Pareto criterion has been thought to be an expression of individual liberty, it appears that in choices involving more than two alternatives, it can have consequences that are, in fact, deeply illiberal."[23] (A closely related diagnosis of the clash, it seems to me, would focus on the condition of Unrestricted Domain, which regards all alternative states as subject to *social* choice.)

Sen's article drew two published criticisms. Neither squarely takes issue with the particular way that his example reproduced here applies his interpretations of liberalism, social states, and decisiveness. An intuitively appealing conception of liberalism would let each individual be unquestionably decisive only for what John Stuart Mill called purely self-regarding decisions. Yet a decision whether someone or *no one* should read the book is, after all, partly on other-regarding decision, one affecting *another* person's reading.[24]

The critics raised objections rather different from this one. Liberalism, according to Y. K. Ng,[25] holds that each individual should be decisive in matters that significantly affect him but not other persons. Sen could produce a clash between the liberal and Pareto principles only by ignoring intensity of preference. In the example of *Lady Chatterley's Lover,* one person's reading affects another's feelings strongly enough to override the liberal presumption that reading is solely a person's own business.

Unlike Ng, I would focus attention more on the nature than on the intensity of preferences. One person might have an intense desire to be a busybody and to control the behavior of other persons, even though their behavior did not affect his own welfare straightforwardly enough to concern him legitimately.[26] Liberalism, as I understand it, would find such tastes deplorable — and the more intense, the more deplorable. A liberal would consider it a virtue of particular social institutions and policies if they did not tend to promote or reinforce such tastes. In a liberal society, certain externalities would not count heavily, such as the distress that a prude would feel about the Rabelaisian reading of his neighbors. In contrast with a totalitarian or a tribal society in which people see externalities all over the place and in which government or tradition therefore controls the individual's life in detail, a liberal society narrows the range of supposed externalities dignified by social policy.

Claude Hillinger and Victoria Lapham[27] also question Sen's conception of liberalism, but from a different standpoint than Ng's. They define liberalism "as the desire not to coerce individuals to accept choices that they would not have made voluntarily . . . when the actions of one individual do not impinge on the welfare of others, then liberalism follows as a special case of the Paretian principle." In the example of *Lady Chatterley's Lover,* Sen's liberal principles "require that person 1 should not be compelled to read Lawrence and person 2 should not be prevented from doing so. What basis is there for this assertion other than the personal taste of Sen, who presumably does not care who reads Lawrence? Since his taste is not shared by the members of his hypothetical society, why should it be imposed on them?" In the presence of externalities, Hillinger and Lapham "cannot conceive of any 'principle of liberalism' which would govern what actions are to be left to individuals independently of the majority preference of the individuals concerned."

After that remarkable statement, they summarize, maintaining that when individual choices are interdependent,

> there applies no general principle of liberalism of which we are aware, although the Pareto principle applies. Therefore, there cannot be any conflict between the two principles. The contradiction obtained by Sen is the consequence of his imposing on the social choice of a society arbitrary values which conflict with the preferences of individuals in the society.

To Hillinger and Lapham, then, the Pareto principle is supreme, discrediting any incompatible conception of liberalism. Any readiness to treat some tastes with less respect than others clashes just as much with liberalism, as they understand it, as with the Pareto principle. To them, meddlesome and live-and-let-live tastes are equally worthy. They consider it a damaging charge to say that Sen wants to "impose" values on society that conflict with the preferences of its members. But Sen is not trying to impose anything. Implicitly, to be sure, he is *recommending* liberal values over busybody or totalitarian values. He is presumably prepared to explain why a greater respect for some kinds of tastes than for others is conducive to a society whose members have relatively good chances of leading satisfying lives.

In his own reply, Sen notes that the liberalism of Hillinger and Lapham

> would seem to demand freedom of individual action only when a person's action is not opposed by anyone else . . . their brand of liberalism . . . is completely *redundant* in the presence of the Pareto principle . . .[It] would say nothing on minority rights, nothing on the right to privacy, and nothing on noninterference in personal lives. It would defend a person's freedom of action only so long as nobody else objects to that action.
>
> I would readily concede that my theorem asserted nothing about this empty box which HL call liberalism. This is, in fact, not a concession, it is an assertion.[28]

The exchange, it seems to me, leaves Sen's paper looking even more impressive than it did in the first place.

Other writers have also challenged the value judgments concealed in the Pareto criterion. John Rawls's *A Theory of Justice* illustrates how a thoughtful man can do so.[29] (To recognize this example, one need not accept Rawls's particular conception or principles of justice.) In the appraisal of institutions and policies, Rawls explicitly accords justice priority over efficiency.

Many liberals insist — as Kurt Baier notes with apparent agreement — that although social action should indeed aim at maximizing individual satisfaction, it should also take account of what individuals find satisfaction in. Preferences based simply on ill will or on the enjoyment of others' misfortunes should not influence policy. "'Social Welfare' can thus hardly mean the same as 'social choice pattern derived from individual choice patterns in accordance with a reasonable constitution.'" It "neither normally coincides with nor means the same as 'social choice pattern derived by a certain method' . . ."[30] Sidney Alexander is emphatic: "Whether Pareto-optimality is right or wrong, it is normative to the core." Economists have erred in granting "a monopoly to Pareto-optimality. If it had to compete in the marketplace for ethical ideas it could not . . . . . long survive."[31]

What accounts then for the widespread, if rather passive, acceptance of the Pareto criterion? Alexander notes "the impersonality of its appeal". It takes each person's normative standard as final to himself; no one finds his values contradicted by it; so no one is inclined to object. It seems that "everyone can reasonably subscribe to it whatever his desires."[32] Or, as Baier suggests, the criterion is appealing because it seems to bypass the problem of appraising the legitimacy of various tastes or preferences by allowing all, indiscriminately, to count in the social-decision-making process. Yet this does *not* really bypass the problem. To regard all preferences as "equally legitimate" and as deserving to

> weigh equally, or in proportion to their intensity[,] . . . may sanction a policy that obligates a person to act against, for instance, his preferences in food, housing, sex and so forth, because a majority (though directly unaffected by his doing so) intensely *dislikes* the thought that he should indulge them.[33]

VI. OBJECTIVE ANALYSIS OF TASTES AND VALUES

In indiscriminately according all tastes a legitimate potential influence on policy, the Pareto criterion embodies a sweeping value judgment.[34] It implies a denial, furthermore, that tastes and values of a more specific kind can be objectively or quasi-objectively right or wrong, at least in the sense of being consistent or inconsistent with a coherent social philosophy. In effect it echoes the familiar remark that economists as such have no business making judgments about tastes.

Yet Burton Weisbrod has registered a mild dissent.[35] He considers persons contemplating alternative states of affairs on the constitutional level, or behind a "veil of ignorance". In one state, each person has a utility function characterized by narrow and perhaps ruthless self-interest; in the alternative state, each person's utility function exhibits a decent considerateness of other persons. Which state would rational and knowledgeable persons prefer? Whichever state they were in when making the comparison, they would prefer the state in which persons were considerate. They would understand and regret the otherwise unnecessary expenditure of resources required to cope with people's untrustworthiness and predatoriness. In an intelligible sense, it is more efficient for the members of a society to be considerate than to be untrustworthy and predatory.

Weisbrod's argument may seem thin, leaving only slight scope for appraising tastes. Yet is is significant as an opening wedge. (Weisbrod claims, by the way, that he has shown how the Pareto framework can be extended even to dealing with utility functions. What he has extended, it seems to me, is Pareto *terminology* — and extended it too far. To say that all analyses of desirability are analyses made with the aid of the Pareto criterion is to empty that criterion of its last vestige of meaning.)

The quasi-objectivity of tastes and values can be a fruitful working hypothesis, comparable to the scientist's working hypothesis of the uniformity of nature. Things may or may not be objectively good or bad, values may or may not be really right or wrong; but to leave open the possibility of objective truth on such matters promotes investigation and discussion. Discussion need not be confined to how values and tastes, taken as given, can be served or gratified. Reasoning employing analysis from economics and other disciplines can help systematize value judgments and reveal hierarchies, compatibilities, and clashes among them. Demonstration of clashes can lead people to revise their relatively specific values, choosing others that accord better with each other and with their more fundamental values. As Sen suggests, standard remarks about the futility of arguing over value judgments stem from implicit concentration on *basic* value judgments only.[36] Yet it is sometimes possible to show that a judgment in someone's value system is *not* basic. The opposite is not true. To take a given judgment as basic "is to give it, at best, the benefit of the doubt. It seems impossible to rule out the possibility of fruitful scientific discussion on value judgments."

Sidney Alexander endorses the "Socratic notion that men . . . can devise impersonal means . . . of evaluation of normative judgments, that they can cooperate in progressive rational inquiry directed toward making these judgments soundly . . .". An apparent difference in values may turn out to hinge on differing descriptive, operational, predictions of the consequences of the policies considered. It is premature to vest "allegedly irreconcilable values in issues that can in fact be determined operationally against the background of more fundamental value judgments." " . . . within a problematic situation the issues are empirical . . . any purely normative question lies at the next higher level." No normative principle need be regarded as ultimate. A disputed principle will be found to depend "on still other empirical facts or on a still higher normative principle. We can repeat the process indefinitely, so long as we do not come to a normative principle that we refuse to discuss. If . . . no particular principle is inherently a *first* principle, there is no necessary stopping place." This infinite regress is benign; for an impasse would force us "to the barricades." If room always remains for investigation and discussion, "we need go to the barricades only at infinity, which is never".[37]

Overlooking these points and taking as given, and as of equal dignity, values that may not be ultimate values at all, the Pareto approach tends to choke off analysis of them prematurely. To the extent that it is not simply empty to recommend adoption of any set of changes that everybody — or an "honorary" consensus — thinks desirable, then it is hasty and even unscientific. People do not fully understand their wants or supposed wants and the ways in which the gratification of some may entail the frustration of other wants, which may be more basic or enduring. Room always remains for investigation of such matters. On a less psychological or philosophical plane, it is relevant to repeat that people do not understand all the probable consequences of contemplated policy changes. They do not fully understand how particular measures may eventually change the general character of their society.

VII. LIBERALISM (LIBERTARIANISM) AS A COUNTEREXAMPLE OF THE PARETO APPROACH

Akin to its indiscriminate respect for all values is the tendency of the Pareto approach to regard whatever emerges from market transactions as ethically valid (with qualifications about externalities and so forth). Suppose one man were to buy another man's abject fawning submissiveness or buy his submission to torture to gratify the sadistic tastes of the first man. Does the Pareto criterion bless such transactions, noting gains from trade? It would be merely comical to point out the requirement that the sadists compensate not only the torture victims but also whatever tender-hearted third parties might be pained by the knowledge of the torture. It would be merely comical to point out that there might be no way to compensate and obtain the consent of all pained third parties, perhaps because some of them might belong to future generations. The comedy consists in trying to dodge responsibility for judgments about the characters of men and society by resort to notions of voluntary transactions, gains from trade, and externalities.

Many liberals (libertarians) favor a market economy as the kind of economic arrangement that positive analysis suggests to be most compatible with personal freedom and with voluntary cooperation among individuals in pursuit of their own happiness. Such liberals consider material benefits almost as incidental, though welcome, extras.[38] It is startling, then, to find the market tacitly exalted into a source or validator of values. It is startling to find the concepts of market, voluntary transactions, gains from trade, and government as a trading mechanism exalted to the be-all and end-all of an allegedly liberal conception of the good society, with the question ignored or disparaged of what sorts of tastes and human personalities this conception respects and promotes. Actually, the market is a technically advantageous *instrument* for facilitating the pursuit of happiness, not the very fountainhead-by-default of a conception of the good society. The market is no substitute for social philosophy.

Liberalism, in contrast with the Pareto criterion, is a set of value judgments and positive propositions that add up to a particular conception of the good society. Liberalism values the well-being of actual human beings as they themselves perceive it. It does not scorn, however, all attempts to discriminate between worthy and unworthy tastes, between those that ought and those that ought not to count in the formation of social institutions and policies.[39] It (or, at least, the brand that seems persuasive to me) does not disparage consideration for the well-being of people besides oneself, or even of future generations; but it does recognize that values, satisfactions, and frustrations pertain to actual human beings rather than to transcendent metaphysical entities such as "society" or the state. It seeks institutions that minimize the scope for each person's exercise of his freedom to clash with the freedom of other persons. It calls for limiting man's power over man, for dispersing power, and, in turn, for avoiding unnecessary linkage of economic and political power.

If social philosophy has any role at all, it is to contribute to achieving a consensus about what social institutions and policies and attitudes are desirable. Its job is to paint a coherent picture of the good society. It cannot just offer a ticket instead of a picture, a ticket reading that the good society looks like whatever a substantially unanimous opinion thinks it looks like. That would be to abdicate, to offer no guidance at all.

De Tocqueville and John Stuart Mill inveighed not only against governmental tyranny but also against the conformist pressures of public opinion. Liberalism positively values diversity, tolerance, and a live-and-let-live spirit. Recognizing that today's public policies influence what private attitudes may prevail tomorrow, it warns against state actions tending to dignify tyrannical and meddlesome tastes.

An action or policy that embodies meddlesomeness cannot be represented as liberal merely by postulating that it is freely agreed to. To define liberalism as sanctioning whatever policies are freely chosen, or to define it in terms of the procedure used in determining agreement or of the degree of agreement, is to destroy it as a particular conception of the good society. A unanimous decision to adopt totalitarianism would not be a liberal decision, for liberalism values approximately the opposite social arrangements.

VIII. POLICY, ATTITUDES, AND CHARACTER

Far from merely reflecting and implementing people's attitudes, values, and tastes, policy also influences them — if not by actively shaping or changing them, then by dignifying and reinforcing them. For an example widely appraised as "good", consider how laws and court decisions in the United States since World War II have altered attitudes toward discrimination against blacks. Examples of "bad" effects might be found in considering how welfare measures of certain kinds supposedly tend to breed successive generations of families who grow up believing that it is acceptable not to work for a living, or in considering the idea that unemployment-compensation recipients should not have to accept jobs apparently felt beneath their dignity. Consider how redistributionary measures predicated on the supposed injustice of material inequality may tend to erode respect for property rights. Consider how tariff protection tends to dignify employing government power to obtain private benefits at other people's expense.[40]

Numerous private as well as public activities do change, and are intended to change, attitudes, values, wants, and tastes, as well as resources and technology, thereby changing the "Pareto frontier". There could hardly be a strong consensus in our society that current preferences are sacrosanct.[41]

Attitudes and traditions and the policies that alter or reinforce them can influence material conditions, as whether a country has a primitive or a modern economy. They may well have more effect on people's standard of living than whether or not competition is pure, whether externalities of relatively ordinary kinds go uncorrected for, and similar concerns that form the stock in trade of price theorists and welfare economists.

Alexander chides economists for recognizing the problem of externalities only from the point of view of Pareto optimality. Actually, he says, our whole culture is a "smoke nuisance". ". . . our economic institutions play a leading role . . . in determining what sort of men we turn out to be . . .". This "neighborhood effect . . . is opaque to Pareto-optimality because a man is not likely to be prepared to pay for being made other than he is the amount that it would be worth to him to be a different man, a worth that he could recognize only if he *were* a different man". The question thus arises "of what sort of wants we should generate, what sort of men we should make".[42]

John Stuart Mill expressed similar concerns. One important test of political institutions, he said, was "how far they tend to foster in the members of the community the various desirable qualities, moral and intellectual . . .". Government is not only "a set of organised arrangements for public business" but also "a great influence acting on the human mind"; and that vital influence may turn out either beneficial or mischievous. A government is to be judged, therefore, partly "by its tendency to improve or deteriorate the people themselves . . .".[43]

Mill also showed concern for possible influences on people's characters and tastes in his comments on deficiencies in the doctrines of Jeremy Bentham. Bentham needed more knowledge than he had "of the formation of character and of the consequences of actions upon the agent's own frame of mind . . .".

> He though it an insolent piece of dogmatism in one person to praise or condemn another in a matter of taste; as if men's likings and dislikings, on things in themselves indifferent, were not full of the most important inferences as to every point of their character; as if a person's tastes did not show him to be wise or a fool, cultivated or ignorant, gentle or rough, sensitive or callous, generous or sordid, benevolent or selfish, conscientious or depraved.[44]

Some of the foregoing remarks, as well as Alexander's complaint that the exclusion of normative standards other than Pareto-optimality "grants our social institutions immunity from criticism other than on grounds of efficiency",[45] may seem to echo the radical critics of capitalism. But methodological slogans will not squelch such criticism. In some respects, particularly in its complaints about the narrowness of traditional economic policy judgments, I sympathize with it. We must be willing to discuss how economic and social institutions affect people's life-styles and values, and even how the different ranges of choice of life-styles and values afforded by alternative social-economic systems facilitate or impair the pursuit of happiness. The range of relevant knowledge is of course tremendous,[46] and some of that knowledge is conjectural or missing. This fact underlines how far we are from an impasse over fundamental value judgments and how much scope remains for research and discussion to narrow disagreements.

The remarks made or quoted in the last few pages may alarm some readers. In warning against the Paretian view of tastes as "given" and in recommending that social philosophers concern themselves with how policies might affect tastes, attitudes, and personal characters, am I not taking a very activist and almost a totalitarian view of government? Am I not being arrogant and almost dictatorial in suggesting the possibility of objective truth even in this area of value judgments?

My answer has three parts. First, if policies do unavoidably affect attitudes and tastes, either changing or reinforcing them, then it is perverse to pretend otherwise and argue that the government should pursue an impossible neutrality. We may welcome the presumably liberal ideal underlying the muddled view that political economists should take tastes as "given" and immune from criticism or influence, but we can hardly serve our ideals by allowing the muddle to go unexamined. That view is reminiscent, in a way, of a misunderstanding about free speech, a mistaken notion that all ideas deserve a respectful hearing. Freedom of speech means noninterference, not respect for all ideas. In fact, part of the sound case for free speech is the contention that there is a better way — discussion — of dealing with wrong ideas than forcibly suppressing them. Similarly, liberalism recognizes a role for discussion in dealing with bad taste.

Although individuals' tastes are largely a social product and although how policy may affect them legitimately concerns the social philosopher, complacency about overriding people's tastes does not follow in the least. A man's tastes are *his* tastes, and the frustration of having them overridden is unpleasant for *him*, regardless of just how his tastes were shaped by his society.[47] There is no contradiction between wanting to let people gratify their own tastes and taking heed of what influences shape those tastes, and how.

A second part of my answer is that concern for the effects under discussion need not necessarily lead to recommendations for a hyperactive government. On the contrary, analysis of such effects might support recommendations for drastically restricting the scope of government. Attention to interactions among policies and attitudes and tastes helps reveal how broad a range of empirical considerations may bear on the desirability of policies. Thirdly, the working hypothesis that quasi-objective truth may be found even in the realm of values does not arrogantly claim special insight for a dictatorial elite. On the contrary, it recommends the ordinary scientific procedures of investigation and discussion.[48]

IX. THE EFFICIENCY VIEW VERSUS THE CONSTITUTIONAL VIEW

An important line of defense of the Pareto concepts as policy criteria relates to their clear usefulness in abstract theory. This defense asserts the need for a concept or standard of *efficiency* against which to appraise actual or contemplated states of affairs. But the concept of efficiency is most applicable to rather narrowly technical or economic aspects of welfare — patterns of resource allocation, production, exchange, and consumption. A pattern is not fully efficient if some technically feasible shift in any aspect of it could benefit at least one person while harming no one.

The Pareto concept of efficiency, narrow and rigorous as it is, has great pedagogical value in price theory. It can help one grasp the abstract, barebones logic of a competitive market economy, or of a centrally administered economy successful in achieving certain features of an ideal competitive economy. The concept can be useful in demonstrations of the gains still to be reaped in non-Pareto-optimal situations. It helps one achieve an intellectual appreciation of the equality of the various marginal rates of substitution and transformation in the situation toward which a competitive market economy tends (apart from externalities and so forth) as economic actors respond to the information and incentives conveyed by prices. Theorems of correspondence between competitive equilibria and Pareto optima can have an austere intellectual beauty. On a less exalted plane, students may gain facility in price theory by studying it both backwards and forwards, not only starting with the concept of long-run competitive equilibrium and deriving its welfare properties but also starting with those properties and seeing how perfect competition would tend to achieve them.[49]

All of this is quite different from erecting a Pareto-optimal state as a benchmark or ideal in comparison with which states of affairs in the real world are to be approved or condemned. It is different from insisting that policy changes be Pareto-optimal. Elegant abstractions have an unquestioned role in theory, but their direct and overriding application to policy in the complicated real world is quite a jump.

If we must have a standard against which to appraise reality, we might well adopt the looser view of a competitive market economy as a device for gathering and transmitting information about not-yet-exhausted opportunities for gains from trade (including "trade" with nature through production or through rearrangements of the pattern of production), for conveying incentives to exploit such opportunities, and for coordinating decentralized activities.[50] With this mechanism in mind, we may find arguments — though not conclusive arguments — for particular strands of policy because they facilitate its operation. We may — though again, not conclusively — condemn other strands of policy because they impair access to opportunities for gains from trade, because they distort the information or incentives transmitted by prices, because they obstruct the market process of coordinating decentralized activities, or even because they rest on and thereby dignify fallacious arguments. But such narrowly economic criteria cannot be conclusive because, for one thing, they do not come to grips with the sociological and psychological considerations that may also be relevant in appraising institutions and policies.

Do not the recognized merits of cost – benefit analysis dignify the Pareto criteria of policy? Though far from the same, the two approaches are related. Considering whether the benefits from a proposal would exceed the costs amounts to considering whether a package of changes, including side-payments, might conceivably be worked out from which some or all persons would gain while none would lose. The usefulness of cost–benefit analysis does not hinge on the full actual implementation of such policy packages. Nor does it even hinge on great precision in the measurement, totaling, and comparison of costs and benefits. Perhaps the chief merit of cost–benefit analysis lies in bringing some standards, some discipline, into discussions, lessening the influence of sheer eloquence and poetry. But this contribution is pretty far from actual application of the Pareto criteria.

Prized for its intimate connection with the concept of efficiency, the Pareto concept finds its principal usefulness in the contemplation of "results" of the operation of the market in the form of particular — but abstractly conceived — allocations of resources and goods. It serves in pure price theory, not in contemplating the concrete "results" observed in the real world. James Buchanan essentially recognizes this point when he says that "the Pareto criterion is of little value when employed solely to classify 'results' defined with respect to the orthodox economic variables, inputs and outputs of goods and services possessed by different persons in the social group". Instead, he suggests, "the criterion must be extended to classify social rules which constrain the private individual behavior that produces such results".[51]

The latter view of the Pareto criterion can hardly be reconciled, it seems to me, with the view that would employ it in appraising the efficiency of allocations. These two different uses or defenses of the Pareto criterion are incompatible — unless, perhaps, they are segregated in completely separate contexts.

If, in denying the applicability of the Pareto criterion to the appraisal of "results", Buchanan means that social philosophers and economists seldom face an occasion or opportunity to appraise concrete, specific real-world allocations, he is clearly right. Among other reasons, they lack the detailed specific knowledge necessary for such appraisals. Their appraisals must deal, rather, with rules, institutional arrangements, and systems. Buchanan agrees with my colleague Rutledge Vining,[52] who emphasizes that legislators and their advisors are choosing among alternative patterns of legal and institutional constraints rather than among alternative specific results or allocations. (Vining and Buchanan differ, however, on the meaningfulness of the Pareto criterion in discussions over policy, so conceived.)

The contrast is tremendous between abstractly contemplating the allocations that would result from market processes and contemplating supposedly optimal configuration of legal and institutional constraints. In abstract theorizing we can conceive — and instructively so — of an allocation from which no Pareto-optimal move can be made. But what is a set of policies or rules from which no such move can be made? Insofar as no policy changes can be found in the real world that would harm literally no one, then, in a corresponding sense, the existing combination of policies is Pareto-optimal. That label, however, would be pretentious. How can we rule out discovery or invention of a new policy package that would benefit some persons while inflicting net loss on none? The range of discoverable or inventable policy packages can hardly be taken as given in the same sense that "wants, resources, and technology" (and institutions) are conventionally taken as given in abstract price theory, especially since the search for consensus by Buchanan's political economist is supposed to include a search for just such discoveries or inventions. Its success renders existing policies no longer Pareto-optimal. Existing policies, in short, either do or do not count as Pareto-optimal, depending on just how the concept is extended beyond its role in abstract price theory.

For still further reasons this extension is illegitimate. Legal and institutional constraints are supposed to be rules of the game within which people strive to make the most of their opportunities amidst ceaseless change in wants, resources, and technology. The very point of having rules presupposes their having a certain stability and dependability, which would be undermined by continual efforts to make supposedly optimal changes in them.

What is useful in policy discussions, then, is not a supposed benchmark of Pareto-optimality against which to compare or test each proposed set of rules but rather a comparison among themselves of what alternative sets of rules add up to — alternative economic and social systems.[53]

Advocates of socialism typically do not say that their system would be Pareto-optimal, that it could command unanimous consent. At their best, they are arguing that the arrangements they recommend would facilitate the pursuit of happiness better than any alternative arrangements. A rigorous adherent of the Pareto criterion would presumably scorn this brand of political economy as loose and sloppy and would refrain from discussion with the socialists on the grounds that he must remain silent about policies, or constitutions, that would harm some people while benefiting others. If the contention under discussion is that socialism would give the best chance of happiness to the person considered at random, considered as stripped from any distinctive personal characteristics or role in society, then the Paretian political economist might feel entitled to enter the discussion, contributing an analysis of potential unanimity on some sort of super-constitutional or pre-constitutional level. This gambit amounts, however, to *not* taking seriously, after all, the restrictions that the Pareto criterion would otherwise impose on its adherents.

X. THE GOOD SOCIETY

We might as well return — openly — to appraising policies in the light of our own conception of the good society. As Clarence Philbrook says, "Only one type of serious defense of a policy is open to an economist or anyone else: he must maintain that the policy is good".[54] Such a contention logically has two parts or bases: (1) a positive analysis predicting what results the recommended policy would have, and (2) a judgment that those results are on the whole desirable, that is, in conformity with the advisor's conception of a good society, which he should be prepared to avow openly. This approach need not mean conceiving of "society" as some metaphysical entity whose interests transcend those of its individual members. On the contrary, the good-society approach recommends appraising social institutions according to how effective they are likely to prove in facilitating voluntary cooperation among individuals in their pursuit of their own happiness.

With prospects for happiness forming the criterion of a good society and thus of policy, questions might seem to arise about a choice between maximum aggregate or *per capita* utility[55] on the one hand and lesser aggregate or *per capita* utility associated with a more nearly equal distribution on the other hand. I conjecture, however, that such questions simply dissolve on the level of discourse concerned with basic institutions. Is it really possible to specify a set of institutions that would give greater total (or *per capita*) utility but a lesser degree of equality and an alternative set that would give lesser total (or *per capita*) utility but a greater degree of equality? (The obvious quibbles about comparing and adding up the utilities of different persons — waived here — would reinforce my conjecture about the nonoperationality of questions about a tradeoff between total utility and its distribution.) One can, of course, conceive, at one extreme, of a complete absence of redistributive measures (other than private charity) or even of institutions and measures positively reinforcing the inequalities resulting from heredity and luck, and conceive, at the other extreme, of egalitarian policies such as *per capita* grants financed by drastically progressive income and wealth taxes and even the confiscation of all income and wealth above certain ceilings. But plausible arguments suggest that either the antiegalitarian or the egalitarian extreme would result in lesser total or *per capita* utility (or less attractive prospects either for the man considered at random or for the least advantaged members of society) than some intermediate policy. Such arguments would enlist facts and theory from various fields of knowledge.[56] Similar considerations would still apply, if less unambiguously, to comparisons between alternative intermediate (nonextreme) policies. We would never obtain all the detailed factual and theoretical knowledge necessary to judge that policy A would yield more utility more unequally distributed while policy B would yield less utility less unequally distributed. Further knowledge would always remain relevant to an assessment of the attractiveness of the contemplated society; and we would never, I conjecture, face no recourse but to make a sheer value judgment between utility and equality. We would never encounter a situation in which the question of the tradeoff had to be faced. This question, like some others in social philosophy, can appear to arise because we have not faced the prior question of in what *context* it could relate to a genuine issue.

Though emphasizing that one's conception of the good society depends on one's values, I also conjecture that sufficient investigation and discussion would reveal a substantial consensus on fundamental values (such as human happiness) and, through positive analysis, on more specific values in turn. If so, values possess a quasi-objective validity.[57] If a social philosopher or policy advisor fails to face the question of values squarely and, instead, tacitly employs the relatively unexamined specific values of "the community" or of persons who make mutually satisfactory exchanges, he is in effect adopting those values himself without analyzing them. Such acceptance of other people's values parallels, in a way, the concern for other people's assessments of political feasibility that, when allowed to contaminate supposedly expert judgments of desirability, has been rightly condemned in discussions of "realism" in policy espousal. People who trim in that way are scrambling onto each others' bandwagons.[58]

XII. CONCLUSION

My view may seem elitist or dictatorial. But whether a situation that will result from a proposed policy is good or bad is not simply a matter of whether or not the policy can now command the support of a majority or even of everybody. If I were to imply that the desirability of a policy did depend on the degree of support for it, I would be doing a little bit to subvert that rational discussion which itself forms part of the democratic ideal. Favoring a policy opposed by a vast majority would not mean wanting to impose that policy by force, even if I could. The means whereby policies are put into effect is itself terribly important. There is nothing inconsistent about emphatically advocating a certain policy, yet rejecting its imposition by antidemocratic means.

Is the policy advisor who believes in objective good and bad, right and wrong, claiming superiority for his insights over those of everyone else? No; he is just honestly stating what his insights are. His views on topics in which he is a specialist are indeed probably worth more than those of most other people, just as other people probably have better-based views than he does about plumbing or manufacturing or shopkeeping or politics or other fields in which he does not specialize. His particular job is to seek and communicate positive knowledge that, in combination with frankly avowed and carefully examined value judgments, leads to policy recommendations. But he claims no infallibility. He is simply making his contribution to investigation, reasoning, and discussion. He can best help to root out error, including error of his own, by being clear and forthright. There would be little hope of reaching meaningful consensus (even if that were the criterion of desirability) unless participants in the discussion were willing to state frankly what their judgments were, instead of trying to adjust theirs to those of everyone else. Frank advocacy of what he thinks good is part of his job.

In conclusion, I am not scorning abstract economic theory, in which the concept of Pareto optimality plays an important role. I am warning against the impression — an impression conveyed by misapplication of the Pareto terminology — that narrowly economic concepts and considerations, perhaps employed along with a much broadened conception of the range of economic transactions, can be decisive on matters of policy. I am asking that we do not camouflage with Paretian slogans our unavoidable return to the good-society approach to policy espousal. I am decrying psychological rather than logical effectiveness in terminology and writing style; I am calling for forthrightness and clarity.

NOTES

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1. G. Warren Nutter, "Economic Welfare and Welfare Economics," *Journal of Economic Issues* (June, 1968), p. 167.

1A. Gordon Tullock, "Information Without Profit," *Papers on Non-Market Decision-Making* (Charlottesville, Va.: Thomas Jefferson Center, University of Virginia, 1966), pp. 141 – 159.

2. Some of these difficulties are discussed in Clem Tisdell, "Some Bounds Upon the Pareto Optimality of Group Behavior", *Kyklos* (1966), pp. 81-105. Some points regarding information are developed by Roland N. McKean and Jora Minasian, "On Achieving Pareto Optimality — Regardless of Cost!" *Western Economic Journal* (Fall, 1966), pp. 14-23. They show, for example, that marginal-cost pricing in the conventional sense in the familiar decreasing-cost case might wastefully sacrifice information about consumers' demands for the good or service involved.

3. James M. Buchanan and Gordon Tullock, *The Calculus of Consent* (Ann Arbor, Mich.: University of Michigan Press, 1962), pp. 261, 285, 92 respectively.

4. Abba P. Lerner notices "a cult of 'objectivity' that . . . essentially amounts to a refusal to consider any significant welfare problems since it is very hard to think of any policy to benefit some people which would not also bring some damage to others". Abba P. Lerner, "The Economics and Politics of Consumer Sovereignty", *American Economic Review* (May, 1972), p. 263.

   For conjectures about the motives of Ludwig von Mises and James Buchanan for allegedly espousing the "peculiar and unsatisfactory principle" of condemning all changes from which anyone at all would lose, see Brian Barry, *Political Argument* (New York: Humanities Press, 1965), pp. 51-52.

5. Karl Brunner, "The Role of Money and Monetary Policy", Federal Reserve Bank of St. Louis *Review* (July, 1968), p. 13*n*.

6. Notable early contributions were Harold M. Hochman and James D. Rodgers, "Pareto Optimal Redistribution", *American Economic Review* (May, 1972), pp. 542-557, and Edgar O. Olsen, "A Normative Theory of Transfers", *Public Choice* (Spring, 1969), pp. 39-58.

7. *Cf.* Lester C. Thurow, "The Income Distribution as a Pure Public Good", *Quarterly Journal of Economics* (May, 1971), pp. 327-336. Thurow speaks of the "Pareto optimum income distribution" at which "the marginal costs (transfer payments) of moving toward more equality are just equal to the net marginal social benefits of moving toward more quality". *Ibid.*, p. 331. Achieving the optimum distribution, so conceived, involves tax payments by those who desire the move to greater equality and compensatory payments to those who dislike greater equality as well as the transfers to change the distribution in the optimal way.

   "Since the income distribution is a public good, equilibrium is reached at the point where the sum of the marginal rates of substitution between income and the income distribution for each individual is equal to the marginal rate of transformation between transfer payments and the income distribution. . . . When [this condition] is fulfilled, a Pareto optimal income distribution has been reached . . . " *Ibid.*, p. 334.

8. George Daly and Fred Giertz, "Welfare Economics and Welfare Reform, "*American Economic Review* (March, 1972), pp. 131-138, provide an example of coming closer, on the explicit level, to disavowing than affirming any idea that the necessity of something or other for a Pareto-optimal result constitutes a recommendation for it. Characteristically, however, they still employ the Pareto concept as if it were relevant to real-world policy-making. Characteristically, also, they vaguely disparage the market for being unable to handle externalities related to income distribution in a Pareto-optimal way. (Their chief *explicit* message is the familiar one that the particular way in which the utility of potential donors may depend on the consumption patterns of the potential recipients may recommend transfers in kind rather than in cash. So may political considerations.)

9. Herbert Grubel even introduces the concepts of "Pareto optimal exchange rate fluctuations", the "Pareto optimal rate" of interest on Special Drawing Rights, and the "Pareto optimal amount of international reserves". The latter apparently means the amount of reserves that authorities intervening to influence exchange rates would effectively demand if the reserves bore interest at a rate equalling the marginal productivity of invested real resources. Herbert G. Grubel, "The Case for Optimum Exchange Rate Stability", *Weltwirtschaftliches Archiv* (1973), pp. 351-381.

10. This is the approach of Buchanan and Tullock, *The Calculus of Consent, passim.* For a recent restatement,

illustrating that notions of Pareto optimality on the constitutional level remain current, see Harold M. Hochman, "Individual Preferences and Distributional Adjustments", *American Economic Review* (May, 1972), especially p. 359.

11. A "widespread tendency to attribute policy differences to differences in value judgments" arises, according to Milton Friedman, "because it is often so much easier to question a man's motives than to meet his arguments or counter his evidence. We can shortcut the hard process of analysis and collection of evidence, and at the same time bring the support of indignation and moral fervor to our views. . . . "
We could better strive for rational agreement by leaving differences in value judgments as a last resort explanation of disagreement. Milton Friedman, in *Human Values and Economic Policy,* ed. S. Hook (New York: New York University Press, 1967), pp. 87–88.

12. *Cf.* P. T. Bauer, *Dissent on Development* (Cambridge, Mass.: Harvard University Press, 1972), pp. 449–451 and *passim*, elaborating points originally made in Bauer, "International Economic Development", *Economic Journal* (March, 1959), especially pp. 106–107, 123.

13. Gordon Tullock says, for example: "If a proof has been developed that some particular change is Pareto optimal, then we can demonstrate, on the basis of our criteria, that this change should be adopted without any ethical presuppositions at all." Gordon Tullock, *The Logic of the Law* (New York: Basic Books, 1971), pp. 8–9. In concluding a paper concerned with applying Pareto criteria to redistributive measures in particular, James M. Buchanan emphasizes that "nowhere in the discussion has it been necessary to introduce external ethical norms. . . . *The redistribution that 'should' be performed at various levels of government is that which individuals, acting through their collective entities, local and central, expressly prefer*. . . . There is no cause for retreat into obscurantist ethics, which does little more than embroil us, one with another, over just whose personal set of values 'should' be selected by that nonexistent yet subservient elite through which too many of us seek in unconscious willingness to subvert ordinary democratic process". James M. Buchanan, "Who Should Distribute What in a Federal System", in *Redistribution Through Public Choice*, eds. H. Hochman and G. Peterson (New York: Columbia University Press, 1974), pp. 39–40.

14. On the concept of "fundamental" or "basic" value judgments and their limited role in controversies over courses of action, see Paul Edwards, *The Logic of Moral Discourse* (New York: Free Press, 1965), Amartya K. Sen, *Collective Choice and Social Welfare* (San Francisco: Holden-Day, 1970), Chapter 5, and Section VI below.

15. The argument for such a test appears in James M. Buchanan, "Positive Economics, Welfare Economics, and Political Economy", *Journal of Law and Economics* (October, 1959), pp. 124–138, and Buchanan, "Economic Policy, Free Institutions and Democratic Process", *Il Politico* (1960), pp. 265–277. Even that test had flaws. Unanimity might not be a necessary condition even though a sufficient condition of a Pareto-optimal change. A person might vote against a change that would benefit him because he was holding out for a still more advantageous change. Kurt Klappholz. "What Redistribution May Economists Discuss?" *Economica* (May, 1968), p. 195*n*.

16. *Cf.* the remarks of Buchanan and Tullock, *Calculus of Consent,* pp. 254, 260–261, on the "essence of the contractual conception of the collectivity": " . . . each and every participant has, implicitly, accepted the 'contract' embodied in the rules of the game when he chooses to play". "The 'social contract' is best conceived as subject to continual revision and change, and the consent that is given must be thought of as being continuous. . . . We do not conceive the 'constitution' as having been established once and for all. We conceive the contractual aspects to be continuous, and the existence of a set of organizational rules is assumed to embody consensus".
David Hume mocked the interpretation of any such passiveness as consent: "We may as well assert, that a man, by remaining in a vessel, freely consents to the domination of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her." David Hume, "Of the Original Contract", reprt. in *Hume's Ethical Writings* ed. A. MacIntyre (New York: Collier Books, 1965), p. 263.

17. It is not clear, however, whether Buchanan and Tullock would count all changes conforming to the pervasive constitution as Pareto-optimal. In sentences interwoven with those quoted in the preceding footnote, they say that any change in the social contract, "if it is desirable at all, can always find unanimous support, given the appropriate time for compromise. . . . The implicit rule for securing the adoption of changes in these organizational rules (changes in the structure of the social contract) must be that of unanimity. This is because only through the securing of unanimity can any change be judged desirable on the acceptance of the individualistic ethic." Buchanan and Tullock, *Calculus of Consent,* p. 260.
The equivocation surrounding such concepts as consensus on the constitutional level, tacit consent, and unanimously agreed revision of the social contract does, in any case, raise doubts about their meaning.

18. "[M]uch of orthodox political thought", according to Buchanan and Tullock, *Calculus of Consent*, pp. 266–267, "seems to be based on the view that the collective-choice process reflects a partisan struggle in which the beneficiaries secure gains solely at the expense of the losers". In that view, political order depends "on the strength of moral restraints placed on human actors. If, by contrast, a broader and, we think, a more 'correct' conception of political choice is adopted, there need be less reliance on moral restraints of individuals".

19. See, *inter alia,* Harold Hotelling, "Stability in Competition", *Economic Journal* (March, 1929), pp. 41–57. This spirit of competition is far from totally bad. Having no momentous issues sharply dividing the population and requiring once-and-for-all decision probably does tend to promote social peace and cohesion.

20. A related point is stressed by an avowed radical, Robert Paul Wolff, *The Poverty of Liberalism* (Boston: Beacon Press, 1968), especially chapter 3.

21. Buchanan and Tullock recognize this point in some (untypical) passages. Their methodological individual-

ism, taking as point of departure "the calculus of the rational utility-maximizing individual as he confronts . . . constitutional choices", is an approach that "must embody philosophical commitments". *Calculus of Consent,* p. 265.

22. Amartya K. Sen, "The Impossibility of a Paretian Liberal", *Journal of Political Economy* (Jan./Feb., 1970), pp. 152-157; its essence is reproduced in Sen, *Collective Choice,* esp. chapter 6.
23. Sen, "Impossibility of Paretian Liberal", pp. 155-156, and 157 respectively.
24. Mill viewed the self- and other-regarding distinction as a matter of *fact:* yet actually it is fuzzy. It concerns what things men choose to take an interest in and whether their interest is rightful or not. See Wolff, *Poverty of Liberalism,* pp. 24-25.

    I would add that the value judgments at issue are almost certainly not ultimate or fundamental. They are discussible in terms of how the character of the society is likely to be affected by where the line is drawn between self- and other-regarding actions.
25. Y.K.Ng, "The Possibility of a Paretian Liberal: Impossibility Theorems and Cardinal Utility", *Journal of Political Economy* (Nov./Dec., 1971), pp. 1397-1402.
26. In chapter 6 of *Collective Choice,* Sen introduces the term "nosiness" to characterize a concern with supposed externalities that a liberal would consider illegitimate.
27. Claude Hillinger and Victoria Lapham, "The Impossibility of a Paretian Liberal: Comment by Two Who Are Unreconstructed", *Journal of Political Economy* (Nov./Dec., 1971), pp. 1403-1405.
28. Amartya K. Sen, "The Impossibility of a Paretian Liberal: Reply", *Journal of Political Economy* (Nov./Dec., 1971), pp. 1406-1407. Peacock and Rowley agree with Sen and extend his argument. Alan T. Peacock and Charles K. Rowley, "Pareto Optimality and the Political Economy of Liberalism", *Journal of Political Economy* (May/June, 1982), pp. 476-490.
29. John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).
30. K. Baier in Hook, *Human Values,* pp. 127-128, 133.
31. Alexander in Hook, *Human Values,* p. 108. Surprisingly, perhaps, for authors who get so much mileage out of the Pareto criterion, Daly and Giertz admit that some economists might find it "ethically objectionable" in certain contexts, since it "is, after all, an ethical standard". Daly and Giertz, "Welfare Economics", pp. 131-138.
32. Alexander in Hook, *Human Values,* p. 109.
33. Baier in Hook, *Human Values,* p. 130.
34. I wonder how deeply the adherents of the Pareto criterion really believe this judgment. A willingness to appraise other people's tastes is hardly absent from their informal conversation, at least.
35. Burton A. Weisbrod, "Comparing Utility Functions in Efficiency Terms or, What Kind of Utility Functions Do We Want?" *American Economic Review* (December, 1977), pp. 991-995.
36. Sen, *Collective Choice,* pp. 62-64.
37. Alexander in Hook, *Human Values,* pp. 105-107, 114-115.
38. Perhaps the most eloquent and prolific writer in this tradition was Wilhelm Röpke. As Peacock and Rowley, "Pareto Optimality", p. 489 remind us, "The liberal economist has always recognized that when he makes policy recommendations he is responsible for them in the round and that such recommendations are derived from a social and political philosophy embracing far more elements than arrangements which are designed solely to promote economic efficiency".
39. In a lengthy passage whose unfortunate wording requires a charitable interpretation, P. K. Pattanaik makes a similar point, maintaining "that individual preferences may be at different levels of objectivity and that it seems more reasonable to base social preferences on a higher-order individual evaluation — ethical preferences — rather than on a lower-order evaluation — subjective preferences". P. K. Pattanaik, "Risk, Impersonality, and the Social Welfare Function", *Journal of Political Economy* (Nov./Dec., 1968), pp. 1161, 1163.

    Compare also the doctrine of John Rawls, reviewed in footnote 57 below, on the frame of mind appropriate for individuals making judgments on what social institutions are desirable.
40. Although the cause-and-effect propositions underlying these possible examples might be wrong, the examples still serve to stimulate reflection on how policies can affect attitudes.
41. Jerome Rothenberg, *The Measurement of Social Welfare* (Englewood Cliffs, N.J.: Prentice-Hall, 1961), pp. 72, 98.
42. Alexander in Hook, *Human Values,* p. 110.
43. *Representative Government,* chapter II, pp. 193, 195, in John Stuart Mill, *Utilitarianism, Liberty, and Representative Government* (London: Dent, 1910, rprt. 1929.)
44. "Bentham", in *Selected Writings of John Stuart Mill,* ed. M. Cowling (New York: New American Library, 1968), pp. 52-53.
45. Alexander in Hook, *Human Values,* p. 111.
46. Moral philosophy, for example, is relevant. As Mortimer Adler says, "Unless we know what a good life is and how it can be attained, we cannot know what a good society is and the shape that its institutions should take in order progressively to realize the ideal of a healthy community and one that is just in its economic and political arrangements". Mortimer J. Adler, *The Time of Our Lives* (New York: Holt, Rinehart, and Winston, 1970), p. 322.
47. For development of a related point, see F. A. Hayek, "The *Non Sequitur* of the 'Dependence Effect'" *Southern Economic Journal* (April, 1961), reprinted in his *Studies in Philosophy, Politics and Economics* (Chicago: University of Chicago Press, 1967), pp. 313-317.
48. On this last point, compare Duncan MacRae, Jr., "Scientific Communication, Ethical Argument, and Public Policy", *American Political Science Review* (March, 1972), pp. 38-50.
49. Abba P. Lerner, *The Economics of Control* (New York: Macmillan, 1944) is a good example of what I have in mind. It is unimportant that Lerner does not actually employ the term "Pareto optimality". Also see J. E. Meade, *Trade and Welfare* (London: Oxford University Press, 1955).
50. Even on the theoretical as well as the practical level, Allais recommends the dynamic conception of a decentralized search for realizable surpluses (or net gains) over the static and centralized conception of an

optimal pattern of production, exchange, and so forth. Changes in wants, resources, and technology are constantly giving rise to new opportunities to realize surpluses. Maurice Allais, "Les théories de l'équilibre économique général et de l'efficacité maximale", *Revue d'Economie Politique* (1971), pp. 331–409.

51. James M. Buchanan, "The Relevance of Pareto Optimality". *Journal of Conflict Resolution* (December 1962), p. 341.
52. Rutledge Vining, "On Two Foundation Concepts of the Theory of Political Economy", *Journal of Political Economy* (Mar./Apr., 1969), pp. 199–218.
53. Nutter finds "much to be said for encouraging economists to abandon altogether the field of welfare economics as it has developed and to substitute more sophisticated study of alternative economic systems. Let economists raise the question of what system works best, all relevant considerations being taken into account, and not what specific policies are desirable regardless of system". Nutter, "Economic Welfare", p. 169.
54. Clarence E. Philbrook, "'Realism' in Policy Espousal", *American Economic Review* (December, 1953), pp. 846–859. The title of the present article derives, obviously, from Philbrook's title.
55. The aggregate and *per capita* criteria diverge if the policy chosen affects the size of population. I simply bypass the metaphysics involved in comparing these criteria. (Even the choice posed in the text is not operational, as I try to show.)
56. For an attempt at such an argument, see Leland B. Yeager, "Can a Liberal Be an Equalitarian?", in F. A. Harper and others, *Toward Liberty* (Menlo Park, Calif.: Institute for Humane Studies, 1971), II, 422–440.
57. See the already cited works by Paul Edwards, Mortimer Adler, and Sidney Alexander in Hook, *Human Values,* among others. My thinking has also been influenced by the "Objectivist" writings of Ayn Rand.

    Though interpretations of Rawls, *Theory of Justice,* differ widely, it seems to me that Rawls espouses values in a relatively forthright way, regarding them as quasi-objectively valid. Rawls conceives of an "original position" in which parties discuss and agree on the basic principles of social organization. Although aware of the general facts of physical and human nature, the parties are ignorant of any specific characteristics of their society, of their own statuses in it, of their own distinctive personal characteristics, and even of what generations in time they belong to. This concept, as I interpret it, is a heuristic device for putting social philosophers into a proper frame of mind. In it, they are able to ignore their personal circumstances and tastes and so reach agreement on what principles of social organization would be *fair* for all members of a society. Investigation of the more specific characteristics of a good society must invoke not only basic principles, however, but also the contingent empirical findings of psychology, economics, and other disciplines, findings always subject to revision and extension by further research and discussion.

    Although Rawls labels his doctrine "contractarianism", I see no operational difference between appealing to a *conceptual* social contract and doing what I interpret him as actually doing — asking himself what a social philosopher can in good conscience recommend on his own responsibility when in a proper frame of mind. He is less anxious than Buchanan and Tullock to shed personal responsibility for the values unavoidably involved in policy choices. Respecting Rawls for this reason does not imply, of course, agreement with the particular values that he espouses.
58. Besides Philbrook, "Realism", see W. H. Hutt, *Politically Impossible . . . ?* (London: Institute of Economic Affairs, 1971).

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WILLIAM WOLLASTON ON PROPERTY RIGHTS*

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I

In the pages of an obscure book first published in 1722, there lurks one of the finest essays on property rights ever penned. The book is *The Religion of Nature Delineated,* by William Wollaston.[1]

Educated at Cambridge, William Wollaston (1660–1724) took the holy orders and, after attaining financial security through an inheritance, devoted his life to scholarly pursuits. Although he wrote a fair amount, he published very little — *The Religion of Nature Delineated* being his only major work. This sold well, going through eight editions by 1750 and selling over 10,000 copies. But Wollaston's fame was fleeting: the last edition appeared in 1759 and the work was not reprinted until 1974.[2] During this gap of over 200 years, Wollaston's theory, as one commentator notes, "was soon relegated to the curiosity section of the philosophical museum".[3]

Most philosophers who did not ignore Wollaston ridiculed him instead. David Hume makes him the butt of a joke,[4] and Wollaston fares little better at the hands of Jeremy Bentham.[5] The English historian Leslie Stephen, after misstating Wollaston's theory (all the better to condemn him with), concludes that Wollaston "inevitably fails to extract any intelligible results from (his) fanciful form of an illusory theory".[6]

A few scholars and philosophers are kinder to Wollaston. The great rationalist scholar J. M. Robertson regards him as a "vivid, interesting, thoughtful, and very learned writer".[7] Wollaston, according to Ernest Mossner, "was a man of vast erudition".[8] More recently, Stanley Tweyman claims that "the available literature has not offered effective criticisms against his views, nor has it been shown that Wollaston's book is without lasting significance".[9] And philosopher Joel Feinberg has rescued Wollaston from some distortions perpetrated by his critics.[10]

Friend and foe alike, however, have focused on Wollaston's ethical theory while neglecting his theory of property.[11] But it is Wollaston's property theory that is of great interest to libertarian scholars, because it is the most impressive defense, prior to this century, of a libertarian approach to property. This paper will outline Wollaston's theory of property rights, primarily through quoting relevant passages, and we shall see that Wollaston is more than an historical curiosity; he is in many ways a remarkable anticipation of modern libertarian thought.

Since Wollaston's property theory is an extension of his ethical theory, it is necessary to survey his theory of ethics and the general tradition to which it belongs. This paper is expository, not critical; its purpose is to introduce the reader to an unjustly neglected philosopher.

II

Wollaston claims some originality for his ideas,[12] and rightfully so, but he was probably influenced by earlier writers. In epistemology and political theory we see important similarities to John Locke. In theology Wollaston is sometimes classified as a Deist, and although he has much in common with this school of thought, it is more accurate to place him in the tradition of Rational Theology.[13] In ethics Wollaston is commonly regarded as a member of the "Intellectual School" of British moral-

*This paper was originally presented to the Los Angeles Libertarian Seminar (Dec. 1977).

ists — and some of his ideas do resemble those of Samuel Clarke[14] and Ralph Cudworth.[15] But this classification, as Thompson points out, can be misleading, for Wollaston, unlike other members of this group, is not an intuitionist in ethics. Wollaston's rationalism is grounded in experience; he represents "a reconciliation of the empirical and rational elements both in knowledge and in morals". Wollaston, writes Thompson, "was seeking to make it clear that morality is based on the real nature and relation of things, and that happiness has the same foundation. The free conformity of life to the nature of things is goodness, and happiness is the natural and necessary consequence of such a life".[16]

If it is difficult to categorize Wollaston specifically, it is clear that he is a representative of the early Enlightenment. Reason, for Wollaston, is the final court of appeal. He attempts to derive an ethical theory based on reason and experience without recourse to supernatural revelation, and his god resembles the non-interventionist god of Deism. Religion, writes Wollaston, is "nothing else but an obligation to do . . . what ought not to be omitted, and to forbear what ought not to be done", (pp. 25–26). Hence the "Religion of Nature" looks to the facts of reality for the distinction between good and evil.

This places Wollaston squarely within the natural-law camp of moralists. He regards moral principles as a matter of knowledge; what a person "ought" to do can be determined with reference to what "is". Because moral judgments are either true or false, moral disagreements can be settled by an appeal to reason.

Morality, writes Wollaston, presupposes "a being capable of distinguishing, choosing, and acting for himself: or more briefly . . . an intelligent and free agent" (p. 7). Moral (as opposed to immoral) action consists of the conformity of action to truth. Just as propositions are said to be true when they "express things as they are", so actions can also convey meaning and constitute, on a practical level, the affirmation or denial of a truth. "Moral" and "immoral" are to the realm of human action what "true" and "false" are to the realm of human propositions. "Moral good and evil are coincident with [epistemological] right and wrong" (p. 20). "(T)here is as certainly moral good and evil as there is true and false . . . the difference at the bottom being indeed the same" (p. 22).

The key to Wollaston's ethical theory, and its most controversial aspect, is his contention that "A true proposition may be denied, or things may be denied to be what they are, by deeds, as well as by express words or another proposition" (p. 8). Many actions convey a conceptual message, "and what has a meaning may be either true or false" (p. 9). If the proposition implied by one's action contradicts what is true, then one's action is *morally* wrong, just as a false proposition is *epistemologically* wrong. The basic criterion of morality is the standard of truth — "conformity to nature" — applied to the realm of human action. To act in a manner that implies a falsehood, is to act in a way that is "wrong in nature" (p. 13).

Although "to act against truth in any case is wrong", Wollaston recognizes that "the degrees of guilt vary . . . with the importance of things". In trivial cases, the degree of wrongdoing may be "almost nothing" (p. 31). Moreover, moral judgments are concerned only with living beings or with the relation between inanimate objects and living beings. A drinking glass, for instance, has value only in relation to a being capable of using it for a purpose; and it is this relationship that must be considered in determining how the glass should be treated (e.g. is it the property of another person?). "So . . . when we compute what such things are, we must take them being what they are in reference to things that have life" (p. 31).

To act morally in regard to other persons requires that we treat them according to truth, i.e. in a manner consistent with the kinds of beings they are. And what are the essential elements of man's nature, according to Wollaston? Man is at once a rational and emotional being, and both of these aspects must be taken into account in framing the general principles of human interaction. It is by the use of his reason that man acquires truth, and it is through the pursuit of truth that man attains happiness. Truth and happiness are inseparable: "We cannot pay the respects due to one, unless we regard the other" (p. 31). If, therefore, it is man's duty to seek truth and follow its dictates, it is also man's duty to seek happiness: "To make itself happy is a duty, which every being, in proportion to its capacity, owes to itself . . . " (p. 38). Thus anything that undercuts the basic requirements of happiness must sabotage the pursuit of truth and must, *ipso facto,* be wrong. This brings us to what, in Wollaston's opinion, is required for happiness.

Happiness, for Wollaston, is the preponderance of pleasure (or "true" pleasure[17]) over pain. "Pleasure is a consciousness of something agreeable, pain of the contrary" (p. 32). Pleasure is experienced, axiomatically, as a value; and although humans share a common nature, they differ in particulars to such a degree that the "causes of pleasure and pain are relative things" (p. 33). Pleasure is experienced subjectively, and what causes pleasure in one person may not cause pleasure in another. The individual is in the best position to judge his own pleasure and pain, so the individual, left to his own reason, is the best judge of what he requires for happiness.

> Men's respective happinesses or pleasures ought to be valued as they are to the *persons themselves,* whose they are; or according to the thoughts and sense which they have of them: not according to the estimate put upon them by other people, who have no authority to judge of them, nor *can* know what they are; may compute by different rules; have less sense; be in different circumstances; or such as guilt has rendered partial to themselves. . . . Every man's happiness is *his* happiness, what it is to him . . . (pp. 33 – 34).

Because individuals differ, it is virtually impossible for one man to tell another man, in specific terms, what will cause him pleasure and thus promote his happiness.

> In general, all persons ought to be very careful and tender, where any other is concerned. Otherwise they may do they know not what. For no man can tell by himself, or any other way, how another may be affected (p. 34).

Here, in Wollaston's theory of psychology, we see a glimmer of his libertarian sentiments. Man, in order to attain happiness, requires freedom to act on his own judgment. And since "the way to happiness and the practice of truth" are corollaries, both the rational and the emotional facets of human nature require freedom.[18] To compel a man to act against his judgment is implicitly to deny the kind of being man is — a free agent who must employ reason to attain happiness. To coerce a man is to treat him "as a post; as if he had no sense, and felt not injuries which he doth feel; as if to him pain and sorrow were not pain; happiness not happiness" (p. 15).

Because man is a rational being who desires happiness, to treat him as if he were not is to act contrary to truth. This is morally evil, because it violates the fundamental principle of morality — that one "should treat everything as being what it is" (p. 26). Morality therefore requires that we exercise extreme caution when interfering in the lives of other persons: "How judicious and wary ought princes, lawgivers, judges, juries, and even masters to be!" (p. 34).

With this brief overview of Wollaston's moral theory, we shall now turn to his theory of property. It is here that Wollaston's radical individualism, implicit in his ethics and psychology, is formulated in explicit detail.

III

To facilitate a discussion of Wollaston's theory of property rights, we shall consider his presentation in the following order:

1. The meaning of the right to property.
2. The moral justification of property rights.
3. Property rights as the foundation of social equality.
4. The acquisition of property titles.
5. The transfer of property titles.
6. Self-defense and restitution.

1. Wollaston is clear on the meaning of property rights: "To have the property of anything and to have the sole right of using and disposing of it are the same thing: they are equipollent expressions" (p. 136). He is also clear on the relation of property to justice:

> To usurp or invade the property of another man is injustice: or, more fully, to take, detain, use, destroy, hurt, or meddle with anything that is his without his allowance, either by force or fraud or any other way, or even to attempt any of these, or assist them who do, are acts of injustice. The contrary, to render and permit quietly to everyone what is his, is justice (p. 137).

2. What is the justification for the right to property? Wollaston begins his defense with the assertion that every person has "a principle of individuation, which distinguishes and separates him from all other men in such a manner as may render him and them capable of distinct properties in things (or distinct subjects of property)" (p. 127). If, therefore, there is something that B can call his own, "it will be for that reason not C's"; and by the same logic, "what is C's will for that reason not be B's" (p. 127).

Wollaston then develops a theory of natural property as the foundation for the moral claim of ownership.[19] It is in the nature of some things, he argues, to have "a natural and immediate relation" to a person, such that "he only of all mankind can call them his".

> The life, limbs, &c. of B are as much his as B is himself. It is impossible for C or any other to see with the eyes of B; therefore they are eyes only to B, and when they cease to be his eyes, they cease to be eyes at all. He then has the sole *property* in them, it being impossible in nature that the eyes of B should ever be the eyes of C (p. 127).

In the modern era of organ transplants, Wollaston's last statement is false. But his basic point is that when we refer to eyes, we must implicitly refer to the eyes of some *person*, because eyes can serve the function of providing sight (that characteristic in virtue of which we call them eyes) only in relation to an individual. To say that the eyes of a person are his eyes, that they are his natural property, is to say that he bears a natural relation to those eyes unlike that of any other person.

In other words, eyes achieve their identity, so to speak, in virtue of their relation to a person. It is only because they have this connection that we call them eyes in the first place. The eyes of B are his natural property; they are part of his person. Applying the principle of individuation, it follows that the eyes of B cannot likewise be the eyes of C (at least not at the same time and in the same respect). This idea is then extended to human labor and the fruits thereof:

> Further, the labor of B cannot be the labor of C, because it is the application of the organs and powers of B, not of C, to the effecting of something; and therefore the labor is as much B's as the limbs and faculties made use of are his.
>
> . . .Again, the effect or produce of the labor of B is not the effect of the labor of C; and therefore this effect or produce is B's, not C's — as much B's as the labor was B's and not C's. Because what the labor of B causes or produces, B produces by his labor, or it is the product of B by his labor. That is, it is B's product, not C's, or any other's (pp. 127 – 128).

Here Wollaston makes a key remark that ties natural property to moral theory: "And if C should pretend to any property in that which B only can truly call his, he would act contrary to *truth*" (p. 128).

This is Wollaston's bridge between the "is" of natural property and the "ought" of property rights. From the empirical observation that a person has the natural relation of property to some things, Wollaston infers that such property enjoys a moral sanction against the encroachment of other persons. If the proposition, "This property is a product of B's labor", is *true*, then morality requires that we act in a way consistent with truth. To deny B the right of use and disposal over that which he had produced, is a practical denial of the truth that he has produced it. It is B's property because it has a natural relation to his labor, which in turn has a natural relation to B's person.

If C violates the property rights of B, this means that C uses the property of another person as if it were his own: "He who uses or disposes of anything, does by that declare it to be his" (p. 137). But it is not C's property — his natural relation to that property is *not* that of producer and product — and hence C, in acting as if it were his property, acts contrary to truth. Thus does Wollaston ground property rights in ontological truth.

3. Because property rights, for Wollaston, are grounded in natural law, they exist independently of, and prior to, human law and governmental decree. Rights exist in the theoretical "state of nature" so frequently discussed by political theorists of the seventeenth and eighteenth centuries. One's right to the fruit of one's labor is the foundation of social equality and harmony in the state of nature. Rights are a guarantee, a moral safeguard, against "subordination or distinction" in the state of nature.

Wollaston's remarks on this issue are obviously directed at Hobbes. In the state of nature, according to Hobbes, "every man has a right to everything; even to one another's body".[20] No so, argues Wollaston. Rights sketch the boundary lines of permissible actions in a social context: "In a state of nature men are equal in respect of dominion" (p. 129). One has rightful dominion over one's own property but not over another's. "B has no more dominion over C than C reciprocally has over B: that is, they are in this regard equal" (p. 130).

Personal characteristics, such as strength and intelligence, cannot alter human equality in respect to rights.

> Great natural or acquired endowments may be privileges to them who have them, but this does not deprive those who have less of *their title* to what they have; or, which is the same, give anyone who has greater abilities a *right* to take it or the use of it from them. If B has better eyes than C, it is well for him, but it does not follow from this that C should not therefore see for himself and use his eyes as freely as B may his. C's eyes are accommodated by nature to his use, and so are B's to his; and each has the sole property in his own, so their respective properties are *equal*. . . . if B should be stronger than C, he would not yet for that reason have any right to be his lord. For C's less degree of strength is an much his as B's greater is his; therefore C has as much *right* to his, and (which is the natural consequence) to use his, as B has to use his . . . (p. 130).

Hobbes equates the power to do something with the right to do it, but this, according to Wollaston, leads to "absurdity" and "contradiction".

> If power, *qua* power, gives a right to dominion, it gives a right to everything . . . and then nothing can be done that is wrong. . . . For then to oppose the man who has this power as far as one can, or (which is the same) as far as one has the power to do it, would not be wrong; and yet so it must be if he has a right to dominion, or to be not opposed (pp. 130 – 131).

This *reductio ad absurdum* addressed to Hobbes is relevant to contemporary anarchist theory, because it applies with equal force to the disciples of Max Stirner. We may expand on Wollaston's argument as follows:

If the power (i.e. ability) to do something, gives one the moral right to do it, then one has a right to *every* action within one's power, because one can act only within the scope of one's power. But this destroys the concept of "a right". To say one has a right to something is to invest that action with a moral sanction in regard to other persons. It is to say that another person is morally wrong if he interferes with that action. But another person can interfere only if he has the power to do so: so his interference, in virtue of the initial premise, must also be a right. The same action, therefore, as judged by the same moral standard, is simultaneously right and wrong — which lands us in self-contradiction.

Suppose B has the power to take an action. This means, according to Hobbes, that he has a right to that action. It must then follow — if the concept of "a right" is to have any meaning whatever — that it is *wrong* for C to interfere with B's action. But if C has the power to interfere, he must also have the right to interfere, which means it is "wrong" for B to "interfere" with C's interference. But it must likewise be wrong for C to "interfere" with B's interference of C's original interference — and so on, *ad infinitum,* as we plummet into unintelligibility.

In sum, Wollaston's argument is that the standard of a right must distinguish between right and wrong actions in regard to other persons. But the standard of Hobbes — power — obliterates the distinction between right and wrong by eliminating the possibility of rights violation. Thus Hobbes's standard of rights is in fact no standard at all.

4. We have examined Wollaston's general argument for the right to property. But how does one acquire a specific *title* to a particular item of property? Wollaston delineates four basic methods, two of which we have already examined.

(a) Some property is "natural". One has moral jurisdiction over one's faculties and labor in virtue of the natural relation they bear to one's person.

(b) Anything that is the result of one's labor becomes one's property, because it represents the extension and application of one's faculties.

(c) Previously unowned property rightfully belongs to the "first possessor" (p. 134). This right of "prime occupancy", in the case of land, requires the "cultivation . . . and labor of the first possessor".[21]

> Now to deprive a man of the fruit of his own cares and sweat, and to enter upon it as if it was the effect of the intruder's pains and travel, is a most manifest violation of *truth.* It is asserting in fact that to be his which cannot be his (p. 134).

(d) The title to previously owned property "may be transferred by compact or donation" (p. 135).

> If B has the sole right in lands or goods, nobody has any right to the disposal of them besides B; and he has that right. For disposing of them is but using them as *his.* Therefore the act of B in exchanging them for something else, or bestowing them upon C, interferes not with truth, and so B does nothing that is wrong. Nor does C do anything against truth, or that is wrong, in taking them, because he treats them as being what they are — as things which come to him by the act of that person in whom is lodged the sole power of disposing of them. Thus C gets the title innocently (p. 135).

5. After the title to property is acquired, the title remains with the owner until he relinquishes it voluntarily by contract or donation (or until the owner dies). *Consent* is a necessary condition for the transfer of title. To use or to dispose of another person's property without his consent is *the* fundamental act of injustice.

Although physical force may transfer property from the owner to the invader (as in robbery), force cannot cause the transfer of title, or rightful claim, to that property. If the owner does "not quit his possession willingly", the title to that property "must remain solely in him, unless he consents to quit it" (p. 135).

6. Every person, according to Wollaston, "has a right to defend himself and his against violence" (p. 131). Self-preservation requires that one be able to use necessary means, including force, to protect oneself from "cruel invaders . . . injurious treatment, and violence".

> If a name has no right to defend himself and what is his, he can have no right to anything . . . since that cannot be his right which he may not *maintain* to be his right (p. 132).

If the invader suffers injury as a result of the victim defending himself, that injury is the responsibility of the invader, for he is "the true cause of all that follows"; and whatever falls upon him from the opposition made by the defending party is but the effect of his own act. Or it is that violence of which he is the author *reflected* back upon himself. It is as when a man spits at heaven, and the spittle falls back upon his own face" (p. 132).

The victim of aggression should respond prudently, using means suited to his goal of repelling the invader. "He ought indeed not to act rashly or do more than the end proposed requires." If possible he should persuade the invader to stop, or the victim should "withdraw out of the way of harm". But if these remedies are not sufficient or practical, the victim should "confront force with force" (p. 133).

Just as one has a right to defend one's property, so one has a right to seek restitution of property taken against one's will.

> By the same means that a man may defend what is his, he may certainly endeavor to recover what has been by any kind of violence or villainy taken from him. For it has been shown already that the *power* to take anything from another gives no *right* to it (p. 133).

A coerced transfer of property, as we have seen, does not also transfer the title to that property. The title remains with the rightful owner. Therefore, as long as the invader continues to deny control to the rightful owner, the invader stands as a *perpetual aggressor;* and the victim, in using force to regain his property, is the true defender. This argument — a remarkable anticipation of later libertarian theory — is presented in these words:

> . . . the power to take anything from another gives no right to it. The right then to that which has been taken from its owner against his will, remains still where it was. He may still truly call it his. And if it be his, he may use it as his; which if he who took it away, or any other, shall hinder him from doing, ***that man is even here the aggressor, and the owner does but defend himself and what is his*** (p. 133, emphasis added).

If the stolen property has been destroyed, or if it cannot be recovered, the owner may demand compensation from the thief for the equivalent in value, plus additional expenses for loss of time, "dangers undergone", and so forth — because "all these are the effects of the invasion, and therefore to be added to the invader's account" (pp. 133–134).

Wollaston's sophistication in dealing with restitution is shown in his awareness that economic value judgments are subjective.[22] Who, then, is to determine equivalence of value? The compensation, argues Wollaston, should be equivalent in value to the *victim;* he should be no worse off than he was before the invasive act. If the invader feels that he is required to surrender more than he took, he has only himself to blame for the loss:

> If the thing taken by way of reprisal should be to the man from whom it is taken of greater value than what he wrongfully took from the recoverer, he must charge himself with that loss. If injustice be done him it is done by himself . . . (p. 133).

IV

After we leave William Wollaston on property rights, his significance for libertarian theory ends. Indeed, some of his later conclusions — e.g. that adultery by a woman violates her husband's property rights — are incompatible with libertarian principles. Moreover, Wollaston's theory of government is simply an abbreviated version of Locke's social contract theory — complete with the escape hatch of "tacit" or "implicit" consent.[23]

Nevertheless, Wollaston's ethics and the property theory derived from it are impressive achievements deserving of close study by libertarian scholars. It would be interesting, for instance, to investigate the influence of Wollaston's property theory on his contemporaries (which, judging by the initial popularity of *The Religion of Nature Delineated,* may be considerable). Let us hope that future research will shed more light on this maligned and forgotten predecessor to libertarian thought.

NOTES

1. I have used the 1726 edition of *The Religion of Nature Delineated,* printed in London. For the reader's convenience, I have modernized spelling and punctuation, and I have omitted many of Wollaston's italics, retaining only those that are necessary for emphasis. Page citations follow each quotation.
2. *The Religion of Nature Delineated,* with an introduction by Stanley Tweyman (Del Mar, N.Y., 1974). This facsimile reprint also contains a criticism of Wollaston by John Clark (1725) and an anonymous defense of Wollaston (1738).
3. Clifford G. Thompson, *The Ethics of William Wollaston* (Boston, 1922), p. 5.
4. *A Treatise of Human Nature,* edited by L. A. Selby-Bigge (Oxford, 1973), p. 461.
5. *The Principles of Morals and Legislation* (New York, 1948), p. 18, n. 8. Bentham does not mention Wollaston by name, but the reference is clear.
6. *History of English Thought in the Eighteenth Century,* 2nd ed. (London, 1881), II, 10. This work is considered a classic, but it is unjustly biased against many freethinkers and libertarians, such as Anthony Collins and Thomas Paine. A much-needed corrective to Stephen may be found among the voluminous works of J. M. Robertson, a scholar of less fame than Stephen but by far his superior. See Robertson's *Dynamics of Religion* (2nd ed., London, 1926) for a reply to Stephen's attack on the English Deists. A devastating analysis of Stephen's hatchet-job on Paine is contained in Robertson's *Thomas Paine: An Investigation of Sir Leslie Stephen's Criticisms of Paine's Influence on Religious and Political Reform* (London, 1888). Stephen's critique of libertarian historian Henry Thomas Buckle is answered by Robertson in *Buckle and His Critics* (London, 1895), pp. 42–74. For Stephen's reply to the latter, see *The English Utilitarians* (New York and London, 1902), III, 344–345, n.l.
7. *A Short History of Morals* (London, 1920), p. 277.
8. *The Encyclopedia of Philosophy,* edited by Paul Edwards (New York, 1972), Vol. 8, p. 345.
9. Tweyman, *op. cit.,* p. vi.
10. "Wollaston and His Critics", *Journal of the History of Ideas,* Vol. XXXVIII, no. 2 (April-June, 1977), pp. 345-352.
11. A partial exception is Paschal Larkin, *Property in the Eighteenth Century* (London and New York, 1930), which contains a brief discussion of Wollaston's property theory. Wollaston, according to Larkin, "tried to give almost mathematical precision to the absolutist aspect of Locke's theory of property" (p. 90).
12. Writes Wollaston: "That which is advanced in the following papers concerning the nature of moral good and evil, and is the prevailing thought that runs through them all, I never met with anywhere. And even as to those matters in which I have been prevented by others and which perhaps may be common, you have them, not as I took them from anybody, but as they used to appear to me in my walks and solitudes. So that they are indeed my thoughts, such as have been long mine . . . without any regard to what others have or have not said . . . " (p. 6).
13. Thompson, *op. cit.,* pp. 13–17. *Cf.* Ernest C. Mossner, *Bishop Butler and the Age of Reason* (New York, 1936), p. 75.
14. See the section of Clarke's *Discourse Upon Natural Religion* reprinted in Selby-Bigge, *British Moralists* (Oxford, 1897) II, 3–56. Note especially the similarity to Wollaston on pp. 13–14.
15. See Cudworth's *Treatise Concerning Eternal and Immutable Morality,* bk. 1, ch. 2, contained in *The True Intellectual System of the Universe* (1st American ed., New York, 1838) II, 373–378. Cudworth was reacting to the storm in religion and ethics created by Thomas Hobbes, and Wollaston, to some extent, may be viewed as a later manifestation of this reaction. For background on Cudworth and the Cambridge Platonists, see Basil Willey, *The Seventeenth Century Background* (London, 1946), pp. 157–163.
16. Thompson, *op. cit.* pp. 15–17.
17. Wollaston regards "true pleasure" as pleasure that is relatively free of bad consequences, such as future pain. All pleasure is agreeable at the time it is experienced, but only true pleasure — pleasure derived from the proper use of one's faculties — is "good". Pleasure that is not good is such that "he who enjoys it must pay

more for it than it is worth . . . " (p. 37). Happiness, for Wollaston, is the sum of pleasure that is both "agreeable" and "good" — and such is the nature of "true pleasure".

18. Wollaston bases his argument for freedom of thought on the impossibility of conveying truth by coercive means. Truth must be arrived at by reasoning, and "all reasoning is founded originally in the knowledge of one's own private ideas". Furthermore, one's ideas can be determined only by one's own mental faculties, so "to demand another man's assent to anything without conveying into his mind such reasons as may produce a sense of the truth of it, is to erect a tyranny over his understanding, and to demand a tribute which it is *not possible* for him to pay" (p. 52).

    This line of argument was common among deists and freethinkers of the eighteenth century. For an earlier presentation of a similar argument, see Anthony Collins, *A Discourse of Freethinking* (London, 1713), pp. 5–32. Collins refers to "the monstrous absurdities which do in fact and must necessarily arise from the methods employed to restrain men in the use of their faculties". (p. 25).
19. Compare John Locke, *Two Treatises of Government,* edited by Peter Laslett (New York, 1965), pp. 328–329 (bk. II, para. 27).
20. Thomas Hobbes, *Leviathan,* edited by Michael Oakeshott (New York, 1970), p. 103.
21. Wollaston, in recognizing the possibility of previously unowned land, avoids the pitfall of Locke, who regards all land as originally given by God to mankind in common. See Locke, *op. cit.,* pp. 327–328.
22. Although Wollaston does not break away totally from the erroneous notion that each party of an exchange receives an equivalent in value, he does note the subjective nature of this equivalence, and he then asserts the possibility of all parties gaining in an exchange:

    > For the contractors are supposed to receive each from other the equivalent of that which they part with, or at least what is equivalent *to them respectively,* or perhaps by each party *preferable.* Thus neither of them is hurt, perhaps both advantaged. And so each of them treats the thing which he receives upon the innocent exchange as being what it is: better for him, and promoting his convenience and happiness. Indeed he who receives the value of anything, and what he likes as well, in effect has it still. His property is not diminished: the situation and matter of it is only altered (p. 135).
23. To trace the history of the tacit consent doctrine is to trace a tortuous route whereby political theorists have attempted to avoid the anarchistic implications of the natural rights/social contract position. Josiah Tucker, in *A Treatise Concerning Civil Government* (1781), opined that Locke neglected to carry the consent doctrine to its logical end — i.e. anarchism. David Hume, who grounded governmental authority in utility rather than in consent, was among the first to point out the weakness of the tacit consent idea in his essay, "Of the Original Contract" (1748). Hume's lead was followed by Adam Smith in *Lectures on Justice, Police, Revenue, and Arms* (c. 1763). Most people under the dominion of a government, argues Smith, cannot "be said to give any consent to a contract. . . . To say that by staying in a country a man agrees to a contract of obedience to government is just the same with carrying a man into a ship and after he is at a distance from land to tell him that by being in the ship he has contracted to obey the master". (*Adam Smith's Moral and Political Philosophy,* edited by Herbert W. Schneider, New York, 1970, p. 289.)

    The embarrassing implications of social contract theory for an existing government, and the consequent need for a theory of tacit consent, were recognized clearly by James Madison. In a letter to Jefferson (Feb. 4, 1790), Madison argues that the social contract doctrine threatens to "subvert . . . the very foundation of Civil Society". To contend that consent is the moral justification for government is to lay the groundwork for anarchy; and, writes Madison, "I can find no relief from such embarrassments but in the received doctrine that a *tacit* assent may be given to established Governments and laws, and that this assent is to be inferred from the omission of an express revocation". (*The Mind of the Founder,* edited by Marvin Meyers, Indianapolis, 1973, pp. 230–233).

    It was the great achievement of the nineteenth-century anarchist Lysander Spooner to demolish the tacit consent doctrine, particularly as it applies to the U.S. Constitution. Spooner's natural rights theory, combined with his refusal to recognize the surrender of rights through tacit consent, brings out the radical anarchism latent in the Lockeian tradition. See Spooner's *No Treason: The Constitution of No Authority* (Larkspur, Colorado, 1966).

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KROPOTKIN'S ETHICS AND THE PUBLIC GOOD

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Prince Peter Kropotkin, the communist-anarchist theorist, sought to place his political and ethical doctrine on a scientific basis. Specifically, Kropotkin sought to develop an ethic that was in accord with the theory of evolution and with the findings of biological science. Most important for Kropotkin was freeing ethics from the sanction of religion.[1] But he also adhered to the methods of natural science in wanting to base ethical law on empirical data gained from observation of the life and activities of humans, rather than basing it, as he contended Kant had, solely on abstract reasoning.[2]

In Kropotkin's pamphlet on *Anarchist Morality,* he applauded the empiricist philosophers of the 18th-century Enlightenment for rejecting religious interpretations of human action and adopting an account that made the quest of pleasure and avoidance of pain the source of human motivation.[3] Kropotkin joined with Bentham, John Stuart Mill, and Chernischevsky in affirming that the desire for pleasure was the true motive of all human action.[4] Kropotkin not only maintained that in their conscious, deliberative acts, human beings always seek out pleasure; he saw this motive operating throughout the organic world. Recognition of this truth, Kropotkin argued, placed ethics on a materialistic, naturalistic basis.[5] Furthermore, Kropotkin thought reliance on the findings of science and on evolutionary theory gave to ethics a philosophical certitude, in contrast to the uncertain intuitionalism on which transcendental philosophers like Kant relied.[6]

Yet it should be noted that in Kropotkin's final work, *Ethics,* he wrote that Kant was correct to reject utility as a basis for ethics. Like Kant, Kropotkin pointed to the elevating character of morality.[7] In fact, Kropotkin came to argue that the Russian revolution had gone astray primarily because "the lofty social ideal" of the early Russian revolutionaries had been superseded by "teachings of economic materialism emanating from Germany".[8]

Kropotkin located the source of morality in a natural attribute of all animals: the instinct of sociability and mutual aid within a species. He described this instinct as having arisen via the transmission to subsequent generations of a habit developed in animals and humans to cope with the changing environment in which each species lived.[9] Biologists today would almost unanimously reject Kropotkin's Lamarckian notion of the heritability of acquired characteristics. But the instinct of sociability and mutual aid can be explained in terms of standard Darwinian natural selection. According to this view, mutual aid behavior contributes to the survival of a set of genes.[10]

The origin of moral sentiments, then, according to Kropotkin, lies in the appearance of the instinct of mutual aid. From then on, moral sentiments can be said to be the product of a moral sense that operates like the sense of smell or touch.[11] Mutual aid becomes a permanent instinct, always present and developing in social animals (especially in humans) in the course of their evolution.[12]

In Kropotkin's pamphlet, *Anarchist Morality,* he seemed to blend the instinct of mutual aid (aimed at preservation of the species) with the feeling of sympathy. He contended that Adam Smith had discovered the true origin of moral sentiments in sympathy.[13]

However, in Kropotkin's *Ethics,* he modified his stance after re-reading Kant. Kropotkin did not throw out sympathy as a support for morality. But sympathy no longer had the decisive role it had in the theories of the Scottish moralists and in Kropotkin's own earlier moral writings. In *Ethics,* Kropotkin agreed with Kant's demonstration that morality cannot be based solely on sympathy.[14]

Instead, Kropotkin distinguished between sympathy and mutual aid. He described sympathy and mutual aid as elements in the moral makeup of human beings. But he recognized that even for a person with a well-developed sympathetic character, there would arise situations in which his sympathies were at war with his other natural tendencies.[15]

In case such conflicts arose, what course was a moral person obligated to follow? Kropotkin said that obligation derives its force from the recognition by instinct and reason of the course to follow.[16] Whereas Kropotkin says that Kant leaves his readers completely ignorant of the origin of the sense of duty, Kropotkin is able to point to the mutual aid instinct as the driving force behind the sense of duty. As social life gets more and more complex, reason plays an ever more important role in moral decision-making. But, for Kropotkin, reason is always in harness with instinct.[17]

One of the dictates of reason is the human conception of justice.[18] A sense of justice only develops once the foundations have been laid by the institutionalization of mutual aid in human society and the internalization of mutual aid (via Lamarckian processes) in human nature. The basic core of the concept of justice, according to Kropotkin, is equal rights or equality of self-restraint.[19]

The sense of obligation to uphold justice stems not so much directly from instinct as from the rational recognition of necessity. Kropotkin adopts Hume's position that there are certain rules of action which are absolutely necessary, so long as one wishes to live in society.[20] Equal rights are necessary to social life.

But Kropotkin means by *justice* not simply political and civic equity, but also economic equality. Hence he applauds the appearance of egalitarian thinkers and philosophers at the end of the 18th century and the beginning of the 19th century.[21]

Kropotkin never provides a full-blown defense of equality as a political goal. However, we can discern some slight indications of four possible arguments about equality in Kropotkin's writings.

First, Kropotkin undertakes a criticism of the religious morality of aspiration. Such morality begins by postulating human equality and brotherhood. But either natural inequalities or original sin make full equality unattainable.[22] It is still morally imperative that one share with the poor. But it is not possible to carry this to its logical conclusion. Such morality of aspiration rejects the rule of moral reasoning that *ought* implies *can*. One is left with a duty to be charitable that is based on reasoning that is acknowledged to be unsatisfactory by the proponents of the duty. Kropotkin is correct in pointing out the "deadly contradiction" here.[23] But he has not thereby established the possibility or desirability of equality.

As part of this discussion of charity, Kropotkin is arguing that mercy and beneficence are not enough.[24] Although he does not spell it out, Kropotkin is correct in saying that these sentiments are not enough to establish the justice of economic equality.

In a societal situation, mercy, charity, and generosity are dependent in practice (and dependent logically as concepts) upon the assignment of rights and entitlements. Mercy, for example, can only be the relinquishment to somebody of something to which one is justly entitled. One needs a rationally-defensible theory of justice in entitlements before one can say that some case is a case in which mercy could be exercised.

Since Kropotkin does not wish to develop a theory of entitlements more elaborate than the (incompatible) notions that everyone is entitled to equal shares and that everyone is entitled to his needs, Kropotkin does not dwell on charity or compassion.[24a] (Proudhon, who unlike Kropotkin is an individualist-anarchist, stresses charity and generosity and shows that communism is essentially opposed to them.)[25] When Kropotkin criticizes Herbert Spencer, Kropotkin does so not on the basis that Spencer opposes charity (which in fact Spencer considers a second-order duty). Kropotkin contends that thefts by the powerful and economic exploitation by the capitalists have taken from the poor what is due to them. Like Spencer, Kropotkin sees the validity of separating that which is rightfully due to people from that which may be given them out of beneficence. They simply disagree about what is due.[26]

In a second discussion of equality, Kropotkin contends that we ourselves would want to be expropriated, if in some case we took material goods that fell like manna from heaven and used such goods for material gain:

> We ourselves should ask to be dispossessed, if . . . we seized upon an inheritance, did it fall from on high, to use it for the exploitation of others.[27]

The problem with Kropotkin's account is that goods do not fall like manna from heaven.[28] Instead, goods have a history of relationships to human beings. Goods do not arrive magically on the scene. Instead, goods were originally taken under someone's control somehow and then perhaps transferred to others. Whether justice was adhered to in the original acquisition and in the subsequent exchanges is something that deserves critical examination. But one cannot pretend that the case of the falling of economic goods from on high is a usual case. Hence it seems extravagant to argue from a case in which goods have no history of attachments to human beings (the case of goods falling from on high) to the usual case in which goods have a long history of attachments to human beings.

The notion of windfall gains, which may be what Kropotkin is appealing to, is as misleading as the idea of goods falling from heaven. If an apple falls out of a farmer's tree, it is still the farmer's. To take what may be Kropotkin's example, if a gift (or an inheritance, which is a kind of gift) is unexpected, that does not make it illegitimate. If the giver was entitled to the good and then transferred it, there is no reason to be found in the gift's unexpectedness for dispossessing the recipient.

Perhaps the decisive point for Kropotkin is that the goods are to be used for the exploitation of others. Since Kropotkin's notion of exploitation seems to rely on a neo-Ricardian labor theory of value, any claims that exploitation is taking place depend on the very questionable validity of that value theory.[29]

In a third discussion of equality, Kropotkin argues that the goods and services that we enjoy today are the product both of past generations and of present-day collective labor. Hence, according to Kropotkin, it is wrong that individuals benefit personally from what are in fact not their own creations.[30]

But there is nothing immoral about benefiting personally from things which one does not create. If one benefits personally from something one has been given as a gift (or even benefits personally from something one sees somewhere), one may be benefiting from something one has not created oneself, but there is nothing inherently immoral about it.

Things made in the past are either gifts or items received in just exchanges or stolen goods or items taken via fraudulent exchanges. In cases of theft or fraud, there should be rectification. There is no other special problem about products made in the past.

In general, Kropotkin believes that he has found a major flaw in the justification of property rights and economic inequality. What Kropotkin is focusing on is the somewhat muddled notion that one is entitled to the fruits of one's labor. In more refined natural-rights liberal theory, one owns one's own personal capacity to labor, one's own energy. If one owns an article and transforms it further using labor on it, well, one still owns it. In addition, a prospective employee may make a contract in which an employer agrees to transfer money to the employee on the condition that the employee do certain work. In this case, the employee is working on articles that belong to the employer. What the employee is entitled to is not the transformed article that he worked on. That still belongs to the employer. The employee is entitled to the wage or salary that was contractually agreed upon. (It should be noted that the theory that one has a just claim to any article one works on seems to leave out service workers, like teachers, who do not work on physical products.) Labor contracts are made every day without the parties worrying about Kropotkin's false problem of an indistinguishably collective product.[31] The parties simply make a conditional contract: wages are transferred to the employee, if work is done for the employer.

In Kropotkin's fourth commentary on equality, he says that communist anarchists will not "tolerate" persons using their natural assets and attributes (physical stength, mental acuity, beauty, and so forth) in any way that other persons would find annoying or upsetting to have such attributes used.[32] The idea of not tolerating persons' making use of their own lives, bodies, and minds in ways they prefer implies either that some persons have rightful control over others or that all persons have rightful control over all persons.

Since Kropotkin is a self-proclaimed communist, we can assume that he rejects slaveholding in which some persons own others. Since he is a self-proclaimed anarchist, we can assume that he rejects the state by which some people control others, or in effect own them. But the pure communist alternative in which by right all decisions about all acts of or pertaining to any person are made by all persons, is impossible to conceive of and impossible to put into practice.

Inevitably, decision-making power is delegated to others or others claim it has been delegated to them. What Michels called the "iron law of oligarchy" takes over in the life of organized activity in the communist society.[33] The core of the political state has then been reintroduced in the anarchist commune, and some persons again control others, or in effect own them.

The only other conceivable alternative is that of natural-rights liberalism, in which persons own themselves in the sense that women are said by feminists to own their own bodies.[34] Persons are entitled to their natural assets and attributes. These assets and attributes are not something that was stolen from someone else or obtained through some other illegitimate process.[35]

Kropotkin himself stated that the most important criterion in the evaluation of all modern ethical systems is the presence or absence of fetters on individual initiative. He explicitly ruled out fettering individual initiative for the welfare of the society or the species.[36] It seems at least likely that Kropotkin's prohibition on communist grounds of persons making use of their natural assets in ways that others find upsetting will not survive scrutiny according to Kropotkin's own standards for judging ethical systems.

In contending that justice is equal rights, that justice is necessary to social life, and that equity includes economic equality, Kropotkin was discussing what one was morally obliged to do. But like Spencer, Kropotkin distinguished between moral duty and supererogatory acts.[37]

While maintaining that recognition of equal rights is a duty and a necessity, Kropotkin also maintained that "if each man practised merely the equity of a trader, taking care all day long not to give others anything more than he was receiving from them, society would die of it".[38]

Packed away in this assertion of Kropotkin's are two notions which deserve to be brought out and examined closely. First of all, Kropotkin assumes that in trade, equivalents are exchanged. But since the Marginalist Revolution of the late 19th century, economists have rejected objective value theories in favor of a subjective one in which each party to an exchange trades because he believes he will get something more valuable to him in return. In terms of each party's own preferences, inequivalents are being exchanged.

Secondly, Kropotkin seems to be saying here that if all persons in a society traded with each other nonfraudulently this would destroy society. Over the long run unfraudulent trade will lead to the suicide of society.

Let us try to spell out what Kropotkin may mean. According to Kropotkin's objective theory of value, traders are exchanging only equivalents. Hence, no gain in welfare comes from trading. According to Kropotkin, society can make progress only when some persons magnanimously devote themselves to discovering new ideas, inventing new techniques, or helping others above and beyond the call of duty. If only honest trade occurs, society will die, for in the face of challenges from a changing environment, society can succeed, progress, and develop only through acts of self-sacrifice. However, Kropotkin never shows satisfactorily why economic development and the handling of new challenges cannot be accomplished in the marketplace, as they seem to have been historically.

We have seen that Kropotkin's account of what constitutes the public good depends heavily on what the supposed instinct of sociability and mutual aid tells us, on the moral duty to institute equality across the board, and on the desirability of making sacrifices to meet the needs of or bring improvements to others. There are problems with each of these elements.

Kropotkin has trouble distinguishing between the role of reason and the role of instinct in ethical discourse. Also he tells us to look to instinct as the basis of obligation and for answers to what seem to be ethical dilemmas. In fact, the voice of instinct is not unambiguous on ethical questions. If it were crystal clear and compelling, we would not have the ethical problems we do.

Furthermore, Kropotkin's ideas about man's natural inclinations toward socially compatible and mutually co-operative behavior can support more than one ethical system. For example, *laissez-faire* liberals have made use of the same notions.

Modern-day classical liberal Ludwig von Mises writes:

> The core of liberal social theory is the theory of the division of labor. . . . Society is the union of human beings for the better exploitation of the natural conditions of existence; in its very conception it abolishes the struggle between human beings and substitutes the mutual aid which provides the essential motive of all members united in an organism. Within the limits of society there is no struggle, only peace. Every struggle suspends in effect the social community. Society, as a whole, as organism, does fight a struggle for existence against forces inimical to it. But inside, as far as society has absorbed individuals completely, there is only collaboration. For society is nothing but collaboration. . . . The only theory which explains how peace is possible between individuals and how society grows out of individuals is the liberal social theory of the division of labor.[39]

Another modern-day classical liberal, Murray N. Rothbard, writes:

> The free market . . . is precisely the diametric opposite of the "jungle" society. The jungle is characterized by the war of all against all. One man gains only at the expense of another, by seizure of the latter's property. With all on a subsistence level, there is a true struggle for survival, with the stronger force crushing the weaker. In a free market, on the other hand, one man gains only through serving another, though he may also retire into self-sufficient production at a primitive level if he so desires.
>
> It is precisely through the peaceful cooperation of the market that all men gain through the development of the division of labor and capital investment. To apply the principle of the "survival of the fittest" to both the jungle and the market is to ignore the basic question: *Fitness for what?* The "fit" in the jungle are those most adept at the exercise of brute force. The "fit" on the market are those most adept in the service of society . . .
>
> The free market . . . transmutes the jungle's destructive competition for meagre subsistence into a peaceful co-operative competition in the service of one's self *and* others. In the jungle, some gain only at the expense of others. On the market, everyone gains. It is the market — the contractual society — that wrests order out of chaos, that subdues nature and *eradicates* the jungle, that permits the "weak" to live productively, or out of gifts from production, in a regal style compared to the life of the "strong" in the jungle.[40]

Not only are there alternative notions of what socially cooperative behavior is in man, but, as we have seen, there are major difficulties with Kropotkin's sketchy discussion of equality. At times Kropotkin seems to believe that superabundance and the abolition of economic scarcity will solve the problem of remuneration of labor.[41] But prices have not yet fallen to zero so we know that resources are still scarce.[42]

Kropotkin wanted to build a stateless society on equality of possessions, mutual service, and a morality of increased self-sacrifice. But it can be argued that Kropotkin failed to be clear about the concepts he used and failed to avoid self-contradiction in his theory of communist-anarchism.

What can be said about the institutions of Kropotkin's communist society? Kropotkin proposed a society of small-scale territorial communes. Yet Kropotkin's goal of across-the-board equality may easily be undermined by separate decision-making in each township on distribution of goods.[43] Communes will be in different locations and find themselves with different assets. Do they have a property right, in some sense, to these assets? Kropotkin himself accepts temporary inequality between town and country after the revolution.[44] What is the proper territorial size for communes? What is the proper population size for communes? We receive no answer from Kropotkin.

We can only guess from Kropotkin's admiration for the medieval city-states that he has something like them in mind when he talks about free communes.[45] But these medieval cities had governments. The guilds that Kropotkin admired and that dominated the commercial life of these cities were adjuncts of the governmental apparatus.[46]

Surely there is at least some danger that Kropotkin's free communes will follow the iron law of oligarchy. The Utopian dream of participatory decision-making by consensus seems unlikely to survive the harsh realities of organizational life. In short order, the commune, which has expropriated all land, factories, dwellings, food, and clothing, will be run in practice by a few persons.

This situation in which social ownership of all capital and goods is combined with oligarchical rule will turn the free communes into communist states. The illegitimacy of private property makes it very costly to secede and makes independent life outside a commune well nigh impossible. Perhaps at the point of transformation of free communes into communist states, the communist-anarchists will harken to the prophetic words of Proudhon's critique of communism:

> Private associations are sternly prohibited, in spite of the likes and dislikes of different natures, because to tolerate them would be to introduce small communities within the large one, and consequently private property; the strong work for the weak, although this ought to be left to benevolence, and not enforced, advised, or enjoined; the industrious work for the lazy, although this is unjust; the clever work for the foolish, although this is absurd; and finally, man — casting aside his personality, his spontaneity, his genius, and his affections — humbly annihilates himself at the feet of the majestic and inflexible Commune.[47]

APPENDIX ON THE LIBERTARIAN NOTION OF THE PUBLIC GOOD

Contemporary natural-rights liberals would begin any discussion of the public good with prior consideration of the highest good for man. The highest good (*summum bonum*) is an end which all men share in common. This end is leading a truly happy life. Real happiness can be a goal common to Robinson Crusoe shipwrecked on a desert island and to an inhabitant of London.

The public good is, according to natural-rights liberals, that which all men have as an end while they live in the company of others.[48] The highest good is happiness (Aristotle's *eudaemonia*); in society, the primary public good is liberty. Liberty is below happiness in the hierarchy of values. But when one is living amongst other human beings, liberty is necessary to the achievement of happiness. Without liberty one cannot live virtuously, one cannot strive for the highest good. Natural-rights liberal Tibor Machan writes:

> In so far as political liberty is something which is a *universal* condition (*if* it were to exist), it does seem to be common to all those within a social organization or community. Political liberty is the absence of interference with one's efforts to lead one's life *in peace*. It is not being free of interference when one is himself attacking others or otherwise violating their human rights to life, liberty, and property. Thus the claim really amounts to holding up freedom from aggression as something that is of value, benefit, and interest to every person, even to one who would rather not enjoy it . . .
>
> But, then, no one is claiming that political liberty is recognized as a universal, common, collective good; if it were so, the political systems throughout the world would be very different. The point is simply that, *in fact,* the appropriate condition of social existence is political liberty: it is something which can be secured for *everyone* without discrimination and *all* people have an implicit stake in it for purposes of running their lives. While bread and butter, or Cadillacs, or golf courses, or men's clubs are not good for everyone — since not all people are interested in them or talented or situated so as to make use of them — political liberty is the condition which permits each member of society to pursue his own interests to the best of his will and ability. Political liberty is a real possibility because people can refrain from interfering with another's life. It is the fact that people are ultimately free to choose their way of living (within physical limits) that makes political liberty more than just an empty ideal. It makes possible when legally instituted, the flourishing of each man as a self-responsible being; this in turn renders it of value to everyone without exception.[49]

Other supposed public goods, such as conservation, simply do not have the universal character that liberty has.[50]

The only institutional arrangement which is appropriate to liberty is property in one's own will, body, life, and honestly-acquired material goods. One's liberty is based on one's self-ownership and on property rights. Thus liberal James Tyrrell argued in the 17th century that there was no reason to believe that "a man either could, or ought to neglect his own preservation and true happiness". The policy which Tyrrell then deemed necessary was the institution of property rights: "The constitution of a distinct property in things, in the labor of persons [was] the chief and necessary medium to the common good."[51]

With the institution of property rights securing liberty, all attacks upon the public good manifest themselves as attacks on particular individuals' rights. Society is simply a relationship among persons. Society *per se* does not have an interest or a good. Relationships cannot possess interests.[52] Only persons (including persons in relationships) can possess interests, goods or rights. Liberty is the primary and overriding public good. No one can legitimately attempt to advance any other possible public or private good by violating liberty and property rights. Force can legitimately be used to defend liberty.

Hobbes argued that the public interest was best served by a monarch whose private interest lay in securing the public interest.[53] Individualist-anarchists whose anarchism is derived from the natural-rights liberal tradition argue that private law enforcement agencies have the unity of interest that Hobbes thought the king would have.

In brief, once the requisite critical mass of persons accepts libertarian ideas of justice, individual rights will be defended against those who would violate them. Persons will make use of the division of labor in protecting rights. Private law enforcement agencies will arise. These private agencies gain customers in proportion to their reputation for upholding the public good of liberty. Furthermore, there is a more direct link between the income of private law enforcement agencies and their performance than there is between the income of dynastic monarchs and their performance. Finally, kings may well gain war against other kings, but private agencies are subject to the discipline of the market where violence and turmoil are considered bad business. Violence breaks up the socially cooperative network of market transactions. Thus private enforcement of public law is led as if by an invisible hand to strive for the peaceful resolution of disputes.

While this sketch by no means exhausts what could be said about the libertarian notion of the public good, it shows that there is available an approach to the public good which allows for the individual initiative that Kropotkin wants to preserve without falling prey to the contradictions in Kropotkin's communist-anarchism.

NOTES

1. Kropotkin, *Ethics: Origin and Development* (New York: Tudor Publishing, 1947), pp. 26–27, 333; Kropotkin, *Revolutionary Pamphlets* (New York: Dover, 1970), pp. 83–84.
2. *Ethics*, p. 214.
3. *Revolutionary Pamphlets*, p. 84.
4. *Revolutionary Pamphlets*, p. 84.
5. *Ethics*, p. 88.
6. *Ethics*, p. 20.
7. *Ethics*, p. 218.
8. Kropotkin, *Selected Writings on Anarchism and Revolution* (Cambridge, Mass.: M.I.T. Press, 1970), pp. 39–40; see also pp. 338–339.
9. *Revolutionary Pamphlets*, p. 96. *Ethics*, p. 164.
10. See Arthur Caplan, "Ethics, Evolution, and the Milk of Human Kindness: A Review of the Reviews of E. O. Wilson's 'Sociobiology'," *Hastings Center Report*, vol. 6, no. 2 (April, 1976), pp. 20–25.
11. *Revolutionary Pamphlets*, p. 98.
12. *Ethics*, pp. 15 and 219.
13. *Revolutionary Pamphlets*, p. 94; Adam Smith, *Theory of Moral Sentiments* (New Rochelle, N.Y.: Arlington), pp. 5–24, 33–44, 52–65. See also Mandeville, *Fable of the Bees* (Baltimore, Md.: Penguin, 1970), pp. 264ff.; Rousseau, *First and Second Discourses* (New York: St. Martin's, 1964), pp. 130ff: Spencer, *Social Statics* (New York: Appleton, 1878), pp. 114ff.; Hume, *Treatise of Human Nature* (London: Oxford University Press, 1888), pp. 575–581; Hobbes, "Human Nature", in *English Works*, ed. by Molesworth (London: 1839–1854), vol. 4, p. 44; Nicholas Rescher, *Unselfishness* (1976).
14. *Ethics*, p. 218.
15. *Ethics*, pp. 218–219.
16. *Ethics*, p. 175.
17. *Ethics*, p. 234. See also p. 252.
18. *Ethics*, p. 146.
19. *Ethics*, p. 30. See also p. 221.
20. *Ethics*, p. 24 and p. 200.
21. *Ethics*, p. 266.
22. *Ethics*, pp. 26–27.
23. *Ethics*, p. 26.
24. *Ethics*, pp. 26, 218, 320.

24a. On the difference between equal shares and distribution according to needs, see Hugo Adam Bedau, "Egalitarianism and the Idea of Equality", in J. Roland Pennock and John W. Chapman, eds., *Nomos IX: Equality* (New York; Atherton, 1967), pp. 11–12. At times, Kropotkin seems to believe that distribution according to needs would receive unanimous approval. See *Selected Writings*, p. 185. This unrealistic assumption allows him to neglect a detailed defense of this mode of distribution.

25. Proudhon, *What is Property?* (New York, Dover, 1970), p. 261.

26. *Ethics,* p. 320.
27 *Revolutionary Pamphlets,* p. 100.
28. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), pp. 198, 219.
29. Nozick, pp. 253-262; George J. Stigler, "Ricardo and the 93 Per Cent Labor Theory of Value", *American Economic Review,* vol. 48 (June, 1958); Eugen von Boehm-Bawerk, *Karl Marx and the Close of his System* (New York: Kelley, 1949); Eugen von Boehm-Bawerk, "The Exploitation Theory", in *Capital and Interest* (S. Holland, Ill.: Libertarian Press, 1959), vol. 1, pp. 241-321; Alfred Zauberman, "Revisionism in Soviet Economics", in Leopold Labedz, ed., *Revisionism: Essays in the History of Marxist Ideas* (New York: Praeger, 1962), pp. 268–280; Philip H. Wicksteed, *The Alphabet of Economic Science* (New York: Kelley & Millman, 1955), pp. 116–124; M. M. Bober, *Karl Marx's Interpretation of History* (2nd ed. Cambridge, Mass.: Harvard University Press, 1950), pp. 182–199.
30. *Ethics,* p. 306.
31. On supposed joint social products from which no individual's contribution can be disentangled, see Murray N. Rothbard, *Power and Market* (Menlo Park, Calif.: Institute for Humane Studies, 1970), pp. 183–184; Nozick, pp. 187–188.
32. *Revolutionary Pamphlets,* p. 99.
33. Michels, *Political Parties* (New York: Dover, 1959).
34. Murray N. Rothbard, "Justice and Property Rights", in *Egalitarianism as a Revolt against Nature* (Washington, D.C.: Libertarian Review, 1974), pp. 58-60. For a similar division into three exclusive alternatives, see Brian Barry's discussion of the law on assaults, in "The Public Interest", in Anthony Quinton, ed., *Political Philosophy* (London: Oxford University, 1967), pp. 118-119.
35. Nozick, p. 225; Rothbard, *Power and Market,* p. 187.
36. *Ethics,* p. 27.
37. *Ethics,* pp. 102, 176–177, 278–279.
38. *Revolutionary Pamphlets,* p. 106.
39. Mises, *Socialism* (New Haven, Conn.: Yale University Press, 1951), pp. 316, 318.
40. Rothbard, *Power and Market,* p. 168.
41. *Revolutionary Pamphlets,* p. 172. Compare *Selected Writings,* pp. 183–184.
42. Rothbard, "Anarcho-Communism", in *Egalitarianism,* p. 123.
43. *Selected Writings,* p. 187.
44. *Selected Writings,* p. 204.
45. *Selected Writings,* pp. 211-264.
46. *Selected Writings,* p. 239.
Compare Ronda Larmour, "A Merchant Guild of Sixteenth-Century France: The Grocers of Paris", *Economic History Review,* 2nd ser., vol. 20, no. 3 (1967), pp. 467–481; Charles Gross, *The Gild Merchant* (1890; London: Oxford University Press, 1964), chap. 3; Sylvia L. Thrupp, "The Gilds", in M. M. Postan, ed., *The Cambridge Economic History of Europe* (London: Cambridge University Press, 1963), vol. 3, pp. 232, 233, 242; M. M. Postan, *The Medieval Economy and Society* (Baltimore, Md.: Penguin, 1975), pp. 241–242; Abbott Payson Usher, *An Introduction to the Industrial History of England* (Boston: Houghton, Mifflin, 1920), pp. 78–79, 173.
47. Proudhon, pp. 260-261. Proudhon is talking about state communism here, but if all communist societies necessarily generate governmental rule, then Proudhon's description applies to Kropotkin's communism too.
48. For a similar view, see C. W. Cassinelli, "Some Reflections on the Concept of the Public Interest", *Ethics,* vol. 69, no. 1 (October, 1958), pp. 49-50.
49. Tibor R. Machan, "Some Considerations of the Common Good," *Journal of Human Relations* (Fall, 1970), pp. 989-990.
50. See Edwin G. Dolan, *TANSTAAFL* (New York: Holt, Rinehart and Winston, 1971), pp. 85-96.
51. J. A. W. Gunn, *Politics and the Public Interest in the Seventeenth Century* (London: Routledge & Kegan Paul, 1969), p. 289. Kropotkin writes, "When [Locke] attempted to define justice, he quite needlessly limited this conception, reducing it to the conception of property: 'Where there is no property there is no injustice, is a proposition as certain as any demonstration in Euclid.'" *Ethics,* p. 167.
52. Cassinelli, p. 50; Benjamin R. Tucker, quoted in James J. Martin, *Men Against the State* (Colorado Springs, Colo.: Ralph Myles, 1970), p. 214.
53. Hobbes, *Leviathan* (Oxford: Basil Blackwell, n.d.), pp. 122 – 123.

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AGAINST NONLIBERTARIAN NATURAL RIGHTS

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In a recent article[1] critical of Robert Nozick's book *Anarchy, State, and Utopia,*[2] Samuel Scheffler argues that it is possible to give greater than libertarian scope to natural rights so that, contrary to Nozick's conclusions, non-voluntary redistribution of income would be morally justified. Scheffler proceeds by sketching a conception of natural rights somewhat different from Nozick's which he believes accords with the meager and barely explicit moral theory that supports Nozick's own politics. This conception of natural rights borrows considerably from the *prima facie* rights theory developed by, among others, Gregory Vlastos.[3] Scheffler maintains that nothing in Nozick's own meager moral underpinnings justifies the "libertarian constraints" against non-voluntary redistribution of income (or other goods or services). This is because, in ascribing the *prima facie* right to liberty to each person, it is still morally justified to disregard this right in favor of the *prima facie* right to welfare, for example.[4]

Elsewhere I argue[5] that it is not possible to substitute the *prima facie* rights theory for the natural rights theory without upsetting the function that both *prima facie* and natural rights theorists ascribe to basic rights in a legal system — in Vlastos' phrase, in a "scheme of justice".[6] In this note I will argue that Scheffler's case against libertarian constraints (*à la* Nozick and Locke) is unsuccessful, that Scheffler's own meager and barely explicit moral underpinnings do not support his broad conception of natural (e.g. welfare) rights, and that, contrary to Scheffler's assertion, a society governed by a system of justice based on the Lockean natural rights Nozick and I would advocate would not produce the adverse social consequences Scheffler describes.

Although Scheffler adopts John Rawls's idea of natural rights,[7] he does "not here specify *which* natural attributes are sufficient conditions for the possession of natural rights".[8] All we are told is that "every person has a natural right to a sufficient share of every distributable good whose enjoyment is a necessary condition for the person's having a reasonable chance of living a decent and fulfilling life" (with several spelled out qualifications which are not germane to my argument).[9] Following Nozick, Scheffler does not provide a complete account of the moral basis of his conception of natural rights but offers only the barest clues to what that basis would probably be:

> The fact that the welfare goods are obtainable in practice only through the mediation of a complex society of working men and women is certainly of significance for the alternative conception. But its significance is not to show that people do not, after all, have the rights which the alternative conception assigns to them. Rather, its significance is to show that individuals with rights also have duties: duties, in particular, to contribute their labor, according to their talents and abilities, to the enhanced functioning of the society in which they live.[10]

So where in Nozick, as Scheffler notes, only some vague idea of "the meaning of life" avoids rendering the case of Lockean rights a mere "prudential argument",[11] here it is a vague notion of "duties to society" that provides the alternative conception of natural rights with its broader than Lockean or libertarian scope. It seems to Nozick to be a morally worthy task for one to be "giving meaning to his life"; so, it appears, the Lockean rights which make this "striving for meaningful life" possible may well obtain their moral support from this idea. Alternatively, because it seems to Scheffler that it is morally proper that the "duties to society" be performed, the broader conception of rights Scheffler defends may well obtain their moral support from this idea in view of the fact that only such a broader conception can insure the maximum performance of those duties. It appears from what Scheffler says *and* does not say that for him the basic moral standard in support of a sound political theory consists of a set of duties persons have to society (i.e. "to the enhanced functioning of the society in which they live").

A preliminary point should be made about the possibility of the libertarian alternative making room for the duties Scheffler speaks of. The market may be precisely the place where people should contribute their labor, etc., to their society's enhanced functioning. If, as I shall argue, one's having a duty to be productive does not imply that anyone is morally justified in requiring another's productivity by non-voluntary means, then in a libertarian society the work people perform in the free market (for pay or other purposes) may well constitute their contribution to the enhanced functioning of the society in which they live. The objection that this would not accord with regarding the work as one's duty is to beg the question as to whether one's duties must benefit others alone. Productive work done for pay does benefit others — why else the pay? (At least it could be viewed along these lines.)

Now to Scheffler's account of natural rights based on the moral theory of duty to benefit society (others, their enhanced functioning). In this account there is insufficient attention paid to both the relationship between rights and duties and to the place rights take in moral theory. These points are, of course, related. A duty is some possible course of action human beings should take because morality requires it. In certain moral positions duties constitute the basic principles, in others duties are derivative, based on virtues, self-interest, etc. In Scheffler nothing outside rights and duties is mentioned. We know rights as moral principles pertaining to the relationship of people — what they may not do to each other or owe to each other in a social context — and *natural* rights are principles pertaining to the relationship of people derived from their nature: what they owe to each other or may not do to each other because they are human beings in the community of other human beings. Thus rights cannot be basic to morality. Duties can and clearly are basic in certain moral positions because one can have duties that have nothing to do with others — e.g. to be honest, courageous, productive, prudent, etc. Most duties pertain to others but duties are not necessarily duties *to* others, that is, interpersonal moral principles. The duty one may have to atone for one's sins, for example, need not be other-directed; the duty to fulfill a promise could constitute an act of perfection of one's soul; the duty to society, if it exists, could emerge from a (possibly hypothetical) contractual commitment entered into in order to enhance the circumstances of one's own social existence. In short, a duty may not be, and thus could not be treated on the model of, a legally binding principle of morality.

Since we find nothing else in support of Scheffler's alternative and nonlibertarian conception of natural rights outside the vague idea of some alleged duty to society each person has, and since duties are often not enforcible obligations but, on the contrary, moral responsibilities, Scheffler has failed to develop a conception of natural rights that would morally sanction the non-voluntary institutions he advocates. Scheffler believes that because A has the duty to do d, B (e.g. the government) is morally justified in forcing A to perform the action that constitutes fulfilling d. If d were a duty to the performance of which B or someone in whose behalf B may act is entitled (on the model of many contractual obligations), then Scheffler would have a case, but he never demonstrates that anyone is entitled or has a natural right to A's performing d. Instead Scheffler wants to derive others' entitlement or natural right to the performance of d from d itself. Since, however, duties do not necessarily confer rights upon others, Scheffler's argument does not work.

Moreover, in advocating the enforcement of duties to society, Scheffler endorses the demoralization of these duties even if they exist. That is to say, if ought implies can, and a *moral* duty can exist only if the moral agent is free to choose to do or not to do it, advocacy of non-voluntary performance of the duties in question implies that one is rejecting their *moral* significance. It is precisely in the framework of a Lockean legal system that morality, whether virtue or duty oriented, can flourish. This shows again that from the moral basis Scheffler introduces he cannot support nonlibertarian rights.

Scheffler has not, therefore, produced a conception of natural rights that gives moral support to non-voluntary institutions in society, that is, that justifies the violation of the libertarian constraints on how human beings should act in their relationships to each other. He did provide some vague support for moral duties over and above abstaining from the violation of people's Lockean natural rights. But showing that persons in a community should, as a *moral* requirement, act in certain ways, some of which may benefit each other, does not show that anyone, including a government, is authorized to compel the behavior that would, if freely performed, constitute doing *d,* to act so as to compel *A*. matter entirely why some moral philosophers believe that the fact that *A* should do *d* authorizes *B*, who knows this and could compel the behavior that would if freely chosen constitute doing *d*, act so as to compel *A*. Perhaps the intrincisist theory of value, whereby doing something is morally required because it would contribute to the achievement of some independently and intrinsically good state of affairs, underlies such an idea. Scheffler certainly has not given any proof of such a theory, so he has no reason to expect us to read it into his case.)

I now turn to Scheffler's allegation that a society that adopts the libertarian theory of rights will foster serious and avoidable moral inadequacies. He believes, for example, that such a society would produce great inequalities of wealth and that "we have considerable evidence that in most societies there is a high correlation between wealth and political power".[12] Thus in a libertarian society the wealthy would have unjustified political advantages which would involve the generation of unfair legal administration, subjugation, and similar adverse results for the less than wealthy.

First, in libertarian theory political power can involve nothing more than access to judicial and police services and impact on the selection of administrators of such services. Since politics would involve only the preservation and protection of natural rights, the wealthy would at most have greater access to such service. The voluntarily acquired greater wealth of the wealthy would necessarily require, for example, greater effort to protect against possible violators of property rights. Contracts involving great sums and extensive provisions would probably require extensive adjudication procedures. This kind of political power, always paid for by those who would receive it, need not involve any degree of injustice or unfairness whatsoever, and Scheffler does not indicate why we should expect such unfairness or injustice. The slogan that bigness need not be badness applies here, and the libertarian theory would do justice to the ordinary notion of the propriety of taxation with representation (with the change that the paying of fees for government services could not be construed as taxation).

Second, the inequalities of libertarian societies need not have anything to do with wealth. History does not support Scheffler here, despite some myths about the antidemocratic character of incomplete capitalist systems of the past and present. In societies such as the ones that would involve Scheffler's conception of natural rights there may be less economic equality, but political inequalities are far greater than in semi-libertarian or liberal democratic systems. Scheffler wishes to dispel the idea that economic controls on the lives of citizens usher in the loss of significant liberties, but here history — to which Scheffler often appeals in a sort of *ad hoc* fashion — does not bear out his wish. It seems quite sensible to suppose, anyway, that where governments control land, industry, transportation, etc., serious political opposition could not be mounted. It is no accident that in socialist Russia a dissident author is unable to find a publisher. It is no mere accident, either, that in welfare states where governments own and operate broadcasting outright — e.g. West Germany, France, Sweden — only certain groups' interests are well served. Even in the U.S. public education is centrally run, grey, politically narrow, and uniform, and this activity is almost completely socialized. In all the inequality of *political* power is obvious.

Third, Scheffler's wish to disassociate the welfare state from the usurpation of civil liberties is naive, at best, and borders on the incredible. It was Chief Justice Burger who supported the majority decision authorizing censorship of the arts by noting that: "Understandably those who entertain an absolutist view of the First Amendment find it uncomfortable to explain why rights of association, speech, and press should be severely restrained in the marketplace of goods and money, but not in the marketplace of pornography."[13] The enforcement and precedent-based justification of vice statutes are certainly simpler when government has jurisdictional authority to regulate properties where alleged vices may be performed. It may be just as morally objectionable to fail to do one's duty to society as artist, journalist, citizen, or movie maker as it is to fail to do one's duty to society as manufacturer, banker, industrialist, or any other type of producer of distributable goods. So wherever the government is entitled to enforce the duties of one group, it cannot by any logic be refused the entitlement to enforce the duties of the other. (Scheffler's effort to distinguish between the vices of refusing to do one's productive duties and refusing to do one's other duties by allusions to levels of significance simply stays unsuccessful in his article.)

In essence, then, contrary to Scheffler's wishes, the bulk of government regulatory and distributional statutes makes it impossible (by reference to any rational standard) to leave one's private or voluntary community activities outside the reach of governmental intrusion and, therefore, control. Finally, when governments are constitutionally authorized to act as distributors of goods and services, there cannot (legally) exist any effective means for withholding support from their activities such as Vietnam-type foreign interventionism. Nozick was not overstating the point in noting that: "Taxation of earnings from labor is on par with forced labor."[14] It is clear, then, that Scheffler's *ad hominem* attacks on the libertarian theory of natural rights fail just as drastically as his attempt to develop an alternative conception of natural rights that might give support to non-voluntary distribution of income. Having now demonstrated this much, there remain a few additional bones to be picked with Scheffler's work.

Although Scheffler is right that Nozick's libertarianism, including his conception of natural rights, has but meager moral foundations in Nozick's own book, two points need to be made in this connection that will put this issue in a different light. First, Scheffler's observation that those "who choose to work within the natural rights tradition need to explicate their use of natural rights terminology . . . [and g]iven the metaphysical associations of the tradition [they] must explain what they *mean* by assigning rights to people . . . and they must deal with a variety of epistemic questions"[15] seems to be intended to point up Nozick's scholarly shortcomings. Be this as it may, Scheffler does little better. Nor does he acknowledge the great deal of work that has been done within the libertarian natural rights tradition, work that would very likely supplement Nozick's.[16] Second, Scheffler ignores the fact that Nozick accepts *Lockean* natural rights, and though Nozick considers Locke's moral foundations inadequate, Locke does give a clear enough clue — as clear as any contemporary moral and political theorist since Marx — to his own moral position.

Locke's ethics are skimpy, but we are told by him that human beings are "born free [and] rational" and "the freedom . . . of man, and liberty of acting according to his own will, is grounded on his having reason".[17] Since he also holds that "the state of Nature has a law of Nature to govern it",[18] he is committed to some moral position. Now and then he hints at this position. Sometimes he appears to be a straightforward Christian, but in some of his works he makes claims that are clearly hedonistic. But he seems opposed to psychological egoism, with which he is sometimes charged. He appears to be a type of egoist.[19] If we consider that recent natural rights theorists such as Rand, Mack and myself, as well as libertarians such as Hospers,[20] defend a type of ethical egoism ascribed even to Aristotle by W. F. R. Hardie,[21] then it is possible to regard what I call classical egoism — to distinguish it from Hobbesean atomistic and Max Stirner's subjectivist egoism — as the moral or ethical foundation of Lockean natural rights.

Since the conception of natural rights that will be most successful is the one that can be defended by reference to a correct moral point of view, the strictest test of Scheffler's own conception of natural rights would have to go to the heart of Scheffler's moral position. The same is true in Nozick's case. Since there do exist elaborate attempts to provide a Locke/ Nozick conception with both metaethical and ethical support — outside of several efforts to clear up the metaphysical difficulties[22] — before the alternative conception Scheffler advances can be accepted, it would be necessary, in addition to overcoming objections such as those here presented, to evaluate the soundness of the moral and other philosophical theories which underlie the various positions.

It may be disturbing to some that in philosophy so much work needs to be done before we can provide solid grounding for what we may believe to be right and wrong, especially in light of the many serious problems we face around us whose solution would appear to require finishing the theoretical work. This appears to be one reason why Rawls wishes to make moral theory independent of the rest of philosophy.[23] Unfortunately, this wish just cannot be satisfied, perhaps precisely because of the enormous complexities of human existence.[24] It seems to me, at any rate, important to rekindle an interest in comprehensive political philosophizing, and to this end both Nozick's and Scheffler's ideas have contributed considerably. But by no means can Scheffler's relative success in finding fault with Nozick's position and with presenting a plausible but not fully supported alternative suffice to put to rest the libertarian theory. This theory has not received much attention lately, indeed it has usually been met with ridicule by intellectuals and philosophers (who could take poor Herbert Spencer as their scapegoat representative of capitalist theory up until Nozick's work appeared). Nozick's is not, however, the final word in libertarian political theory.

NOTES

1. Samuel Scheffler, "Natural Rights, Equality, and the Minimal State," *Canadian Journal of Philosophy* (March, 1976), pp. 59 – 76.
2. New York: Basic Books, 1974.
3. Gregory Vlastos, "Justice and Equality," in R. B. Brandt (ed.), *Social Justice* (Englewood Cliffs, N.J.: Prentice-Hall, 1962).
4. Both Vlastos and Scheffler accept the implications of *prima facie* rights theory to the effect that no right is absolute within the context of the system.
5. "*Prima Facie* versus Natural (human) Rights", *Journal of Value Inquiry* (Summer, 1976), pp. 119-131.
6. Vlastos, *op. cit.* The citation is from Vlastos's paper as it appears in A. I. Melden (ed.), *Human Rights* (Belmont, Cal.: Wadsworth, 1970), p. 84, in revised form.
7. Scheffler, *op. cit.*, p. 64.
8. *Ibid.*, p. 63.
9. *Ibid.*, p. 64.
10. *Ibid.*, p. 72.
11. Nozick, *op. cit.*, p. 50. Throughout his paper Scheffler refers to the welfare rights of those who are destitute so that, as he puts it, "starvation, not taxation, is our worthy foe" (p. 70). I discuss this allusion to the allegedly adverse consequences of implementing the libertarian system later in this note. For now, suffice it to observe that taxation hardly serves starving people — it has been argued by many economists that taxation raises the welfare of the *taxers* and those who are politically powerful enough to reap benefit from their spoils — e.g. Lockheed Corporation, NASA, grant recipients of the National Endowment of the Arts and Humanities, etc. This reference to the crippled and starving in the present context can only be construed as the emotive pleading of the case against the libertarian alternative, especially in light of the records of socialist and other statist political systems.
12. Scheffler, *op. cit.*, pp. 74–75.
13. Paris Adult Theater I v. Slanton, 93 S. Ct. 2628 (1973).
14. Nozick, *op. cit.*, p. 169.
15. Scheffler, *op. cit.*, p. 62.
16. E.g. Eric Mack, "Egoism and Rights", *The Personalist* (Winter, 1973), pp. 5–33; Tibor R. Machan, "A Rationale for Human Rights", *The Personalist* (Spring, 1971), pp. 216–235; *idem.*, "Human Rights: Some Points of Clarification", *Journal of Critical Analysis* (July/October, 1973), pp. 30–39; and *Human Rights & Human Liberties* (Chicago: Nelson-Hall, 1975.)
17. John Locke, *The Second Treatise on Civil Governments*, pp. 61, 63.
18. *Ibid.*, p. 6.
19. *Essay Concerning Human Understanding*, Book II, xx 2, where Locke says that "things are good or evil only in reference to pleasure and pain". Locke rejects a close theoretical kin of this bold hedonism in his *Essays on the Law of Nature* (London: Oxford University Press, 1955), namely psychological egoism, the view that we necessarily do what is in our self-interest or seek self-gratification. For a defense of Locke's ambivalence in ethical theory see the several essays in John Yolton, ed., *John Locke — Problems and Perspectives* (Cambridge: Cambridge University Press, 1968). For additional discussions of Locke see Leo Strauss, *Natural Right and History* (2nd ed., Chicago: University of Chicago Press, 1970), pp. 202–250; Richard Cox, *Locke on War and Peace* (London: Oxford University Press, 1960), and Michael Zuckert, "The Recent Literature on Locke's Political Philosophy", *The Political Science Reviewer* (Fall, 1975), pp. 271–304.
20. Ayn Rand, *The Virtue of Selfishness* (New York: Signet, 1964); Eric Mack, "How to Derive Ethical Egoism", *The Personalist* (Autumn, 1971), pp. 736–

743; John Hospers, "Rule Egoism", *The Personalist* (Autumn, 1973), pp. 391–395. For a detailed development of the argument relating ethical egoism to natural rights, see my *Human Rights and Human Liberties.* See also, David L. Norton, *Personal Destinies: A Philosophy of Ethical Individualism* (Princeton, N.J.: Princeton University Press, 1976), for a comprehensive philosophical defense of eudaemonistic individualist ethics. It is my view that Norton's ethical theory fully supports the Lockean natural rights position. See my "Natural Rights and Morality", *The American Journal of Jurisprudence,* 1978 (forthcoming).

21. "The Final Good in Aristotle's *Ethics*", *Philosophy,* Vol. XL (1965), pp. 277–295.
22. I make the attempt myself in my *Human Rights and Human Liberties,* p. 108, and a compact discussion of the epistemological issues related to natural rights may be found in my two papers cited in note 16 (above). Several pertinent papers, touching on the various issues Scheffler finds inadequately attended to or untreated by Nozick are discussed at considerable length by the contributors to the special issue on human rights of *The Monist,* October 1968. Interestingly, Ronald Dworkin's recently published *Taking Rights Seriously* (Cambridge, Mass.: Harvard University Press, 1977), fails to discuss any of the topics Scheffler mentions, yet its avowed aim is a full discussion of natural rights. I eagerly await Scheffler's forthcoming thoroughgoing criticism of Dworkin's lack of comprehensiveness.
23. John Rawls, "The Independence of Moral Theory", *Proceedings and Addresses of the American Philosophical Association* (Newark, Del.: University of Delaware, 1975).
24. Cf., my "Note on Independence", *Philosophical Studies* (December, 1976), pp. 419–421.

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THE ROLE OF PERSONAL JUSTICE IN ANARCHO-CAPITALISM

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A criticism with which an anarcho-capitalist is usually assailed concerns the operation of free-market courts. How can the free market guard the interests of justice? Will not there be an incentive for a person to hire a relative (family bias) or to bribe a judge so as to receive a favorable verdict? Murray N. Rothbard[1] and other libertarian writers have found that actual free-market courts which existed in the past competed with each other, not on the basis of their respective susceptibilities to bias, but on the basis of their respective fairness and impartiality. Yet, to my knowledge, there has been no theoretical, *a priori* explanation of this phenomenon. This paper will attempt to provide such an explanation. This aspect of a free-market court system will be discussed and will be contrasted with the operation of government court systems.

The key to eliminating injustice via family bias and bribery in an anarcho-capitalist court system is found in the concept of a "personal judiciary". Reference to John Locke's political theory is helpful in explaining this concept.[2]

A major reason why Locke believes that living under a government is preferable to living in a state of nature is because of the nature of a pre-government judiciary. In a state of nature, aggressors are punished directly by injured parties. Each injured party sets himself up as a judge in his own case and punishes according to his own estimate of the damages. With injured parties judging their own cases, however, there would be a tendency for these judges to exact more than enough compensation for their damages. The former aggressors, perceiving that an injustice has been done to them, judge their own case and punish the punishers. If the injury is more than compensated for, then the aggression–overcompensation cycle could continue indefinitely. To rid themselves of this cycle, men establish independent and impartial arbitration institutions to decide cases.

What Locke refers to as setting up one's self as a judge in one's own case is what I call a "personal judiciary".

In what respect is the concept of a personal judiciary relevant to the operation of an anarcho-capitalist court system? Let us consider an example. Suppose that Smith has injured Jones. Jones then hires the fairest free-market judge he can find and institutes proceedings against Smith. The court finds Smith guilty and orders him to pay Jones for actual damages and court costs. Smith, on the other hand, hears of the verdict and rushes to "hire" his brother to decide the case as a free-market judge. His brother, meanwhile, has had no experience in arbitration and, in addition, has plainly stated that he intends to find his brother not guilty regardless of the facts. So, Smith's brother pronounces a verdict of not guilty. The courts are at a deadlock. (I assume, for convenience, that there are no free-market appeals courts.) What happens now?

It is evident that Smith has set up his own agent as a judge in his case. This, in essence, is the same as setting himself up as his own judge. The particular incidentals differ, but the essential principle remains the same: a judge, biased in favor of Smith, judges the case. Smith's actions demonstrate that he consents to that principle.

But, since Smith consents to that principle, he can hardly expect to exclude Jones from acting in accordance with that principle. Smith has stated a preference by means of his actions; Jones's acting in accordance with Smith's legal principle fulfills Smith's preferences. Indeed it would take very little persuasion to convince Jones that he is entitled to respond in kind. Smith, by virtue of his actions, tacitly consents to Jones's response.

Of course, Jones does not have to go through the motions involved in "hiring" his own brother in response to Smith's actions — Jones may hire himself as a judge. Jones may revert to acting in accordance with Smith's legal principle in a more overt manner. Jones could grab his shotgun and seize part of Smith's property in compensation for Jones's injuries.

Jones has a moral advantage. He had shown his good faith by hiring initially the most impartial jurist he could find. He may be able to gain the support of a large segment of that society in any personal action he takes against Smith. In addition, other members of the society may take advantage of Smith's legal rule to inflict injuries on him without having to pay compensation. Hiring his brother may be tantamount to Smith's declaring himself an outlaw — an unenviable position indeed.

But it really does not matter that I am able to outline the motives which may prompt Jones to seek compensation or that I am able to suggest how society may act with regard to Smith and Jones. What matters is that in a free market, personal judiciary actions are always a viable alternative open to an injured party when an aggressor has initiated such actions to stymie the operation of justice. But, one must remember that there are disadvantages associated with the initiation of personal judicial actions — to wit, Locke's infinite aggression–overcompensation cycle. This disadvantage provides an incentive for all parties to show good faith in having their disputes decided impartially. This incentive is especially strong for an alleged injurer who wishes to establish his innocence.

In a governmental society, however, the state's judiciary is the only and final arbiter. Suppose that Smith and Jones live in the same locality and that Smith's brother is the municipal judge. If Smith injures Jones, then Jones has no recourse but to bring his case before Smith's brother. This situation is essentially the same as a situation in which Smith has set himself up as his own judge. And it is likely that Jones will have to accept the verdict. (In some localities municipal court decisions cannot be appealed. Even if the decision could be appealed, enforcing lower courts' compliance with the appeals court ruling could be a problem.) Jones cannot respond in kind as he could in a free-market society. Society's resources are marshalled to enforce state edicts; in this case they are marshalled to enforce injustice. If Jones revolted against this injustice, he would be considered to be an outlaw and would be treated accordingly.

With the possibility of personal judiciary retaliation ruled out, there is no incentive for state judges to be fair. Even if a decision could be appealed and the higher ruling could be enforced, there is no incentive for Smith's brother to be fair, but only an incentive to rule in such a way as to barely avoid any grounds for appeal. Of course, whether these grounds for appeal approximate justice is a pertinent issue in itself.

These problems would not occur in a free market. The only way to avoid personal judiciary actions would be to patronize those judges with the greatest reputation for fairness. Hence, there would be incentives both for litigants to demand fair judges and for judges to acquire reputations for fairness.

Bribing a judge is subsumed under the same personal judiciary principle: a person sets himself up (in this particular case, his agent, who is paid to be biased) as a judge in his own case. Overt bribery would have the same result as the family bias situation. Hence let us assume that the bribery is covert. Obvious injustice would result in retaliatory action. Therefore, only by piecemeal injustice would the briber have any chance at success. But, paying a bribe for only piecemeal injustice may be prohibitively costly. Still, personal judiciary retaliation could take place, even in piecemeal cases, especially if the judge has a reputation for susceptibility to bribery. Personal retaliatory actions can be avoided only by hiring fair judges.

In governmental societies, if one bribed lower and appeals court judges, injustice could be perpetuated by means of the state judiciary's institutional monopoly on arbitration. In the American legal system, all one would have to do is to bribe the jury — they decide cases' facts and their decisions cannot be appealed. Society's resources (for which the victim himself is paying) are consolidated in the state and can be directed against any person who rebels against an unjust verdict.

If one examines the purpose of a judiciary one can discover why a free-market court system is superior to a governmental court system. The courts' purpose is to enable men to settle disputes so as to avoid violent resolution as well as aggression–overcompensation cycles. Regarding the courts' decisions as legitimate is the only way for the litigants to avoid personal judiciary actions. But, courts' decisions are regarded as legitimate only if they are pronounced fairly and impartially. A person who takes advantage of family bias, for example, tries to disguise the illegitimacy of the verdict by cloaking it in an air of legitimacy. Legitimacy, however, is not to be gained by mere appearances. The verdict's unfairness will deprive it of legitimacy and personal judiciary actions will result. Thus, money spent on unfair judicial procedures is money wasted. This constitutes the incentive for free-market courts to compete on the basis of fairness, not unfairness. Government judges do not have to compete on the open market to survive financially; they survive by virtue of their coercive monopoly on legal arbitration services. Moreover, their decisions are backed by force. Thus, individual judges have an incentive to be fair only insofar as the legal norms of a nation embody the principles of fairness. If a state court is fair, it is fair only by coincidence. In light of such an elucidation and contrast, it is difficult to understand why men still cling with almost hysterical desperation to the judicial embodiments of tyranny.

NOTES

1. Murray N. Rothbard, *For A New Liberty* (New York: Macmillan, 1973), pp. 234–243; and *idem., Power and Market: Government and the Economy* (Menlo Park, Calif.: Institute for Humane Studies, 1970), p. 4.
2. John Locke, *Two Treatises of Government*, ed. P. Laslett (2nd Ed., Cambridge: Cambridge University Press, 1967), pp. 368–370.

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MARKETS, TRUE AND FALSE: THE CASE OF YUGOSLAVIA*

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This paper will discuss the emergence and shortcomings of Yugoslav market socialism. The central theme is that markets without saleable property rights are an illusion. As Mises and Hayek have so clearly demonstrated, truly competitive markets require individual freedom and hence private property rights. Property rights are important because they help determine the actions individuals can take and the rewards that can be captured. It will be shown that although the Yugoslavs have approached a market-type economy, the lack of saleable claims to present values has tied workers to their fir? s. This constraint, together with the institution of workers' management, has prevented true capital and labor markets from emerging in Yugoslavia. Hence, non-human and human capital tend to be misallocated.[1] The significance of this paper lies in a further clarification of the rüle of property rights in shaping incentives and behavior under socialism.

We begin by considering the function of private property rights in a free market economy and the consequences for individual freedom when such rights are abolished. Next the case of Yugoslav market socialism is considered. First we explore the reasons that Yugoslavia switched from central planning to decentralized market socialism. We then examine some of the highlights of the 1961 and 1965 economic reforms. In particular, we observe their effects on the distribution structure and workers' claims to enterprise income. Finally, some implications of the reforms are considered. First, employment and investment behavior is discussed for "capital-rich" and "capital-poor" firms and industries.[2] We then examine the impact of the reforms on interfirm and interindustry personal income-per-worker differentials, along with their implications for resource misallocation.

I. MARKETS WITHOUT PROPERTY: AN ILLUSION

Private enterprise rests on the individual's right to own non-human capital. Private property is characterized by (1) the freedom of choice in the use of property, (2) the freedom to buy and sell property — both part of individual freedom under private enterprise, and (3) the owner's right to capture income from (1) and (2).[3] The effectiveness of appropriability is important because it affects one's incentive to direct resources to their highest valued uses. Appropriability, of course, is shaped by the existing set of institutions plus transactions costs.[4]

The distinguishing feature of private "for-profit" firms is the exclusive right of owners to capitalize future expected income into its present value. This is made possible, of course, by the existence of capital markets in which owners can buy and sell ownership claims, including claims to current residual income. Hence, saleability of rights to present values means private owners will immediately bear the current and future value consequences of their present actions. For example, if the private capitalist misdirects investment, the lower future expected profits will immediately be capitalized in a lower market price of his assets or stock shares. Under private enterprise, therefore, the owner will have a strong incentive to monitor managerial behavior affecting

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the firm's present value. In fact, this so-called "profit motive" is the driving force in the private enterprise, free-market economy.[5]

Saleability of property rights also allows individuals to specialize in ownership and risk-taking. Consequently, under private enterprise, ownership claims will tend to be held by those individuals most adept at directing capital to its highest valued uses.[6] In sum, the benefits which emerge spontaneously from competitive capital markets depend on individual freedom to invest and organize production, and to capture the consequent rewards. That is, they depend on effective private property rights. The effectiveness of such rights, of course, depends on stable government by law; for unless government is limited by the "rule of law", private property would be fictitious.[7]

Ludwig von Mises has demonstrated that without private ownership of the means of production and money prices, economic calculation is impossible.[8] He was reacting to the notion that *pure* socialism could abolish scarcity prices and still achieve an efficient allocation of resources. However, he also questioned whether quasi-markets for the means of production could replace private capital markets. It is here that Mises is yet to be fully heard. Many socialists, for example, believe in the possibility of imitating the free capital market without allowing private ownership. Hence, it is useful to review Mises's line-of-argument.[9]

Mises explained that without real competition based on private property rights, socialist markets could not duplicate the market process. He reasoned that without the right to capture present values, no one would have an incentive to find the least-cost production methods, nor to search for the highest valued uses of resources. In fact, since resource prices would be distorted, it would be impossible to minimize real costs. Hence, resources would tend to be misallocated.

Socialists, however, claim that decentralized socialism is possible since socialist managers could be instructed to act "as if" they were managing a private "for-profit" firm. Moreover they assume that the "instructors" would possess all the relevant knowledge available to market participants. Hence, quasi-markets in the means of production could emerge, even though no one could appropriate the returns to capital. Mises, of course, sees this as wishful thinking, since it is unlikely that socialist managers would seek to increase their firm's wealth when the state would capture it. Moreover, no state agency would know how to efficiently direct the uses of resources, since the relevant information is dispersed among numerous individuals. Finally, government bureaucrats would have little incentive to enforce the present value maximization rule, since they have to share any profits or losses with society.

Mises has emphasized that competitive prices and profits are important only in a changing economy. In such an economy, capital must continuously be shifted from one use to another as consumer preferences change. The role of prices and profits is to guide the behavior of entrepreneurs and capitalists. Moreover, it is a mistake to think that the information contained in these signals is given; rather, it is the *result* of a continuous search process on the part of entrepreneurs and capitalists for higher returns on investment. The delusion of market socialists is that they think factor prices will automatically be known once product prices are determined. However, we know from Mises that:

> It is not possible to eliminate from such markets the influence of the supply of capital from the capitalists and the demand for capital by the entrepreneurs, without destroying the mechanism itself.[10]

Nevertheless, socialists persist in thinking that the state can achieve an optimum allocation of investment resources: the state simply has to distribute funds to those managers offering the highest return. These managers can then direct resources to where consumers value them most highly. The same objections that were raised above, however, apply equally well here. Socialists also fail to see that under socialism the more optimistic managers would tend to acquire investment funds, *irrespective of the opportunity cost of capital.* Under private enterprise, on the other hand, managerial opinion about prospective returns is never the ultimate determinant of investment allocation. Instead, it is the judgment of capitalists about expected profits *and risk* which is the deciding factor. Needless to say, investment decisions will be more rational when *private* rather than public funds are used. Therefore, much of the analogy that socialists make between socialist managers and managers of joint stock companies is misplaced. Only the latter are effectively constrained by the incentive of private owners to enforce wealth maximizing behavior.

The above discussion implies that under *any* form of socialism, the state must retain effective ownership of the means of production. Mises's message is that if socialists understood the market process, they would have to grant individuals (a) the freedom to buy and sell nonhuman capital, and (b) the right to capture present values. However, this is precisely what they cannot do, if the essence of socialism is to be retained. Meanwhile, the lack of private property rights precludes the benefits of spontaneous market order, and necessitates deliberate investment planning. Consequently, even under decentralized socialism individual freedom will be precarious.

Friedrich von Hayek has also criticized market socialism along Misesian lines. In particular, he has expounded Mises's argument that without effective appropriability, prices and profits will be distorted. That is, they will not reflect the relevant knowledge of alternatives possessed by individual market participants.[11] As Hayek says:

> To assume that it is possible to create conditions of full competition without making those who are responsible for the decisions pay for their mistakes seems to be pure illusion.[12]

Under private enterprise, individuals are both free and encouraged to use their unique knowledge to move resources to higher valued uses. Of course, individual perceptions about future profitability can be wrong. The benefit of freedom, however, is that individual plans can be quickly revised; thus increasing the probability of attaining market-clearing prices. In fact, only a small number of individuals need act on their limited knowledge of alternatives to generate socially beneficial results.[13] This is

> because their limited individual fields of vision sufficiently overlap so that through many intermediaries the relevant information is communicated to all.[14]

Therefore, although no central list of investment alternatives is available, the free market, in effect, generates such a result.[15] Hayek criticizes socialists for failing to see that the economic problem is largely one of rapidly adjusting to changed circumstances, not known in their entirety by any single mind.[16] Hence, he rejects the notion that some "super-bank" could deliberately bring about an efficient allocation of capital based on "pseudo-competition". In fact, Hayek contends that market socialism would probably be more impractical than strict central planning; because, it tries to abolish central planning of investment without establishing private property rights in the means of production.[17]

II. THE CASE OF YUGOSLAVIA

Emergence of Yugoslav market socialism

Yugoslav market socialism emerged in response to political-ideological disputes and was enforced by the government; it was not the result of spontaneous market forces. Furthermore, it seems that the designers of Yugoslav market socialism were unfamiliar with the earlier market socialist debate. There is no evidence, for example, that the Yugoslav leaders patterned their new institutional arrangement on Oscar Lange's model, or that they were aware of the "Austrian" criticisms of decentralized socialism.[18]

The initial inducement to abolish Soviet style planning[19] came on June 28, 1948 when Yugoslavia was expelled from the Communist party alliance by Stalin's Cominform Resolution. Although Yugoslav party leaders had criticized the excessive bureaucratization associated with Soviet style planning, and angered Stalin by delaying collectivization of agriculture, their expulsion from the communist bloc came as a shock. Hence, their initial reaction was to placate Stalin by pushing forward with central planning and collectivization. By 1950, however, Yugoslav leaders were again reacting to the imposition of strict central planning. In particular, Boris Kidric, Edvard Kardelj, and

Milovan Djilas were openly promoting a departure from the Soviet model.[20] Kidric was the first to formulate a theoretical model of market socialism; therefore let us examine his position.[21]

In 1950 Boris Kidric, chairman of the Yugoslav planning commission, laid out blueprints for decentralizing the Yugoslav economy.[22] Using the notion of "socialist commodity production", Kidric argued that during the transition to communism, the limited use of markets would not be inconsistent with Marxism, correctly interpreted. By "socialist commodity production", he meant social rather than state ownership of the means of production and production by semi-autonomous, worker-managed enterprises. According to Kidric, social ownership would differ from state ownership, since workers would be given control over the means of production.[23]

Besides giving worker-managed enterprises the right to use capital assets, Kidric proposed the following changes: (1) Enterprises were to be made economically responsible for their operations; (2) workers were to participate in the planning process, including the right to implement the state's investment plans; and (3) workers' councils were to acquire the right to distribute that part of enterprise income in excess of the planned amount. Any such "residual income" could then be used to increase personal income and/or be reinvested in the firm.[24]

The implementation of Kidric's scheme required dismantling the central planning apparatus, which by 1950 had become quite entrenched. Moreover, prices would have to be decontrolled and markets reestablished for commodities and the nonhuman factors of production. The first step along these lines came in July, 1950 when the "Law on Management of Enterprises by Workers' Collectives" was passed.[25] This law provided for workers' management and reorganized the ministerial system of central planning. In December, 1951, the "Law on Planned Management of the National Economy" was enacted.[26] This law provided for the decentralization of production planning. By the end of 1952 the general directorates and supply allocation plan had been abolished, giving enterprises greater autonomy in production planning. Furthermore, many prices were decontrolled by this time.[27]

In December, 1953 enterprises were given social ownership of their capital assets by the "Law on Management of Fixed Capital by Enterprises".[28] According to Pejovich, it was this law that signaled the *de facto* turning point in the Yugoslav system.[29] The subsequent transition to market socialism, however, was slow. It wasn't until the 1957, 1961 and 1965 economic reforms that enterprises gained effective rights *vis-à-vis* the state. These reforms introduced the so-called "net income system" of distribution, and gave enterprises more autonomy over employment and investment decisions.[30] Before discussing these reforms, let us consider the two basic features of Yugoslav market socialism: workers' self-management and social ownership.

Workers' management

Much has been written about workers' management, and need not be repeated here.[31] Rather, our purpose is to describe the basic rights and duties of the council, the management board, and the director.

The workers' council. Council members are elected and can be dismissed by a majority vote of the collective. The council consists of 15 to 150 members elected for two-year terms. Three-fourths of the council must be production workers.[32] The council has the right to determine what to produce and how to organize production.[33] These rights, however, have been restricted by price controls.[34] The council is also responsible for labor relations. The 1957 "Law on Labour Relations" delegated the council the right to hire, fire, and discipline workers.[35] It also provided for the adoption of the "Rules on Labour Relations", by which the council specifies employment conditions.[36] However these rules must be submitted to a special commission for approval.[37]

In 1957, the council acquired the legal right to distribute net income between personal incomes and "funds".[38] This right, however, did not become highly effective until 1965 because of various external constraints, which will be discussed later. The council specified its distribution policy in its by-laws until 1961; thereafter distribution was internally regulated by the council's adoption of the "Rules on the Distribution of Net Income".[39]

Another important right acquired by the Council in 1957 was the right to determine personal incomes, i.e. the right to prepare the pay scale.[40] As we shall see, however, this right was narrowly limited until 1961, when the council acquired the right to independently adopt its "Rules on the Distribution of Personal Incomes".[41] These rules state that the council should determine relative pay rates based on such criteria as education and skill level, job responsibility, and working conditions.[42]

At this point it is worthwhile to consider the process of income distribution in Yugoslav enterprises.[43] The process begins when the council holds a general meeting at the end of the year to discuss distribution policy for the coming year. After hearing workers' opinions, the council decides the division of planned net income between personal incomes and funds. The planned amount of personal incomes is then "pre-distributed" among the workers according to the pay scale. Workers, of course, will not know their actual personal incomes until the end of the year when the final accounts are settled. If the planned net income is achieved each month, workers will receive the full rate of pay according to the pay scale. Otherwise, they will receive proportionately more or less depending on whether the realized net income exceeds or falls short of the planned amount. *Their personal incomes, however, cannot be reduced below the minimum guaranteed by law.*[44] In fact, Rikard Stajner points out that if the enterprise cannot meet the minimum personal income rate out of its reserve fund, the local commune must make up the difference.[45] This, of course, will dull incentives to place resources in their highest valued uses.

The board of management.[46] Board members are elected and dismissed by the council. The board consists of 3 to 11 members including the director, who is an *ex officio* member. Members are elected for one year and are limited to a maximum of two consecutive terms. Board members, like council members, are not entitled to remuneration for their official duties. During their term of office, however, they cannot be fired or transferred to another job without their consent.[47] The duties of the board members are as follows. (1) They must submit periodical management reports to the council and assist in preparing the enterprise's statute, rules, and plans. (2) They must implement the council's policy decisions, other than those executed by the director. And, (3) they must monitor the director and his staff to ensure that their behavior conforms to the council's policy objectives — perhaps their most important function.[48] Various rights may be delegated to the board by the council. For example, the council may give the board the rights to: (a) decide upon the utilization of enterprise funds up to a specified amount, and (b) appoint and dismiss executives, except the director, subject to the council's approval.[49] Moreover, whenever the director's position is vacant, the board has the right to occupy it until a new director is appointed.[50]

The director.[51] The director plays an important part in the day-to-day operation of the enterprise. He also has the competence and position to influence the council's policy decisions. Of course his actual influence will be affected by his persuasive powers.[52] Some of the more important rights of the director are: (1) The right to negotiate and sign contracts for specified amounts in the enterprise's name.[53] (2) The right to impose limited disciplinary measures. (3) The right to make proposals to the council regarding business operations. (4) The right to nullify any decision taken by the council or management board that is illegal.[54] Other rights may be delegated to the director by the council; these are specified in the enterprise's statute, its rules, and its regulations.[55]

The procedure for hiring and firing the director should be noted. As of 1958, the director's employment status was determined by the Communal People's Committee. The 1963 Constitution transferred the right to appoint and dismiss the director to the workers' council. The Constitution, however, still required the joint selection commission to hold a public competition, and submit a list of no more than three candidates to the workers' council. This stipulation tends to limit the council's choice of director.[56] Furthermore, any request for the director's dismissal must be approved by the joint commission.[57]

In effect, the director is the legal guardian and technical manager of the enterprise. He is therefore somewhat of an intermediary between the state and the council. Moreover, unlike a private entrepreneur owner, the Yugoslav director's opportunity set is limited by the council's right to ratify major decisions; and his powers flow from the state. Hence, the director is in a rather tenuous position.[58]

On the other hand, recall that workers are not remunerated for time spent at council meetings, etc. This implies that as the opportunity cost to workers of performing managerial functions increases, less of that activity should be observed, *ceteris paribus*. In fact, there has recently been some movement toward specialization in managerial functions. V. Tričkovič, for example, suggested in 1969 that a contractual relationship be established between the council and the professional staff, including the director. The professional managers' reappointment and pay would then depend on realizing the goals set by the council.[59] Such a scheme was actually introduced by Sava, a Slovenian rubber factory, in 1970.[60] It is too soon to tell, however, what implications such arrangements might have for the future of workers' self-management in Yugoslavia.

Social ownership

Ever since 1950 the Yugoslavs have been confronted with the problem of property rights. That is, they have been concerned with defining the enterprise's bundle of rights to take various actions and capture rewards *vis-à-vis* the state.[61] The establishment of private property rights, of course, was out of the question. State ownership, however, was also rejected, since enterprises would have virtually no control over capital goods. Hence, in December 1953, Yugoslavia established "social ownership".[62] Under this rights structure, workers' councils were given the right to use and dispose of the "social property" entrusted to their enterprises.[63]

The council's right of use is exclusive in the sense that the social assets at the firm's disposal cannot be removed except by law[64] — the council has the sole authority to delegate the right of use and disposal to the management board and director. Nevertheless, Yugoslav law provides for the following restrictions.[65] (1) Enterprises must maintain the "book value" of their assets.[66] That is, the council must (a) set aside monies for depreciation of fixed assets and (b) provide for capital losses resulting from the "sale" or misuse of capital goods before distributing personal incomes. (2) Enterprises must pay a tax on the book value of their fixed and working capital funds. Finally, (3) enterprises must reinvest any gain realized from the "sale" of capital goods.[67]

Social ownership is the most important characteristic of the Yugoslav economy, and has affected all the rights changes that occurred during the 1960s. It means that no one can sell shares of common stock. Hence, workers will gain from their "investments" in the firm *only if they remain employed.*[68] Furthermore, forcing firms to maintain the book value of their assets will impede the efficient allocation of capital.[69] Consequently, social ownership affects both capital and labor mobility. Moreover, it restricts the free entry and exit of firms. Entry will depend mainly on the decisions of government officials, not on private investment decisions. Meanwhile, the exit of inefficient firms will be hampered by officials seeking to maintain employment.[70]

Yugoslav economic reforms, 1957–1968

In 1957 the "net income system" of distribution was introduced.[71] This replaced the so-called "profit system" that had been in existence since 1954.[72] Under the net income system, workers are residual claimants, whose personal incomes depend on: (1) the size of enterprise net income, (2) the distribution of net income between personal incomes and funds, (3) the criteria used to determine the distribution of personal incomes, and (4) the number of workers. Hence, appropriability is affected by the council's effective rights to (a) distribute net income, (b) determine personal incomes and

(c) control the volume of employment.[73] The *size* of capturable net income, however, and hence the importance of any rights to net income will depend on the tax structure.

The 1961 and 1965 reforms caused important changes in the tax structure and in enterprise empowerments. In the following discussion, we will first summarize the relevant tax changes, then consider the impact of the 1961 and 1965 reforms on workers' effective claims to net income.[74]

Changes in the tax structure

In 1960, the State siphoned off, through taxes, 56.8% of enterprises' net product (i.e. total revenue minus material costs and depreciation).[75] The following taxes were of particular importance: (a) The capital tax, a flat 6% tax levied on the book value of an enterprise's fixed and working capital; (b) the turnover tax, an *ad valorem* tax ranging from 0 to 25% levied at the finished product stage;[76] and (c) a steeply progressive tax on enterprise income, the rate of which depended on the ratio of income to the size of the minimum personal incomes fund.[77] Other taxes of interest were those levied on the portion of net income allocated to gross personal incomes — the social security tax, the housing construction tax, and the personal income tax[78] — and the 20% tax on allocations to the collective consumption fund.[79]

The 1961 reform replaced the progressive tax on enterprise income with a proportionate tax rate of 15%[80] This increased enterprises' share in net product from 43.2% in 1960 to 51% in 1964.[81] Moreover, it increased workers' take-home pay and thereby helped to correct some of the earlier disincentives to work. Various other taxes, however, still limited the size of their capturable rewards. The taxes levied on allocations to gross personal incomes, for example, left only 56% of that fund available for final distribution.[82] In addition, there was a tax of 25% on that part of personal incomes exceeding the minimum guaranteed amount by more than 160%.[83] Finally, a tax of 20% was levied on allocations to the business and collective consumption funds.[84]

Further changes in the distribution structure were introduced by the 1965 reform. In particular, the 15% tax on enterprise income was abolished,[85] and both the turnover and capital tax were virtually eliminated.[86] Consequently, enterprises' share in net product increased from about 50% in 1964 to 56.5% in 1968.[87] Moreover, subsidies and other forms of assistance to enterprises were substantially lowered, making workers somewhat more dependent on the success of their firms.[88]

Another relevant aspect of the 1965 tax reform was the switch from favorable to unfavorable tax treatment of allocations to personal incomes relative to the business fund. During the 1961–1964 period, the personal income tax rate (paid by enterprises on the net income allocated to personal incomes) was 15%. Funds reinvested in the firm, on the other hand, were taxed at a rate of 20%. After the 1965 reform, however, the personal income tax rate dropped to 10.5%, while the tax on reinvested funds fell to zero.[89]

In sum, the 1961 and 1965 tax reforms significantly increased the size of enterprises' net income. Moreover, the decrease in the capital tax meant that part of this increase in net income could be attributed to returns on capital. The importance of the enlarged net income, however, will depend on appropriability. Hence, we now turn to consider the effect of the reforms on workers' effective claims to net income.

Changes in workers' effective claims to net income

The 1957 reform gave the council the rights to independently distribute net income, determine personal incomes on the basis of the results of individual work plus the success of the enterprise, and appoint and dismiss workers.[90] Because of various external constraints, however, the council's *effective* rights to distribute net income and determine personal incomes remained narrowly limited until 1961, when they were given real content, and 1965, when they became highly effective. Consequently, the ability of workers to capture net income in the form of take-home personal incomes differed in each of the three periods: (1) 1957–1960, in which workers had narrowly limited claims to net income; (2) 1961–1964, in which workers acquired additional, but still rather limited claims to current net income; and (3) 1965–1968, in which workers acquired more effective and thus more valuable rights to net income. Each of these rights structures will be used to categorize a particular type of enterprise ownership form, namely: (1a) "narrowly-limited net income" enterprises, (2a) "limited net income" enterprises, and (3a) "net income-seeking" enterprises.

"Narrowly-limited net income" enterprises, 1957–1961. During the 1957–1960 period, the distribution of enterprise net income was influenced by the "producers' council" of the local commune, which had the right to examine an enterprise's financial statements.[91] If the local producers' council discovered that an enterprise's distribution violated existing regulations, it could "recommend" the necessary changes. In the event the workers' council did not comply with the recommendations, the communal people's committee had two alternatives: it could refuse to make loans and/or it could refuse to act as guarantor for bank loan applications. If the council still refused to abide by the recommendations, the matter was handed over to the district council of producers for resolution.[92] In practice, the recommendations were usually followed even though they had no legal force.[93]

The adoption of the pay scale was also subject to a recommendation procedure in which the trade unions played an important part. The 1957 "Law on Labour Relations" stated that before an enterprise's pay scale could become operative, it had to be approved by the communal people's committee, or a commission appointed by it, and by the appropriate trade union.[94] If the pay scale was not approved, the council was supposed to make the recommended changes. In the event such changes were not made, the matter was to be settled by the district council of arbitration. Its decision had to be incorporated into the enterprise's "Regulations on the Determination of Personal Incomes".[95] The pay scale recommendations were not legally binding, but the available evidence indicates they were effective.

The 1957 "Law on Labour Relations" stipulated that workers' councils could be assisted in the preparation of pay scales and in the determination of personal income differentials by entering into "pay scale agreements". These agreements, worked out by trade union officials, representatives of economic chambers, and/or industrial trade unions, specified "the general criteria, grounds and methods" for determining workers' personal incomes.[96] Pay scale agreements had to be approved by the Secretariat of Labour and Labour Relations of the Federal Executive Council.[97] Their basic goal was to achieve "a unified pay scale policy in enterprises".[98] In order to accomplish this objective the 1959 agreements provided for: (1) the distribution of net income between personal income and funds; (2) the ratio between the highest and lowest pay scale rate; (3) personal income differentials for different skill categories; and (4) the general criteria for determining bonuses and production standards.[99] Although these agreements were not legally binding, they were quite effective according to Štajner, in coordinating "wage rates for similar jobs within the same industry".[100]

Four other constraints should be mentioned. The first two pertain to the 1957–1960 period, or parts thereof, while the latter two are inherent features of the Yugoslav socio-economic system. (1) The 1959 and 1960 Federal Social Plans stipulated that for every amount earmarked for fixed capital at least 20% had to be set aside for working capital.[101] This requirement limited the council's freedom to distribute net income. (2) A regulation in effect from January 1958 to June 1959 restricted the net income that could be distributed as personal incomes: monthly and quarterly distributions were limited to the minimum personal incomes guaranteed by the State plus 50%. Only the Federal Executive Council could modify this limitation.[102] (3) The supervisory powers of the Financial Inspectorate, the Social Accounting Service (*Sluzba Drustvenog Knjigovodstva*), and the National Bank introduced further constraints. The Financial Inspectorate and the Social Accounting Service monitor enterprises' accounts to ensure their legality and supply government officials, trade unions, etc.

with the information needed to evaluate performance. In particular, the Social Accounting Service provides a system of uniform accounts that facilitate intra and inter-industry comparisons. The National Bank and its branches help supervise the use of enterprises' capital assets via their right to audit accounts of firms to whom credit has been extended.[103] Enterprises are also required to finance about 25% of any investment loan.[104] In effect, this motivates them to reinvest part of their net income. (4) Finally, the League of Communists is represented in the majority of enterprises. These units have no legal right to interfere with the self-management process, but their political influence can be significant.[105]

In conclusion, it appears that the above methods of "social control", particularly the communal recommendations and the pay scale agreements, narrowly limited the council's right to distribute net income and determine personal incomes before 1961.[106] This conclusion is supported by the observations of several well-known Yugoslav economists. Dusan Bilandžić, for example, stated that the institutional changes introduced by the 1957 reform had little effect due to the "administrative determination of the distribution and disposal of net income".[107] Likewise, Bajt points out that before 1961 "the system of wage formation . . . continued to be firmly centralized".[108] Finally, Ljubomir Madžar observed that "income distribution [i.e. the formation of personal incomes] was rather strictly regulated" prior to 1961.[109] It appears, therefore, that *in fact* enterprises could not independently determine their distribution policies during the 1957–1960 period.

"Limited net income" enterprises, 1961–1964. In 1961, the constraints on personal income formation were removed. Hence, for the first time, enterprises became autonomous in their decisions affecting the distribution of net income and the determination of personal incomes.[110] Such independence, however, was short-lived; controls limiting the free disposal of net income were reintroduced at the end of 1961. These controls became more pervasive during 1962 and 1963, and remained in effect until 1965.

The legislative package adopted by the Federal People's Assembly in March 1961 is commonly referred to as the 1961 economic reform. The "Law on Changes and Supplements to the Law on Assets of Economic Organizations"[111] and the "Law on Changes and Supplements to the Law on Labour Relations"[112] were particularly important. The relevant articles of the refined texts of these laws, which were adopted on 15 April 1961, are discussed below.[113]

The "Law on Assets of Economic Organizations of 1961" gave enterprises the right to independently distribute net income. Workers' councils were responsible for laying down the "basis and criteria" for distributing net income between personal incomes and funds in their *"Pravilnik o Raspodeli Čistog Prihoda"* ("Rules on the Distribution of Net Income").[114] According to article 14, para. 1, these Rules also had to specify the principles for distributing personal incomes among workers.[115] Article 16 obliged the council to behave "with the care of a good businessman" in determining distribution criteria. This meant that it should provide for the growth of enterprise investment funds and base personal incomes on productivity.[116] Article 17, para. 1, stated that enterprises could enter into agreements concerning "the principles to be observed . . . in determining the bases and criteria for the distribution of net income". Article 19 stipulated that the council must "allow workers to review the proposed rules" and must recognize their "observations and proposals". Article 20 gave the communal authorities the right to examine the council's draft of the Rules on the Distribution of Net Income. Finally, Article 21 provided that if the communal producers' council considered the bases and criteria set forth in the Rules to be in violation of existing legal prescripts, it could recommend the appropriate changes. However, even though the workers' council had to consider these recommendations, they were not legally binding. The same is true with regard to the council's adoption of the Rules on the Distribution of Personal Income.[117] It is important to note that trade unions lost their authority in the area of personal income formation in 1961.

Furthermore, pay scale agreements could become effective without the approval of the communal authorities.[118]

Yugoslav economists and others familiar with the 1961 reform agree, in general, that it effectively abolished the major social controls applied during the 1957-1960 period — making the workers' councils virtually free to distribute net income and determine personal incomes.[119]

On December 29, 1961, however, the Federal People's Assembly adopted the "Recommendation on the Distribution of Net Income in Work Collectives".[120] Its purpose was to remind enterprises that any increases in personal incomes should be tied to "the results of work and management". Nevertheless, the newly acquired freedom to determine personal incomes led enterprises to increase personal incomes far in excess of productivity gains.[121] Consequently, the Federal Assembly passed a law on 9 April 1962 that provided for the formation of commissions to implement regulations on the distribution of net income.[122] And, on 13 April 1962, the Federal Executive Council adopted the "Instruction on the Implementation of the Principles and General Standards for the Distribution of Net Income in the Rules of Economic Organizations".[123]

Article 1, para. 1 of this Instruction required enterprises to incorporate various "principles and general standards" into their "Rules" governing the distribution of net income and personal incomes. Enterprises were to distribute net income (to personal incomes and collective consumption) in accordance with their business success and provide for their growth by reinvesting part of their net income.[124] Article 3 stipulated that in their net income distribution, enterprises must consider not only the amount of net income realized, but also "the conditions under which it was realized". Article 5 ruled out price increases as a justification for increasing personal incomes.

Finally, Article 8 of the 1962 Instruction required enterprises to use a distribution formula in determining the per cent of net income earmarked for personal incomes.[125] This formula specified that in order to increase the ratio of personal incomes to net income in the current year, there must be a decrease in the current year's ratio of capital to labor relative to the previous year. Hence, insofar as this guideline to use labor intensive methods of production.[126] The 1962 formula, however, was somewhat inconsistent: on the one hand it rewarded increased productivity, which depends on increases in the ratio of capital to labor, and on the other hand it provided an incentive to reduce capital intensity!

The 1962 Instruction required enterprises to submit their "Rules on the Distribution of Net Income" to the appropriate Communal Commission. If illegalities were found, the commission could recommend changes. In the event that the workers' council did not accept the recommendation, the communal officials could suspend the enterprise Rules. The council had the right to appeal to the Republic Commission whose decision was final.[127]

On 7 May 1963, the Instruction of 1962 was superseded by the "Instruction on the Implementation of the Principles of the Distribution of Net Income of Economic Organizations".[128] This new Instruction abolished the distribution formula of 1962. Article 9 provided for the establishment of various success criteria by the Federal Secretariat for Work in conjunction with the Central Council of the Confederation of Yugoslav Trade Unions and the Federal Economic Chamber. These criteria, referred to as the "uniform indicators of business success" (*"jedinstveni pokazatelji poslovnog uspeha"*), were supposed to help enterprises analyze their operations and guide them in the distribution of net income and personal income.[129] On 3 July 1963, the "Agreement on the Uniform Indicators of Business Success of Economic Organizations" was adopted. It established three types of uniform indicators: the "uniform indicators of business success"; "net indicators of the conditions of business" (e.g. capital per worker); and the "uniform indicators of distribution" (e.g. gross personal incomes per worker).[130]

According to Bajt, the 1962 and 1963 "Instructions" were not very effective.[131] L. Madzar agrees; he thinks that the controls introduced after 1960 were not highly restrictive. In particular, he argues that "the period after 1960 can be treated, by and large, as the period of the free formation of personal income".[132] Within this period, however, he distinguishes between the years before the 1965 reform and those thereafter. Hence, his division is consistent with the one independently adopted in this paper.[133]

In conclusion, although the controls introduced in 1962 and 1963 did not effectively constrain the council's right to distribute personal incomes, they did tend to limit the free disposal of net income until 1965. Therefore, the 1960–1964 period can be viewed as one in which workers' rights to net income were substantially enlarged relative to the 1957–1960 period, but still somewhat limited relative to the 1965–1968 period.

"Net income-seeking" enterprises, 1965–1968. The 1965 reform abolished the commissions that had been set up to regulate the distribution of net income in enterprises and the 1963 Instruction.[134] The removal of these restrictions made the worker's councils virtually free to distribute net income in accordance with their "Rules on the Distribution of Income" (*Pravilnik o Raspodeli Dohotka*). Some forms of social control still remained, but were not legally binding; they merely sought to keep increases in personal incomes in line with increased productivity through voluntary measures.[135] Thus, they did not interfere with the rights granted by the 1965 reform. As Hanzeković pointed out in 1968:

> From 1965 onward there have been no more regulations which define how economic organizations must distribute their income.[136]

Virtually all Yugoslav economists and others familiar with the reform measures agree that enterprises acquired greater independence in distributing their net income between personal incomes and funds relative to the earlier periods.[137] A careful investigation of the literature indicates that the council's newly acquired legal right to independently distribute net income was effective after 1965. Hence, even though we cannot see a black-and-white distinction between pre-1965 (i.e. 1961–1964) and post-1965 rights to income, we assume that workers' rights to income expanded and became more effective as a result of the 1965 reform.

III. SOME IMPLICATIONS OF THE REFORMS[138]

We have seen that the 1961 and 1965 reforms: (a) increased the *size* of enterprise net income; (b) virtually eliminated the tax on the firm's capital value; and (c) gave workers more effective claims to their firm's net income, including the return to capital. These changes in effective appropriability will differentially affect the workers' council's employment and investment behavior in capital-rich and capital-poor firms and industries.[139] Before deriving these implications, however, we must keep in mind that one right which workers never acquired is the right to capture present value changes resulting from their investments in the firm. As previously mentioned, this lack of private property rights in nonhuman capital means that workers can only capture *current* net income; i.e. they must stay with their firm if they are to realize the expected increase in future income stemming from their investments in the firm. This point deserves further elaboration.[140]

In Yugoslavia the worker can be thought of as having two investment alternatives: (1) He can invest in his firm's capital stock by allocating net income to the business fund; or (2) he can allocate net income to personal income and then invest in a savings certificate paying a fixed rate of interest (i).[141] These investment alternatives differ, of course, since the first is socially owned, while the second is privately owned. The implication of this is that the rate of return (r) on the socially owned investment must exceed that on the privately owned investment to make workers indifferent between the two alternatives. Moreover, the extent of this difference will depend on the average length of employment desired by members of the firm (t). In particular, as t increases, the rate of return (r^*) required on socially owned assets to make the council *indifferent* between the two investment alternatives declines and approaches i. For example, given an i of 5%, r^* will be 23, 13, 9 and 8% respectively for "t values" of 5, 10, 15 and 20 years.[142]

In sum, the important points to note are that: (1) rates of return on alternative investments in Yugoslavia are not directly comparable because of the differences in property rights; and (2) the desired tenure of workers with their firms will affect the amount of net income which they voluntarily reinvest in their firms' capital stock. On the other hand, if workers had private property rights in nonhuman capital, there would be no such relationship between employment and investment behavior. Workers would not have to be employed by an enterprise in order to invest in it, since they would not have to remain with that firm in order to capture expected income streams. That is, if Yugoslav workers had private ownership rights in capital goods, they could immediately realize expected future increments in net income by selling their claims in a private capital market. Clearly, the lack of capital markets in Yugoslavia hampers capital *and* labor mobility. Wachtel, for example, notes that:

> If the worker decides to remain with the enterprise because his personal income has been deferred to some future period, when he would otherwise have changed employment, then severe immobilities will have been introduced into the labor market.[143]

We shall now look into this phenomenon more carefully.

Differences in average lengths of desired employment in capital-rich and capital-poor firms.

The effect of the 1961 and 1965 reforms on the average length of employment desired by members of capital-rich and capital-poor firms is a complex problem. To approach it, we must first recall that t, the average length of employment desired, depends on *capturable* future net income-per-worker; that is, on expected personal income-per-worker. Second, we must recognize that under the net income system, personal income-per-worker depends on net income-per-worker. Thus, firms with above average net income-per-worker will tend to have above-average personal income-per-worker. Furthermore, workers in such firms will tend to have longer average periods of desired employment than in firms with below-average net income-per-worker. In the following discussion, we shall specify the major determinants of interfirm net income-per-worker, one of which is capital-per-worker. We shall then analyze the impact of the reforms on the relation between capital-per-worker and net income-per-worker and personal income-per-worker on the other. Of particular importance will be the effect of the 1961 and 1965 reforms on the capturability of implicit interest income from the socially owned capital assets at firms' disposal. From this analysis we will derive predicted differences in t, i.e. average length of employment, between capital-rich and capital-poor firms.

Three major reasons for interenterprise net income-per-worker differentials can be specified.[144] First, there may be differences in monopoly power and/or privilege. Some firms may have control over their prices, and/or be subsidized by the government. Second, there may be differences in implicit interest income according to the size of the firm's capital stock, and depending on the capital tax. If the capital tax, which may be thought of as an "interest rate" paid to the State on the value of the firm's capital assets, is less than the opportunity cost of capital, part of the firm's net income will consist of implicit returns to capital. Firms that have been endowed with a large amount of capital-per-worker will have relatively high net income-per-worker, insofar as implicit interest income can be captured.

Finally, there may be differences in the quality of entrepreneurship, especially if the entrepreneurial functions are performed by a collective — with all members participating in management, innovation, and risk-bearing. These differences in the quality of entrepreneurship may cause differences in net income-per-worker.

We are primarily interested in the effect of the reforms on differences in t between capital-rich and capital-poor firms. In the following discussion we shall assume that differences in monopoly power and/or privilege, and differences in entrepreneurial quality, are not important sources of *interfirm* net income-per-worker differentials.

Let us consider the impact of the 1961 and 1965 reforms in the relation between capital-per-worker and net income-per-worker. Before the 1961 reform, differences in capital-per-worker should not have been responsible for very large differences in net income-per-worker or personal income-per-worker. There are several reasons for this. First, the tax on capital was relatively high at 6%. If we assume that this tax effectively siphoned off most implicit interest income, differences in capital-per-worker should not have been an important determinant of interfirm net income-per-worker differentials. Second, the progressive tax on enterprise income should have reduced interfirm net income-per-worker differentials, thus further reducing any interfirm differences in net income-per-worker due to capital-per-worker. Finally, personal income-per-worker differentials were narrowly limited before 1961, so that any differences in net income-per-worker due to capital-per-worker should not have shown up as large differences in take-home pay.

After the 1961 reform, however, we would expect differences in capital-per-worker to have a greater impact on differences in net income-per-worker and personal income-per-worker. Although the legal rate of tax on capital remained at 6% until 1964, the effective rate averaged only 2.5% in 1963. This implies that after 1961 enterprises could capture relatively greater implicit interest income from the capital assets at their disposal. In addition, the replacement of the progressive tax on enterprise income by a proportionate tax of 15% should have allowed more of the implicit interest income to be reflected in net income-per-labor. Finally, the removal of most effective controls on the distribution of net income should have allowed the differences in net income-per-worker (assumed here to be due to differences in capital-per-worker) to be reflected more fully in differences in personal income-per-worker.

The 1965 reform reduced the legal rate of tax on capital from 6% to 3.5%. The effective rate, however, was judged to be about 1.3% in 1966.[145] Moreover, all taxes on enterprise income were removed in 1965. Thus, the 1965 reform should have allowed differences in capital-per-worker to show up to a greater extent as differences in interfirm net income-per-worker. Finally, the removal of all remaining controls on the distribution of net income in 1965 should have allowed differences in implicit interest income to be even more completely reflected in interfirm differences in personal income-per-worker.

The preceding line-of-reasoning suggests that firms with above average capital-per-worker should have above average net income-per-worker, and thus above average personal income-per-worker. In turn, this implies that workers in capital-rich firms should have longer average lengths of desired employment than in capital-poor firms. Furthermore, the foregoing analysis suggests that personal income-per-worker differentials between capital-rich and capital-poor firms, and thus interfirm personal income-per-worker differentials, should have increased over the 1957–1968 period.[146] This further implies that differences in t between capital-rich and capital-poor firms, and therefore interfirm differences in t, should have increased over the 1957–1968 period as rights to net income became more valuable.

Using cross-sectional multiple regression analysis, we found that the evidence from both industry-wide and individual firm data were consistent with our hypothesis that capital-rich firms have higher net income-per-worker than capital-poor firms. However, the industry-wide multiple regressions were more appropriate, since in them we attempted to control for the effects of monopoly power *and* quality of entrepreneurship on net income-per-worker.[147]

We also found evidence to support our hypothesis that interenterprise personal income-per-worker differentials increased over the 1957–1968 period. Using the coefficient of variation to measure interenterprise personal income-per-worker differentials in the textile industry, we found that the coefficient of variation increased from 0.206 in 1960, to 0.276

in 1963, to 0.432 in 1967. Similar results were obtained using interindustry data.[148]

Finally, it might be noted that, in theory, differences in capital-per-worker should not result in differences in personal income-per-worker *under socialism.* Yugoslav firms have the right to use the capital goods at their disposal, but they have no ownership title, and must pay a tax on the value of their capital stock. The purpose of this tax, you recall, is to siphon off implicit interest income. Thus, if this "interest rate" reflects the true cost of capital services, differences in capital-per-worker should not affect interenterprise personal income-per-worker differentials.

Using a variant of two-stage least squares regression analysis, we found that for selected years (each year selected to represent a particular rights structure) the evidence both from the textile industry data and Korać's interindustry data suggest that enterprises do capture part of the income flowing from their capital assets. Hence, it appears that interenterprise and interindustry personal income-per-worker differentials can be attributed, at least in part, to differences in implicit interest income, resulting from differences in capital intensity.[149]

We can now derive a specific implication about the behavior of Yugoslav firms. Workers in capital-rich firms will have longer average periods of desired employment (t) than workers in capital-poor firms, since such firms will have above-average income-per-worker in each successive period. Moreover, as the workers' rights, including the "right of use", became more valuable over the 1957–1968 period, interenterprise differentials in t should have increased due to the spread in interenterprise personal income-per-worker differentials.[150] This means, given our assumptions, that differences in t between capital-rich and capital-poor firms should also have increased. We can now state this line of argument more succinctly:

Implication No. I. Workers in capital-rich firms will have longer average lengths of desired employment (t) than in capital-poor firms in each successive period. And, this difference will increase as workers' rights, including the "right of use", become more valuable.

To test this implication we would have liked to proceed as discussed earlier and find for each rights structure, the average length of employment desired by workers in the various circumstances. If we found little difference between the average length of contractual employment in the average capital-rich and average capital-poor firm before 1960, a greater difference after the 1961 reform, and an even greater difference after the 1965 reform, we would have evidence to support Implication No. 1. However, such data is not available. Therefore, we resorted to a less rigorous method of checking this implication.

The quit rate (QR) was used as a proxy for t. Quit rate data, however, were not available before 1964, so our ability to check Implication No. 1 was further limited. Moreover, since quit rate data were available only by industry, we could not examine differences in interenterprise behavior. Nevertheless, we were able to examine interindustry behavior, which is assumed to follow a pattern similar to that predicted for interfirm behavior. Our procedure was to initially examine interindustry differences in t, as measured by the QR, and then analyze these differences for 1964 and 1966, using a regression model of interindustry quit rates.[151]

Our statistical results confirmed that the quit rate is negatively related to capturable rewards, as measured by adjusted personal income-per-worker.[152] Although the regression coefficient was not statistically significant, we believe that if the average length of desired employment (t) could be measured more precisely, one would find a statistically significant positive relationship between t and personal income-per-worker. Thus, we interpret the positive relationship found between personal income-per-worker and capital-per-worker to mean that workers in capital-rich firms have longer average lengths of desired employment than workers in capital-poor firms, *ceteris paribus,* in each successive period.

Moreover, we observed that interindustry quit rate differentials, as measured by the coefficient of variation, increased from 38.3% in 1964 to 49.1% in 1966, and to 52.2% in 1967.[153] We interpret this to mean that differences in average lengths of desired employment behavior between capital-rich and capital-poor industries widened as workers' property rights became more valuable. A crucial link in this reasoning is that capital-rich industries have above average income-per-worker.

Differences in average investment behavior in capital-rich and capital-poor firms.

Given the link between employment and investment behavior in the Yugoslav firm, a corollary to Implication No. 1. can be derived. Namely:

> *Implication No.* 2. Workers' councils in capital-rich firms will *voluntarily* distribute a larger fraction of their net income to the Business Fund relative to capital-poor firms, in each successive period.

That is, the longer average period of employment desired by workers in capital-rich relative to capital-poor firms would lead us to expect workers' councils in those firms to reinvest relatively more of their net income, *ceteris paribus.*

Our evidence confirmed that capital-rich firms have tended to reinvest more than capital-poor firms. However, it is difficult to say anything about how differences in investment behavior between these two sets of firms will change as rights to income become more valuable.[154]

Property rights changes and interfirm personal income-per-worker differentials

Earlier we showed that *even in the absence of differences in reinvestment* between capital-rich and capital-poor firms, personal income-per-worker differentials between such firms should have increased as rights to income became more valuable over the 1957 – 1968 period. Our empirical evidence supported this hypothesis. We found that both interfirm and interindustry personal income-per-worker differentials increased over the 1957 – 1968 period.[155] However, we now have a further reason to believe that personal income-per-worker differentials should have increased between capital-rich and capital-poor firms. Namely, the differences found in net investment between these two sets of firms should have deepened productivity differences, increasing the spread in net income-per-worker, and thereby increasing personal income-per-worker differentials. Wachtel reached a similar conclusion, via a different routes:

worker differentials. Wachtel reached a similar conclusion, via a different route:

> The tendency for high-wage [personal income-per-worker] industries to have relatively larger investments than low-wage [personal income-per-worker] industries could increase interindustry wage differentials over time in Yugoslavia.[156]

Our study, however, stresses that the underlying rights structure in Yugoslavia, as shaped by the 1961 and 1965 reforms, has been a basic factor leading to the increase in interfirm and interindustry personal income-per-worker differentials over the 1957–1968 period. The final implication of our study is simply that point with respect to capital-rich firms, capital-poor firms, and all enterprises.

> *Implication No.* 3. Personal income-per-worker differentials between capital-rich and capital-poor firms will increase as rights to income become more valuable and as a consequence of different reinvestment ratios. These differences will be reflected in increasing interfirm personal income-per-worker differentials over the 1957–1968 period.

Implication No. 3 also applies to interindustry personal income-per-worker differentials.

We have already indicated that income-per-worker differentials increased over the 1957–1968 period. In addition, this variance was analyzed and found to be largely consistent with Implication No. 3.[157] Finally, our findings tend to support (and our theory helps explain) the popular contention in Yugoslavia that:

> . . . a major current problem of the system is, . . . , the discrepancy between rich and poor enterprises, the rich ones allegedly having too small a work force, paying a too high a wage, and preserving their relative wealth by relatively heavy investment.[158]

Resource misallocation

At this point, let us consider the implications of our results for resource misallocation. In addition, let us examine several proposals by Yugoslav economists to dampen the increase in personal income-per-worker differentials.

Misallocation and capital markets

If workers are tied to their firms by the investments they make in non-owned assets, it seems that the *sine qua non* of an efficient allocation of resources in Yugoslavia is the creation of a capital market. Under existing conditions, even though rates of return may be higher in capital-poor firms relative to capital-rich firms, there may not be any flow of capital from one group to another.[159] Capital resources will therefore be misallocated, since there are higher valued investment alternatives that are not being utilized. The socially desirable flow of resources, of course, will be from lower valued uses, e.g. in capital-rich firms to the higher valued uses, say in capital-poor firms. However, this does not occur because of the absence of a free capital market.

On the other hand, capital-rich firms will tend to have higher net income-per-worker, and therefore higher personal income-per-worker than capital-poor firms, regardless of the alternative social cost of different categories of labor. As Madzar says, the payment of labor according to enterprise net income does not guarantee:

> . . . that a given category of the labor force will be equally rewarded in alternative jobs. This implies apparently a certain inefficiency in the allocation of resources.[160]

If the value of labor's marginal products is in fact higher in the capital-rich firms, the value of society's output could be increased by the movement of workers from capital-poor to capital-rich firms. Workers, however, are prevented from moving to their highest valued uses by the institutions of social ownership and workers' management.[161]

Social ownership has a tendency to tie workers to their firms, since they must remain with their firms to capture any increments in future net income resulting from their investments in non-owned assets. Moreover, making workers "residual claimants" rather than wage earners causes workers' councils to be somewhat reluctant to hire new workers. They are reluctant because new members of the collective would share in the fruits of past investments, even though they incurred no sacrifice.

The introduction of a capital market would divorce the investment and employment decisions, make rates of return on alternative investments directly comparable, and provide for capital and labor mobility. Moreover, the existence of a competitively determined market rate of interest, reflecting the scarcity value of capital, would mean that rational investment decisions could be made. Thus, capital would tend to flow to its highest valued uses. Finally, once a share market was introduced, specialization in management and control (ownership) could occur. Workers would lose their status as residual claimants and a competitive labor market would emerge. In such a market, of course, workers would tend to be paid a wage rate reflecting what they could earn in their next best alternative. Thus, the value of labor's marginal product in alternative uses would tend toward equality, implying an efficient allocation of resources.

These institutional changes would almost certainly remove the sources of behavior that we believe have led to increases in interfirm and interindustry personal income-per-worker differentials. They would also enhance individual freedom. Nevertheless, it would be sheer folly to think that such changes, which require private property rights in the means of production, would be instituted in a socialist country. What is fascinating is that the Yugoslavs have gone so far towards a market orientated economy, while retaining social ownership of nonhuman capital resources. This, however, is precisely their impasse.

Yugoslav policy proposals

Given the ideological constraints on private ownership, the following alternatives appear open to Yugoslav officials as ways to mitigate the increase in interfirm pay differentials. (1) Provide for interfirm capital mobility and give workers more complete claims to the income expected from their investments in the firm. (2) Promote integration of smaller firms within an industry. (3) Reintroduce controls on the formation of personal incomes, and increase taxes on enterprise income and capital. Let us consider the actions that have been taken along these lines.

Improving the investment atmosphere. Before 1963, enterprises having excess funds could not invest in other firms. Hence, these excess funds would be distributed as personal incomes, or reinvested in the firm, even if there were more attractive investments in other firms. The 1963 Constitutional Amendment XXII, however, allowed interfirm investment, subject to the constraint that interest earned on funds invested in other firms should not be paid out as personal incomes. Nevertheless, if firms can share in the distribution of net income created by loans to other firms, this implies that they will be able to pay out higher personal incomes. According to Madzar, such a solution would not be ideologically acceptable, since it would allow enterprises to capture interest income.[162]

With respect to giving workers a less uncertain claim to their investment income, Yugoslav policy has been rather silent. However, some Yugoslavs are beginning to realize the need for promoting investment incentives by establishing more effective claims to net income arising from investments in the firm's capital stock.

D. Dubravcić, for example, recognizes that the lack of private property rights in capital goods means that workers must stay with their firm in order to capture expected increments to future net income resulting from their investment in the firm.[163] He therefore proposes the following method of giving workers less uncertain claims to investment income:

> Procedures could be set up to "transfer" certain claims of older workers to pension funds, and even a system of bond issues to members of the co-operative could be envisioned.[164]

According to Dubravcić, such a scheme would undermine socialist ideology of payment according to labor.[165] Hence, the plausibility of such a scheme being adopted is slight.

Aleksander Bajt also recognizes the need for some sort of capital market. His proposal is that since Yugoslav workers act as if they own the means of production they should be given *legal* property rights to their firms' assets. He believes such a transfer of legal title from the state to worker-managed enterprises would allow a freer flow of nonhuman resources, improve entrepreneurial decision making, and enhance economic efficiency. Bajt, however, would not allow workers to have any effective claims to present values. The state would retain effective property rights in capital, by which Bajt means "the undifferentiated income invested in all previous periods in order to increase the productive capacities of the economy". To assure that capital income flows into the state budget and is not appropriated by enterprises, Bajt would have the state place an "adequate" interest charge on capital. Hence, in his scheme, workers would be rewarded only for their labor input plus entrepreneurship, but not for changes in capital value which belong to the state. According to Bajt, this distribution scheme would be consistent with the socialist principle "to everybody according to his work".[166]

There are many difficulties with Bajt's proposal. The main problem, however, is his assumption that giving enterprises legal (but not effective) property rights in their assets will lead to a more efficient allocation of nonhuman capital. We have already seen that without effective appropriability entrepreneurs will not be strongly motivated to efficiently utilize their unique knowledge. This means the competitive search process will be thwarted, true capital markets will not emerge, and interest rates will not reflect the scarcity value of capital. Under Bajt's quasi-ownership scheme, therefore, it is doubtful if nonhuman capital resources could or would be placed in their highest valued uses.

Integration. The integration of capital-poor firms could reduce interfirm differences in capital-per-worker, if jobs were eliminated in the process. Integration would then tend to reduce interfirm differentials in net income-per-worker, and thereby reduce interfirm differentials in personal income-per-worker. Yugoslav economists appear to accept the merger route as a justifiable means of reducing personal income-per-worker differentials among firms.[167] In fact, M. Dautović points out that one of the goals of the 1965 reform was to foster integration, and "to favor enterprises which combine into various forms of association".[168] In his study of economic integration, Dautović found that between 1958 and 1966, the number of medium-sized enterprises employing 125 workers or less decreased substantially, while the number of larger-sized firms increased.[169] He also found that most enterprises that integrated in 1965 and 1966 were in the same branch or group.[170] Dautović's findings suggest that smaller firms were integrating with each other (hence the reduction in the number of medium-size firms) to strengthen their position in the market *vis-à-vis* the richer firms.

We might mention that on January 26, 1967, the Federal Assembly's Economic Chamber adopted the "Recommendation on the Further Development of Economic Integration and Business Cooperation". This measure recommended that Yugoslavia:

> Build into the existing system adequate solutions which would permit a freer movement of accumulated capital, a freer capital market and the elimination of statist methods of concentration of investment capital.[171]

It appears that some Yugoslav officials are beginning to recognize the need for greater capital mobility but are prevented from introducing private ownership, which is the prerequisite for a true capital market, by their ideological commitments.

Reintroducing controls on personal income formation, and increasing taxes on enterprise income and capital. In the final analysis, of course, Yugoslav officials can always resort to personal income controls, and/or higher taxes on enterprises' income and on the value of their capital assets. This measure would certainly dampen the increase in interfirm personal income-per-worker differentials. However, the price would be a revision towards a centrally controlled economy. Nevertheless, given the constraints on the introduction of a private capital market, the Yugoslavs may have little choice in the matter. In fact, since the end of 1967, various controls have been reintroduced along with a tax on the income of specific enterprises.

E. Berković points out that: (1) At the end of 1967 controls were imposed on increases in personal incomes of those persons earning relatively high incomes in the following areas: "banks, power production and distribution, foreign trade, commercial agencies, social security offices and business associations". (2) A tax was placed on the income of enterprises in banking and foreign trade in order to prevent workers in these areas from earning excessive personal incomes due to privileged conditions. (3) Finally in 1968, the "Law Governing the Determination and Distribution of Income to Enterprises" was enacted. This law provided for "social consultation and agreements" among business associations, trade unions, and political organs in order to jointly settle questions relating to the formation of personal incomes.[172] The law aims at making personal income differentials depend more closely on "the results of work", and

> . . . provides for the possibility of imposing progressive taxation on that amount of revenue allocated to personal incomes which exceeds the level of personal incomes fixed by agreement or law.[173]

None of these measures has been very successful in dealing with the problem of widening income-per-worker differentials. In fact, if the hypotheses of this study are correct, Yugoslav officials are headed in the wrong direction as evidenced by their abolishment of the capital tax in 1971. Such a move will probably exacerbate rather than mitigate their problems.

IV. CONCLUSION

The theme of our paper has been that markets without private property rights are an illusion. In Yugoslavia, the absence of private property rights in nonhuman capital not only prevents true capital markets from emerging, it also hampers the efficient operation of labor markets. This occurs because without saleable rights to present values, workers must remain employed with their firm if they want to capture the expected increments in future net income.

The 1961 and 1965 economic reforms sought to decentralize investment decision making and enlarge workers effective claims to net income. It was hoped that this would generate a more efficient market economy and, in particular, provide for a more efficient allocation of investment funds. The difficulty, however, is that although Yugoslav leaders want the results of freedom, their socialist doctrines prevent them from introducing the prerequisite of freedom, namely, private property rights. Moreover, as a socialist state, they find it difficult to abandon deliberate planning of investment.

The Yugoslav reforms are bound to fail in their attempts at decentralization; because spontaneous market order can only be generated via a competitive process, which requires private property rights, i.e. effective appropriability. Moreover, without private property rights in nonhuman capital, both the freedom of investors and entrepreneurs, as well as the freedom of workers will be attenuated.

In fact, our empirical results, while they must be interpreted carefully, tend to support these conclusions. We found that the reforms increased the spread in personal income-per-worker between capital-rich and capital-poor firms. Finally, we attributed this to an institutional arrangement which encourages workers in capital-rich firms to have relatively longer desired lengths of employment and reinvest relatively more than workers in capital-poor firms.

NOTES

1. We judge resource misallocation solely in terms of whether resources flow to those uses valued most highly by individual consumers. Our criterion therefore rests on individual freedom. Accordingly, any impairment of individual freedom to buy and sell factors prevents the spontaneous market order from emerging and reduces the value of output to consumers.
2. "Capital-rich" firms (industries) are those having higher than average capital-per-worker ratios relative to the industry (industry-wide) average, and conversely for "capital-poor" firms (industries).
3. For an excellent discussion of the institutional features of private enterprise, see Henry N. Sanborn, *What, How, For Whom: the Decisions of Economic Organization* (Baltimore: Cotter-Barnard Co., 1972), chap. 10. On "property rights", see pp. 247–248.
4. Roland N. McKean discusses these ideas at length in his "Property Rights Within Government, And Devices to Increase Governmental Efficiency", *The Southern Economic Journal* Vol. 39, no. 2 (October, 1972), pp. 177–186.
5. Armen Alchian has discussed these aspects of private enterprise in detail. See, e.g., *Some Economics of Property*, RAND Corporation, p-2316 (Santa Monica: The Rand Corporation, 1961), especially chap. 3; "Prices, Markets, Incentives", paper presented at CESES IV Seminario Internazionale, Rapallo, Italy, September 1967; and *Pricing and Society*, Occasional Paper No. 17 (Westminster: The Institute of Economic Affairs, September, 1967), especially pp. 11–16.
6. See Alchian, *Pricing and Society*, pp. 12–13.
7. The "rule of law" states that laws should be in the nature of universal rules of just conduct equally applicable to all. For an excellent discussion of the importance of the rule of law in a free society, see Friedrich A. Hayek, *The Constitution of Liberty* (Chicago: Henry Regnery Co., 1960), chaps. 10 and 14.
8. Ludwig von Mises, "Economic Calculation In Socialism", in *Comparative Economic Systems: Models and Cases*, 3rd ed., ed. Morris Bornstein (Homewood, Ill.: Richard D. Irwin, Inc., 1974), pp. 120–126. Reprinted from *Socialism: An Economic and Sociological Analysis*, translated from the German by Jacques Kahane (London: Jonathan Cape Limited, 1936, 2nd ed.: New Haven, Conn.: Yale University Press, 1951), pp. 119–122, 137–142. This volume is an expanded translation of *Die Gemeinwirtschaft*, originally published in 1922.

   Mises's original article, "Die Wirtschaftsrechnung in sozialistischen Gemeinwesen", which touched off the so-called "socialist calculation debate", appeared in *Archiv für Sozialwissenschaften und Sozialpolitik*, Vol. XLVII, No. 1 (April 1920). A translation of this, together with several other important articles from the debate, appears in *Collectivist Economic Planning*, ed. F. A. Hayek (London: George Routledge & Sons, 1935).
9. The following line-of-argument is based on Mises's "Economic Calculation In Socialism", in Bornstein, pp. 120–126.
10. Mises, "Economic Calculation", in Bornstein, p.125.
11. See Friedrich A. Hayek, "Socialist Calculation: The Competitive 'Solution'", in Bornstein, pp. 140–159. Reprinted from *Economica*, New Series, Vol. 7, no. 26 (May, 1940), pp. 125–149. Also see Hayek's "The Use of Knowledge in Society", in *Individualism and Economic Order* (*I&EO*) (Chicago: Henry Regnery Co., 1972), chap. 4.
12. Hayek, "Socialist Calculation II: The State of the Debate (1935)", in *Collectivist Economic Planning*, p. 176.
13. See Hayek, "The Use of Knowledge", in *I&EO*, pp. 83–86. Also see, Sanborn, *What, How, For Whom*, pp. 227–235 and p. 257 for an excellent discussion of entrepreneurial knowledge of alternatives.
14. Hayek, "The Use of Knowledge in Society", in *I&EO*, p. 86. According to Hayek, the price and profit system is a mechanism for conveying information about changes in demand and supply conditions. The value of this system is that it gets individuals to conserve resources for higher valued uses, even if they are unaware of the reasons for the initial price change. Hayek, "The Use of Knowledge", pp. 86–87.

    Let us apply Hayek's ideas to investment behavior. Suppose there is a shift in relative demands so that consumers want more X and less Y. In the loanable funds market there will now be a planned excess demand for investment funds for use in the X industry. Entrepreneurial alertness will then lead to a bidding up of the interest rate on funds for use in X (relative to Y). Consequently, a new short-run equilibrium will emerge in which the return on investment in X will exceed the return in Y. This differential return will then signal and induce investors to transfer monies from Y to X. Over the long-run, as more investors perceive the changed conditions, even more funds will be redirected from Y to X until the differential return vanishes. Consequently, even though the capital stock remains constant, its value to consumers increases, since resources flow to higher valued uses.

For the above sequence to occur, it is only necessary that a few entrepreneurs perceive the relative demand change, and that they be free and motivated to act on their knowledge. A price differential will then emerge which will induce capitalists to shift funds from Y to X. At the end of the process, the great majority of individuals participating in the reallocation will not know the original cause of the price differential.

This process, of course, is simply an illustration of the so-called "second fundamental law of demand". That is, "in the long run, more resources, human and nonhuman, and more customers will shift in response to a given difference in wages, investment returns, or product prices and qualities than in the short run". Sanborn, *What, How, For Whom,* p. 226. Also see Armen Alchian and William R. Allen, *Exchange and Production: Competition, Coordination, and Control* (Belmont, Calif.: Wadsworth Publishing Co., 1977), pp. 62–64 and p. 373.

15. This idea, of course, is one of Hayek's great insights and is best expressed by his statement that: "The mere fact that there is one price for any commodity . . . brings about the solution which (it is just conceptually possible) might have been arrived at by one single mind possessing all the information which is in fact dispersed among all the people involved in the process". Hayek, "The Use of Knowledge", in *I&EO*, p. 86. For an application of this idea to entrepreneurial investment decision-making, see Sanborn, p. 257.
16. For Hayek's definition of the economic problem of society, see "The Use of Knowledge", in *I&EO*, pp. 77–78 and pp. 83–84.
17. Hayek, "Socialist Calculation II", pp. 172–180. Also see Hayek, "Socialist Calculation: The Competitive 'Solution'", in Bornstein, pp. 154–156.

    G. Warren Nutter's criticism of market socialism closely resembles Hayek's. In particular, Nutter observes that: "Markets without divisible and transferable property rights are a sheer illusion. There can be no competitive behavior, real or simulated, without dispersed power and responsibility". Nutter, "Markets Without Property: A Grand Illusion", in *Money, the Market and the State,* ed. Nicholas Beadles and Aubrey Drewry (Athens: University of Georgia Press, 1968), p. 144.
18. See Deborah D. Milenkovitch, *Plan and Market in Yugoslav Economic Thought* (New Haven: Yale University Press, 1971), pp. 101–102, n. 34. For a description of Lange's model of market socialism, see Oskar Lange, "On The Economic Theory of Socialism", in Bornstein, pp. 127–135. Originally published in *Review of Economic Studies,* Vol. 4, no. 1 (October, 1936), pp. 60–66.
19. For a detailed listing of the constraints on Yugoslav enterprise behavior during the so-called "administrative period" (1947–1952), see the "Basic Law on State Economic Undertakings", *Sluzbeni List FNRJ* (*S.L.*), No. 62/1946. Also see Drago Gorupić and Ivan Paj, *Workers' Self-Management in Yugoslav Undertakings* (Zagreb: Ekonomski Institut Zagreb, 1970), pp. 35–44.
20. See Milenkovitch, *Plan and Market,* pp. 62–68 and pp. 77–80. It is interesting to note that Kardelj was advocating, on the basis of Marxist-Leninist principles, the adoption of workers' councils as early as July 1949. Milenkovitch, pp. 65–66.
21. See Milenkovitch, p. 77. For Kidric's original contribution, see "Teze o ekonomici prelaznog perioda u nasoj zemlji", *Komunist,* Vol. 4, no. 6 (November, 1950), pp. 1–20.
22. Although Kidric advocated market socialism during the transition to communism, he believed that ultimately markets would have to be abolished. Moreover, he made specific proposals for state intervention during the transition period. In brief, he proposed the following constraints on enterprise autonomy. (1) Enterprises should be required to achieve a minimum utilization of capacity, consistent with the planned value of output. (2) The state would continue to plan the rate of capital accumulation and allocate investment funds; and (3) enterprises should be subject to planned prices and tax rates based on the federally determined "rate of accumulation and funds". This was the ratio of planned investment plus social welfare expenditures to the planned wages fund. Milenkovitch, pp. 80–89.
23. Milenkovitch, pp. 77–79.
24. *Ibid.*, p. 78.
25. "The Basic Law on the Management of State Economic Enterprises and Higher Economic Associations by Work Collectives", *S.L.*, no. 43, 26 June, 1950.
26. *Ibid.*, No. 58, 29 December, 1951.
27. See Milenkovitch, p. 82 and p. 68.
28. *S.L.*, No. 52, 1953.
29. Svetozar Pejovich, "Liberman's Reforms And Property Rights In the Soviet Union", *Journal of Law and Economics,* vol. 12 (April, 1969), pp. 158–162.
30. "Net income" is the difference between the firm's total revenue and its non-labor costs of production. Under the net income system workers receive a personal income that depends on net income, rather than a fixed wage rate.
31. See, for example, Dusan Bilandzić, *Management of Yugoslav Economy (1945–1966)* (Beograd: Yugoslav Trade Unions, 1967); Joel B. Dirlam and James L. Plummer, *An Introduction to the Yugoslav Economy* (Columbus, Ohio: Charles E. Merrill Publishing Company, 1973); Gorupić and Paj, *Workers' Self-Management;* and International Labour Office, *Workers Management in Yugoslavia* (Geneva: International Labour Office, 1962).
32. For a more detailed description of the organizational structure of the council, see "The Basic Law on the Management of State Economic Enterprises and Higher Economic Associations by Work Collectives", *Constitution of the Socialist Federal Republic of Yugoslavia of 7 April 1963, S.L.*, No. 14, 10 April 1963, art. 92; International Labour Office, chapters 4–5; the Gorupić-Paj study, 1970; and Howard M. Wachtel, "Workers' Management and Wage Differentials in Yugoslavia" (Ph.D. dissertation, University of Michigan, 1970), chap. 3.
33. The council is responsible for adopting annual pro-

duction and financial plans. These plans, however, are not legally binding; they merely serve as guidelines for implementing the council's policy decisions. The "Law on the Planned Management of the National Economy", *S.L.*, made enterprises autonomous in drafting their annual plans. For a detailed account of production planning in Yugoslavia, see Albert Waterston, *Planning in Yugoslavia* (Baltimore: The Johns Hopkins Press, 1962).

34. See Branko Horvat, "Yugoslav Economic Policy in the Post-War Period: Problems, Ideas, Institutional Developments", *American Economic Review,* Vol. 61, Part 2 (June, 1971), p. 111.
35. *S.L.,* No. 53, 12 December, 1957.
36. *Ibid.,* art. 345.
37. This commission is appointed by the communal council of producers and the local trade union organization. If an agreement cannot be reached, the district council of arbitration settles the matter. "Law on Labour Relations", arts. 346 and 350.
38. "The Law on Assets of Economic Organizations", *S.L.,* No. 54, 28 December, 1957. Article 15 of this law divided enterprise assets into four categories: the "fund of fixed assets", the "fund of working assets", the "reserve fund", and the "collective consumption fund". It also stipulated that the "allocation of the net income to the funds shall be implemented by the workers' council". Article 30 of the same law ruled that each fund must be used for its assigned purpose.
   In 1961, fixed and working assets were combined to form the "business fund"; often referred to as the "investment fund".
39. "Law on Assets of Economic Organizations", *S.L.,* no. 17, 16 April, 1961.
40. "Law on Labour Relations", 1957, section 5.
41. "Law on Assets of Economic Organizations", 1961.
42. See International Labour Office, pp. 126–132.
43. See International Labour Office, chap. 10. For specific examples of the distribution process in enterprises, see "Working Collectives Dispose of the Clear Income of Their Enterprises without Outside Interference", *Information Bulletin About Yugoslavia* (*I.B.A.Y.*) vol. 4, no. 28, January 1959, p. 4; "New Wage Scale Regulations in Enterprises", *I.B.A.Y.,* vol. 4, no. 29, February, 1959, pp. 1–2.
44. "Law on Labour Relations", 1957, arts. 186–187.
45. Rikard Stajner, *Distribution of Income in Enterprises* (Beograd: Yugoslav Trade Unions, 1961), pp. 10–11.
46. The following discussion is based largely on: "The Basic Law on the Management of State Economic Enterprises", 1950; "The Basic Law of Enterprises", *S.L.,* no. 17, 17 April, 1965, art. 49; International Labour Office, pp. 84-93; Gorupić and Paj, pp. 116–118; and Bilandzic, pp. 119–120.
47. See Bilandzić, p. 120; and International Labour Office, pp. 89–90.
48. The International Labour Office's study points out that the director's behavior was carefully monitored by the organs of workers' management as early as 1960. International Labour Office, p. 166.
49. Gorupić and Paj, p. 117, n. 27; and International Labour Office, pp. 85–108.
50. International Labour Office, p. 85.
51. The following discussion is based largely on: Husein Kratina, "The Legal Status of the Enterprise Director within the Self-Management System", *Yugoslav Survey,* vol. 9, November 1968, pp. 55–56, 60; *Yugoslav Survey,* vol. 5, April–June 1964, pp. 2478–2480; Horvat, pp. 100–101, and International Labour Office, chap. VI.
52. See Aleksander Bajt, "Income Distribution under Workers' Self-Management in Yugoslavia", in A Ross, ed., *Industrial Relations and Economic Development* (London: Macmillan and Co., 1966), p. 263.
53. International Labour Office, p. 108; and Kratina, p. 57.
54. See Kratina, p. 57.
55. For an example of the director's functions as specified by the statute of a large Zagreb firm, see Gorupić and Paj, pp. 124–125, n. 36.
56. The joint selection commission is composed of an equal number of representatives from the council and the local communal government. If the council declines the proposed candidates, the commission must hold a second competition. If the candidates are again rejected, a new commission must be appointed. In the event that the new commission's candidates are rejected, the composition of the commission must be changed so that an agreement can be reached. Kratina, p. 55 and *Yugoslav Survey,* vol. 5, April–June, 1964, p. 2479.
57. A request for the director's dismissal can be made by the council or the collective. In either case, at least one-third of the members must support the dismissal motion. The communal authorities may also propose the director's dismissal. If the commission accepts the dismissal request, and the council decides to carry out the dismissal, the director still has the right to appeal. *Yugoslav Survey,* vol. 5, April–June, 1964, p. 2480. In general, the director can be dismissed if he fails to implement the council's policy decisions and/or if he fails to promote the material success of the enterprise. "Basic Law of Enterprises", 1957, art. 57.
58. One of the difficulties faced by the Yugoslav system of self-management has been to define the rights of the director *vis-à-vis* the workers' collective. This is made more problematic by the fact that the director is considered a member of the "collective". *Ekonomska Politika,* a Yugoslav periodical, recognized the essence of this problem: " . . . we have a social system in which neither private persons nor the state are the owners of the business enterprise. This is a general social possession . . . somehow there should be devised a workable solution to the dilemma posed by the fact that the director . . . is a member of the enterprise [workers' collective], and that the enterprise [council as representative of the workers] makes the important decisions". 29 April, 1968, p. 519, in Dirlam and Plummer, p. 28.
59. V. Trickovic, "Scientific Management", *Ekonomska Misao,* no. 1, 1969, pp. 75–76, in Dirlam and Plummer, p. 28.
60. *Borba,* 7 January 1970, p. 4, in Dirlam and Plummer, p. 28.
61. For a detailed discussion of the property rights issue in Yugoslavia, see Milenkovitch, pp. 92–98, and chap. 10.
62. "Decree on the Management of Fixed Assets of Economic Organizations", *S.L.,* no. 52, 1953.
63. "Social property" refers to all the assets of an enterprise regardless of their origin. Yugoslav law, how-

ever, makes a distinction between the enterprise's "own assets" and those acquired on the basis of credit. The former are obtained from allocations out of net income and from State grants — these monies become part of the enterprise's funds, while the monies from loans do not. "Law on Assets of Economic Organizations", 1957, art. 4 and art. 7 paras. 2-3.

64. "Law on Assets", 1957, arts. 8-9. Under Yugoslav law the state retains the right to liquidate faltering enterprises. See Milenkovitch, pp. 94-98.

65. "Decree on the Management of Fixed Assets", 1953, and art. 10 of the 1957 "Law on Assets". Also see Pejovich, "The Firm, Monetary Policy and Property Rights in a Planned Economy", *Western Economic Journal,* vol. 7 (September, 1969), p. 194.

66. "Book value" refers to the original cost of the assets. Yugoslavia periodically revalues fixed assets to adjust for inflated replacement costs.

67. It is important to note that the so-called "right to sell" social assets is a peculiarly limited one because of the restrictions on the use of money received. See Steven Kukoleca, "Problems of Business Policy in a Yugoslav Enterprise", *Florida Slavic Papers,* vol. 2 (1968), p. 24.

68. See Pejovich, "The Firm, Monetary Policy and Property Rights", p. 194.

69. To illustrate, suppose relative demands change due to a change in consumer preferences, so that capital should move from A to B. If the value of the nonhuman productive capacity in A is prevented from decreasing by law, then monies flowing into that industry will be tied to replacement costs, and cannot be shifted to the higher valued use in B. Nonhuman resources will, in effect, be prevented from shifting to B, where consumers want them.

Note, workers in A could transfer ("sell") capital to B, but any profit from doing so must be reinvested in A. Therefore, workers in A would have little incentive to search for higher valued uses of capital, and there would still be too much invested in A relative to what consumers prefer.

Alternatively, the government could direct investment to those industries which are profitable, as determined by consumer dollar votes — but who is to capture the profits? If government officials cannot capture present values, why should they have much of an incentive to satisfy consumer preferences?

Finally, one other possible way of circumventing the restriction on the right of use is for conglomerates to develop. They could maintain the total book value of their assets, while channeling depreciation funds into what appear to be the most profitable investments. Once again, however, the absence of capturable present values will impede the efficient flow of nonhuman capital resources. And, if consumer demands turn completely from the conglomerates' products, the same problems we referred to above reappear.

70. See Horvat, "Yugoslav Economic Policy", p. 105. With respect to the entry of new firms, it should be mentioned that citizen groups can establish a new firm. Once established, however, it must be handed over to the workers who elect the management organs. Furthermore, the original founders lose all claims to their investment once workers pay off their obligations. Horvat, p. 104. For a detailed account of the conditions of entry in Yugoslavia, see Stephen Sacks, *Entry of New Competitors in Yugoslav Market Socialism* (Berkeley: Institute of International Studies, 1973).

71. "Decree on the Distribution of Total Revenue of Economic Organizations", *S.L.,* no. 16, 17 April, 1957, sections II-III. Gorupić and Paj point out that the net income system did not become legally binding until 1961. *Workers Self-Management,* p. 162.

Recall that net income (*cist prihod*) is the difference between total revenue and total non-labour costs.

72. Under the "profit system", wages consisted of two components: (1) a tax-free (guaranteed) fixed component — the "accounting wage" — that was paid out monthly in accordance with the enterprise pay scale; and (2) a taxable, variable component — the "variable wage" — that was paid out one or more times a year depending on the enterprise's profit. (Profit — *dobit* — was defined as the difference between total revenue and total costs *including fixed wages.*) Both components were tightly controlled by the State: average monthly accounting wages were set for each skill category, and the share of profit*f* that could be earmarked for increasing accounting wages was fixed in advance. Consequently, workers' councils had virtually no control over distribution policy, and workers' income depended mainly on their fixed wages. Gorupić and Paj, pp. 142-148.

The council did have the right to establish basic pay rates for individual jobs in its pay scale. However, the pay scale had to be approved by the communal authorities and the trade union officials. Gorupić and Paj, p. 146.

73. See Eirik G. Furubotn and Svetozar Pejovich, "Property Rights and the Behavior of the Firm in a Socialist State: The Example of Yugoslavia", *Zeitschrift für Nationalökonomie,* vol. 30 (December, 1970), p. 433.

74. For a more extensive treatment of the reforms, see the present author's doctoral dissertation, "Implications Of Property Rights For Yugoslav Firm Behavior: An Empirical Investigation, 1957-1968" (University of Virginia, 1976), chap. 3.

75. Kreso Dzeba and Milan Beslać, *Privredna Reforma — Sto i Zasto se Mijenja* (Zagreb, 1965), p. 104.

76. In some instances this tax was a specific amount rather than *ad valorem,* and was over 25%. See Dirlam and Plummer, pp. 189-190.

77. The minimum personal incomes fund was established by Federal law in 1959; it was to be "80 percent of the workers' wages as per the pay scale". "Working Collectives dispose of Income without Interference", p. 4. For a schedule of enterprise income tax rates see Svetozar Pejovich, *The Market-Planned Economy of Yugoslavia* (Minneapolis: University of Minnesota Press, 1966), p. 97, Table 15. Note that after 3 December 1957, the amount by which enterprise income was allowed to exceed minimum personal incomes without being subject to tax changed from 25 to 20%.

78. The personal income tax was first introduced in December 1957 as a progressive tax, but was later replaced by a flat 11% tax rate (31 December 1958). On 25 November 1959, the rate was increased to 13%.

The local commune was entitled to at least 10% of personal income tax revenue. See "Law on Contribution to the Budgets from the Personal Incomes of Workers", *S.L.*, no. 52, 1957, art. 8; "Law on Changes and Supplements to the Law on Contributions to the Budgets from Workers' Personal Incomes", *S.L.*, no. 52, 1958, arts. 1, 6; "Law on Changes in the Law on the Contribution to Budgets from Workers' Personal Incomes", *S.L.*, no. 47, 1959, art. 4; International Labour Office, p. 219; and "Working Collectives Dispose of the Clear Income of Their Enterprises Without Outside Interference", *I.B.A.Y.*, vol. 4 (January, 1959), p. 4.

79. On the 1957–61 tax structure see the following sources: "Decree on the Distribution of the Total Revenue of Economic Organizations of 1957", chap. 3; "Law on Labour Relations of 1957", art. 126; "Law on Assets of Economic Organizations of 1957"; "Law on Contribution to the Budgets from the Personal Incomes of Workers", *S.L.* no. 52, 1957; "Working Collectives Dispose of the Clear Income of Their Enterprises Without Outside Interference", *I.B.A.Y.*, p. 4; International Labour Office, Chapter X; United Nations, Economic Commission for Europe, "Economic Planning and Management in Yugoslavia", *Economic Bulletin for Europe,* vol. 10 (Geneva, 1958), pp. 43-62; Marijan Hanzeković, *Privredni Sistem Jugoslavije* (Zagreb: Narodne Novine, 1968), pp. 191–192, and Gorupić and Paj, pp. 148–153.
80. "Law on Contribution from the Income of Economic Organizations", *S.L.*, no. 8, 2 March, 1961.
81. Džeba and Beslać, p. 104.
82. The following taxes were levied on allocations to gross personal incomes. (a) A social security tax consisting of a basic rate of 22% and a supplemental rate of 2%; (b) a personal income tax of 15%; (c) a housing tax of 4%; and (d) a transportation tax of 1%. A. Polajner, *The Enterprise and National Income Distrbution* (Beograd: Yugoslav Trade Unions, 1963), pp. 45–47.

    Since all these taxes are paid directly by the enterprise out of its gross personal incomes fund, they have the effect of arbitrarily increasing the cost of labor, and will therefore affect the council's trade-off between human and non-human inputs.
83. "Law on the Contribution to the Budgets from Workers' Personal Incomes", *S.L.*, no. 17, 3 May, 1961, art. 13, paras. 1, 7. Enterprises, however, could be fully or partially exempted from this tax by the communal authorities.
84. "Law on the Contribution to the Social Investment Funds", *S.L.*, no. 8, 2 March, 1961. The revenue from this tax was divided equally between the communal and republic investment funds. In 1962 the tax rate was increased to 30% and the republic's share increased to 20%. Polajner, p. 48. This tax was abolished 1 January 1964 by the "Law on the Cessation of the Importance of the Law on the Contribution to the Social Investment Funds". *S.L.*, no. 31, 22 July, 1964, art. 1. The social investment funds were then transferred to the credit funds of banks. Horvat, p. 140.
85. "Law on the Formation of Total Revenue and Income of Economic Organizations", *S.L.*, no. 35, 28 July, 1965.
86. "Basic Law on the Turnover Tax", *S.L.*, no. 14, 1965; "Law on Interest Rates on the Funds in the Economy", *S.L.*, no. 35, 1965, art. 1. In 1965 the system of differential turnover taxes was abolished; in its place was substituted a single-tier sales tax applied to retail trade at a rate of 20%. Ljubomir Madzar, "Functional Income Distribution in Yugoslavia", paper read at CESES Seminar, Venice, Italy, 1973, p. 31.

    The tax rate on the book value of the business fund was lowered to 3.5% in 1966; it became applicable in 1967. *Zbirka Saveznih Propisa (Collection of Federal Regulations)*, no. 79, 1969, p. 399. The effective rate, however, has always been below the legal rate. Bajt, for example, estimated that in 1963 the average capital tax rate was 2.5%, while the legal rate was 6%. Moreover, according to Horvat the effective capital tax rate in 1966 was 1.3%. Finally, Dirlam and Plummer point out that the capital tax was abolished in 1971. Bajt, "Income Distribution under Workers' Self-Management in Yugoslavia", p. 254, n. 7; Horvat, p. 139; and Dirlam and Plummer, p. 193.
87. Furubotn and Pejovich, "The Formation and Distribution of Net Product and the Behavior of the Yugoslav Firm", *Jahrbuch der Wirtschaft Osteuropas,* vol. 3 (1972), p. 275, Table II.
88. Bilandzić, p. 116.
89. Cf. Furubotn and Pejovich, "Tax Policy and Investment Decisions of the Yugoslav Firm", p. 336. In their article, Furubotn and Pejovich do not distinguish among the business fund, the collective consumption fund, and the reserve fund; they simply refer to the "Internal Funds". This is somewhat misleading since their 8% estimated tax on allocations to Internal Funds actually applied only to allocations to the collective consumption fund. See Bilandzić, p. 102.
90. "Law on Labour Relations", 1957, arts. 126, 184.
91. The highest organ of government in the commune is the People's Committee. This committee is composed of two chambers: (1) The People's Chamber, elected by the direct vote of all citizens, and (2) The Producers' Council, elected by local enterprises. See International Labour Office, pp. 20-27.
92. "Workers' Management", *Yugoslav Survey,* vol. 1, no. 1, April, 1960, p. 19.
93. International Labour Office, p. 239; and Kiro Gligrov, "The Communal Economy", *International Social Science Journal,* vol. 13, no. 3, 1961, p. 413.
94. "Law on Labour Relations", 1957, arts. 358-359.
95. *Ibid.*, art. 360.
96. *Ibid.*, art. 192.
97. "Preparation of Pay Scales in the 'Novkabel, Factory", *I.B.A.Y.*, vol. 4, March, 1959, p. 4.
98. "New Instruments of Internal Distribution of Enterprises' Income", *I.B.A.Y.*, vol. 4, January, 1959, p. 3.
99. *Ibid.*
100. Stajner, p. 11.
101. International Labour Office, p. 218.
102. "Law on Assets", 1957, art. 14; and International Labour Office, pp. 234-235.
103. International Labour Office, pp. 281-285.
104. United Nations, "Economic Planning in Yugoslavia", p. 51.
105. See George W. Hoffman and Fred W. Neal, *Yugos-*

lavia and the New Communism (New York: Twentieth Century Fund, 1969), pp. 244–245; and Milenkovitch, p. 115.

106. The purpose of social control, according to Stajner, is to make workers more conscious of their obligation to the community. In particular, workers should be aware that investments in their firms' capital stock will be socially as well as personally beneficial. Stajner, p. 11. Of course, the lack of private ownership is sure to weaken individual investment incentives; hence, the need for social controls.
107. Bilandzić, p. 89.
108. A. Bajt, "Economic Reform in Yugoslavia: The Role of the Consumer", paper presented at the International Summer Seminar on Economic Reforms in Eastern Europe: The Role of the Consumer, Venice, Italy, 1971, p. 4.
109. Madzar, "Functional Income Distribution in Yugoslavia", p. 27.
110. Horvat, p. 115.
111. *S.L.*, no. 8, 2 March, 1961.
112. *S.L.*, no. 8, 1961.
113. The refined texts being in *S.L.*, no. 17, 3 May, 1961.
114. Articles 13 and 18.
115. It should be noted that the 1961 "Law on Labour Relations" made the workers' council responsible for adopting, separately, *"Pravilnik o Raspodeli Licnih Dohodaka"* ("Rules on the Distribution of Personal Incomes"). In these Rules the council had "to establish in advance the bases and criteria for determining workers' share in the distribution of monies for personal incomes". Article 187.
116. Mika Spiljak has noted that under the net income system of distribution, a worker's remuneration is based not only on his individual productivity, but also on the success of his work unit and the enterprise as a whole. Mika Spiljak, *The Distribution of the Income of Enterprises and the System of Remuneration in Yugoslavia* (Beograd: Publisticko-Izdavacki Zavod Jugoslavija, 1961), pp. 29–30. This remuneration system, of course, introduces the free-rider problem along with imputation difficulties. Workers know that their incomes depend not only on their own (and their co-workers') efficiency, but also on a whole host of other factors. Work incentives may therefore be impaired relative to situations in which these difficulties are less intense.
117. The 1962 Report of the Federal Executive Council stated that in 1961 enterprises would no longer be required to have their "criteria and scales for the determination of workers' personal incomes approved by the competent people's committee". "Socio-Economic Relations and Self-Government in 1962", *Yugoslav Survey,* vol. 4, April-June, 1963, p. 1825.
118. Spiljak, pp. 21, 44–45.
119. See Bilandzić, pp. 95–96, 126; Horvat, pp. 112, 115; Bajt, "Economic Reforms in Yugoslavia: The Role of the Consumer", p. 5; A. Polajner, p. 32; and Hoffman and Neal, p. 257.
120. *S.L.*, no. 16, 18 April, 1962.
121. Horvat, p. 83.
122. "Law on the Formation of Commissions for the Implementation of Regulations on the Distribution of Net Incomes of Economic Organizations and Institutions", *S.L.*, no. 15, 11 April, 1962.
123. *S.L.*, no. 16, 18 April, 1962.
124. *Ibid.*, art. 2.
125. See Dorn, *Diss.*, pp. 50–51.
126. Another incentive for employing labor intensive methods of production before 1965 was provided by the favorable tax treatment of allocations to personal incomes *vis-à-vis* the funds. See Furubotn and Pejovich, "Tax Policy", pp. 340–341.
127. "Instruction on the Implementation of the Principles for the Distribution of Net Income", 1962, arts. 18–24. Also see Bajt, "Income Distribution under Workers' Self-Management in Yugoslavia", pp. 258–259.
128. *S.L.*, no. 19, 15 May, 1963.
129. *Ibid.*
130. *S.L.*, no. 27, 10 July, 1963. For a detailed description of the uniform indicators, see Hanzeković, p. 194, and Teodor Tomić, *Unutrasnja Raspodela u Privrednim Organizacijama* (Zagreb: Informator, 1965), pp. 27–43.
131. Bajt, "Income Distribution under Workers' Self-Management in Yugoslavia", p. 258, and "Decision-Making in the Field of Income Distribution", p. 11.
132. Madzar, p. 11.
133. *Ibid.*, pp. 8–9.
134. "Law on the Abolition of the Validity of the Law on the Formation of Commissions for the Implementation of the Regulations on the Distribution of Net Income of Economic Organizations and Institutions", *S.L.*, no. 15, 5 April, 1965.
135. For example, on July 24, 1965, the Federal Assembly adopted the "Recommendation on the Distribution of Income and of Personal Incomes in Working Organizations". *S.L.*, no. 35, 28 July, 1965. This Recommendation was not legally binding; it simply recommended that enterprises determine their "Rules on the Distribution of Income" and "Rules on the Distribution of Personal Incomes" in accordance with the socialist principle of distribution "according to work", meaning that personal incomes should increase only if labor productivity increases.
136. Hanzeković, p. 195.
137. For example, see Furubotn, "Towards A Dynamic Model of the Yugoslav Firm", *Canadian Journal of Economics,* vol. 4 (May, 1971), p. 183.
138. This section summarizes some of the implications from chap. 3 of my dissertation. The reader is referred to that chapter for a rigorous derivation and formal testing of the implications which we shall present here.
139. See above n. 2 for a definition of capital-rich and capital-poor firms and industries.
140. The following discussion (pp. 27–28) draws heavily on the work of Furubotn and Pejovich. Of special importance are: S. Pejovich, "The Firm, Monetary Policy and Property Rights in A Planned Economy", pp. 193–199; Furubotn and Pejovich, "Property Rights and the Behavior of the Firm in A Socialist State", pp. 443–454; Furubotn and Pejovich, "Tax Policy", pp. 335–348; and E. Furubotn, "A Dynamic Model of the Yugoslav Firm", pp. 182–197.
141. For simplicity we represent private investment by saving deposits in state banks. Yugoslav citizens may also own land, apartments, and small businesses, which may earn higher rates of return than paid on savings accounts. Such investments, however, are carefully monitored by the State.

142. For any given t and i, r^* can be calculated from: $r^* = i\,(1 + i)^t/[(1 + i)^t - 1]$, which gives the annuity whose present value is 1. As Pejovich points out, the workers can be thought of as buying an annuity when they invest in their firm. And since their annuity from depositing one dollar in a savings account is $a_n^{-1} = i\,(1 +)^n/[1 + i]^n - 1]$, when n = the number of periods, it follows that investment in socially owned assets must yield an equivalent return (r^*) before the council will consider investing in their firm's capital stock. See Pejovich, "The Firm, Monetary Policy and Property Rights", p. 195, n. 7.

We assume that investments in socially and privately owned assets do not differ with respect to risk and liquidity, though privately owned assets are, in fact, definitely more liquid.

143. Howard M. Wachtel, "Workers' Management and Wage Differentials in Yugoslavia", p. 45.
144. These reasons are discussed in Milenkovitch, pp. 262–265.
145. See above, n. 86.
146. However, for qualifications and alternative hypotheses, including other explanations or factors that might push firms or industries to be capital-intensive or to adopt new technologies calling for heavy investments, see Dorn, *Diss.*, pp. 143–153.
147. See Dorn, *Diss.*, pp. 116–120.
148. See Dorn, *Diss.*, p. 119 and pp. 121–122.
149. For the specific regression model used to test this hypothesis, and the empirical results, see Dorn, *Diss.*, p. 121 and pp. 123–126.
150. The "right of use" became more valuable because of the reduction in the capital tax and other taxes, and because of the removal of controls on the distribution of net income as explained above.
151. These two years were chosen by necessity: 1964 was the first year industry quit rates were available, and 1966 was the last year of the Korać data series, which gave us information on the independent variables used in the regression analysis. However, 1964 can be used to represent "limited net income" firms, and 1966 can represent "net income-seeking" firms. It is unfortunate that data was not available for the earlier years, for this would have permitted us to check pre-1961 against post-1961 behavior. The Korać data is taken from Miladin Korać, *Analiza ekonomskog polozaja privrednih grupacija na bazi zakona vrednosti, 1962–1966* (Zagreb: Ekonomski Institut — Zagreb, 1968).
152. See Dorn, *Diss.*, pp. 129–134.
153. See Dorn, *Diss.*, p. 128.
154. See Dorn, *Diss.*, pp. 137–145.
155. Interfirm and interindustry personal income-per-worker differentials are explained, in part, by differences in capital-per-worker. Thus, increasing interfirm and interindustry personal income-per-worker differentials may reflect, in part, increasing differentials in personal income-per-worker between capital-rich and capital-poor firms and industries.

It is important to note that interfirm personal income-per-worker differentials refer to the variability of the average personal income-per-worker of individual firms around the industry average, not to the variability of individual incomes around the average within an enterprise.

156. Wachtel, "Workers' Management and Interindustry Wage Differentials in Yugoslavia", *Journal of Political Economy*, vol. 80 (May/June, 1972), p. 548.
157. See Dorn, *Diss.*, p. 125, Table 4.11, and p. 126, Table 4.12.
158. Thomas A. Marschak, "Centralized versus Decentralized Resource Allocation: The Yugoslav Labora tory", *Quarterly Journal of Economics*, vol. 82 (1968), p. 580.

Marschak uses the term "rich enterprises" to mean those with higher-than-average net income-per-worker, and that have above average capital-per-worker, and conversely for "poor enterprises".

159. See Dorn, *Diss.*, pp. 135–137.
160. Madzar, p. 22.
161. Cf. Benjamin Ward, who predicted such behavior based on the assumption that workers will seek to maximize net income-per-worker, which is equivalent to maximizing personal income-per-worker with his zero investment assumption. "The Firm in Illyria: Market Syndicalism", *American Economic Review*, vol. 48 (September, 1958), pp. 566–589. Also see Evsey D. Domar, "The Soviet Collective Farm as a Producer Cooperative", *American Economic Review*, vol. 56 (September, 1966), pp. 734–757.

Our results indirectly lend support to the Wardian misallocative implications. That is, our findings suggest that Yugoslav firms seek to increase if not maximize net income-per-worker, once they can influence and capture portions of extra income. However, this should not be taken to mean that workers seek to maximize their current personal income. Rather, they seek to "maximize" personal income over their expected tenure with the firm. See Furubotn and Pejovich, "Property Rights and the Behavior of the Firm in a Socialist State;" and Furubotn, "Toward a Dynamic Model of the Yugoslav Firm".

162. Madzar, p. 25.
163. Dinko Dubravcić, "Labour as an Entrepreneurial Input: An Essay on the Theory of the Producer Cooperative Economy", *Economica*, vol. 37 (August, 1970), pp. 305–306.
164. *Ibid.*, p. 306, n. 1.
165. *Ibid.*
166. Aleksander Bajt, "Property in Capital and in the Means of Production in Socialist Economies", *Journal of Law and Economics*, vol. 11 (April, 1968), pp. 1–4. Bajt's original contribution to the 1967–1968 ownership controversy was entitled "Drustvena svojina — kolektivna i individualna", *Gledista*, 9, no. 4, (April, 1968), pp. 531–544.
167. It should be noted that free entry will not bring about a dampening of interfirm personal income-per-worker differentials as some individuals suggest. Without private capital markets, there is no reason to believe that the entry of new firms will significantly alter the differentials in net income-per-worker among capital-rich and capital-poor firms; because entry will not significantly affect the distribution of capital among firms already in the industry.

Stephen Sacks recently pointed out that " . . . during the decade 1959–1968 there was sufficient entry of new enterprises to maintain stable industrial structure, despite the occurrence of mergers and bankruptcies". In the light of our own and Wachtel's data, which show increasing interfirm and interindustry personal income-per-worker differentials over this period, one might infer that without private capital markets, free entry will not mitigate differences in net income-per-worker and personal income-per-worker among capital-rich and capital-poor firms. Stephen Sacks, *Entry of New Competitors in Yugoslav Market Socialism,* p. 3.

168. Mirko Dautović, "Economic Integration", *Yugoslav Survey,* vol. 9, May, 1968, p. 82.

169. *Ibid.,* p. 77.

170. *Ibid.,* p. 79.

171. In Dautović, p. 82.

172. Eva Berković, "Differentiation of Personal Incomes", *Yugoslav Survey,* vol. 10, February, 1969, p. 89.

173. *Ibid.*

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FELIX MORLEY: AN OLD FASHIONED REPUBLICAN CRITIC OF STATISM AND INTERVENTIONISM*

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> "It is a reality attested by all history that if a republic assumes imperial functions it will not remain a republic".[1]

Dr. Felix Morley, educator, scholar and author, has been a staunch defender of federalism, limited government and Jeffersonian Republicanism throughout his long and distinguished career. As editor of the Washington *Post,* he received a Pulitzer Prize for his writing. He became President of Haverford College in 1940, and during World War II he served on a number of government committees. A member of a family noted for literary accomplishment, Dr. Morley has been a news correspondent and a radio commentator, and is the author of many books and many more articles.

In *The Power in the People* (1949) and *Freedom and Federalism* (1959), Dr. Morley championed constitutionalism, decentralization and individual liberty. *Freedom and Federalism* was an almost neo-Calhounian defense of states rights and an attack on democratic nationalism and an activist foreign policy. As expounded by Morley, Jeffersonian Republicanism is "extreme", socially cautious and conservative, and anti-egalitarian; more the Jeffersonianism of Macon, Randolph and Taylor than that of Jefferson.[2] With Frank C. Hanighen, once a liberal muckraker, Dr. Morley was editor of the Old Right weekly newsletter *Human Events* (for which Garet Garrett and Frank Chodorov also wrote). More recently, he has contributed to the conservative quarterly *Modern Age,* and the financial paper, *Barron's Weekly,* and has written an opinion column in the *Nation's Business.* From the later 1940s to the 1970s, Felix Morley has regularly expressed the libertarian and "isolationist" outlook characteristic of the Old Right. It is with Morley's dissent from the Cold War interventionist consensus that we will be concerned here.

MORLEY AS A CRITIC OF THE EMERGING EMPIRE

Already in 1944, Dr. Morley, as contributing editor of *Human Events,* began a vigorous and penetrating critique of the United States' imperial foreign policies. In "Pointing Towards Imperialism", in the fourth issue of *Human Events,* he assailed an Administration scheme to build an Arabian oil pipeline at public expense, a venture he viewed as reflecting a "strongly imperialistic" policy.[3] Interior Secretary Ickes was selling the project to Congress as necessary — even then! — because of the alleged dread danger of America's running out of known oil reserves by 1958. Morley dismissed this argument, as well as the threat of "drastic gas rationing", asking instead what Secretary Ickes was doing promoting a project "as remote from the interior" of the U.S. as possible? Such involvement in the Middle East would embroil America in the Russo-British conflict over Iran (and elsewhere) as well as in the developing struggle between Arab nationalism and Zionism in Palestine. It was hardly coincidental that permanent conscription was also being urged upon the Congress. Before the Administration got the country "permanently involved in the perils of this Middle East entanglement", Congress should determine American petroleum policies, Morley concluded, a warning which seems timely enough today.

At the same time, Dr. Morley voiced

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criticism of America's new-found moral posture of "might makes right" and the violent excesses which inevitably accompanied it. In "Civilians and Civilization", also in *Human Events,* he wrote that the vehement public opposition to attempts by Vera Brittain and the Fellowship of Reconciliation to raise the issue of mass slaughter of German civilians from the air reflected "public uneasiness, both as to the methods utilized to win the war and as to the manner in which our tremendous national power may be employed when the war is over".[4] Noting that mass terror bombing was militarily ineffective and, more importantly, morally degrading to those who employed it, Morley concluded that "the concept of Nationalism has first submerged and is now destroying the inheritance of a common Western Civilization", a civilization which had been based in large measure on the freely expressed opinions of civilians.

In a speech before the American Society of International Law in Washington, D.C., in April. 1944, Dr. Morley broadened his critique of official American attitudes toward power. Discussing the history of neutral rights during wartime and alluding to recent statements of Secretary of State Cordell Hull, he cautioned that the U.S. policy of pressuring neutrals for allowing their nationals to carry on activities which might indirectly aid our enemies could usher in undue interference with their affairs. Secretary Hull's policy seemed to bespeak "the growth of an American attitude which could be antagonistic to the orderly development of international law".[5] "'America First,'" he warned, "might, by 1945, come to possess a connotation very different from that which it had in 1940". While "an assertive American imperialism" could result from a power-oriented posture, Morley still believed in 1944 that it was not entirely likely. Our institutions, he wrote, were not suited to it. For Morley, America's merit lay not in her strength, but in the liberty which had made such material achievement possible. Indeed, our very strength might be our undoing: "The glory that was Greece can easily pass over into the far more ephemeral grandeur that was Rome". Morley recounted how the Melians had sought to remain neutral during the Peloponnesian War, and had said to the Athenians, 'We see you are come to be judges in your own cause", when the Athenians massed their forces against Melos. Since we were, in 1944, engaged in a struggle against the equation of power and justice, for Morley it was all "the more imperative that history shall never record us among those who insist on being judges in their own cause".

A year later, Morley questioned another manifestation of the U.S. posture of "might makes right" — the Unconditional Surrender policy. Stressing the rarity of such a demand in international affairs, he observed that "Good sense . . . is often shouted down in wartime".[6] In addition to the burden of administering Germany after an unconditional capitulation, there were the effects on the victor society. "Before a people can exact unconditional surrender from the enemy they must themselves be prepared to surrender unconditionally to the wartime practices of their own government". Even if this were preferable to foreign dictation, "complete subordination of the individual to the State is a heavy price to pay for victory in a society based on the principle that government is made for man, not man for government". Moving from the moral to the practical realm, Morley warned that only the Soviet Union would stand to gain from forcing capitulation upon Germany. The policy was both a moral and a practical disaster.

In a very bitter piece, "The Return to Nothingness", Morley commented on the outstanding U.S. atrocity of World War II, the use of the atomic bomb at Hiroshima and Nagasaki. In reply to the implicit equation of Pearl Harbor and the bombing of Japan, he wrote that at Pearl Harbor casualties were "for the most part confined to men who had voluntarily enlisted", whereas the victims at Hiroshima were civilians — "like ourselves, . . . merely the helpless instruments of the ruthless Moloch of Totalitarian Government".[7] Hence, Hiroshima was "an equally infamous act of revenge", perhaps "ethically the more shameful". . . . We had paid a terrible price for victory in "loss of ideals" and "spiritual desolation", seen "in the miserable farce put on by those who try to reconcile mass murder of 'enemy children' with lip service to the doctrine that God created all men in his image". Some kind of atonement was called for, inasmuch as the atomic bomb was "a weapon different in kind" and degree — an encroachment "on the innermost mystery of the universe". The Bomb set us "hopelessly adrift", without ethical restraints. In Thomist terms such a pass invited a return to nothingness. A society in which the State could control such a force naturally "shifts to insect values — 'full employment' or 'security' within the meticulously organized anthill of the expanding State". Morley ended on a question: "We have won the war. Now what is our purpose for the Power we control?"

MORLEY AS COLD WAR CRITIC

As the Cold War took shape out of the ashes of the Second Global Bloodbath (to borrow a term from a "broad revisionist"), Morley became less confident that America would avoid imperialism. As early as December, 1944, he commented pessimistically on the crisis in Greece. Accepting the premise that the Soviet Union took an active interest in the spread of communism as such, a contention later revisionist historians would dispute, Morley, though himself a firm philosophical opponent of communism, pointed out some inconsistencies in the British suppression of the Greek revolution. The British had to somehow prove "to a large number of individual Greeks that while they were 'patriots' to resist a German puppet government they become 'gangsters' if they oppose a British puppet government".[8] As a consequence, many Greeks would naturally ask why not a puppet government "of the Russian pattern"? The disintegration of civilized society caused by war itself, created fertile soil for communism, and desperate people everywhere could be expected to embrace it. Morley offered no easy solution to this dilemma.

A little over a year later, in a piece contrasting "Imperialism and Americanism", Dr. Morley surveyed some straws in the wind. For one thing, the U.S. Government was revealing its imperial pretensions by its refusal to genuinely demobilize now that the World War was ended. Instead, discontented citizens were still stationed abroad in large numbers, causing a major drain on real economic productivity. "From shirts to shelter", Morley observed, "we are failing to meet domestic needs, let alone those of the Tagalogs, Hottentots and Yugoslavs".[9] In addition to our vague and far-flung commitments, came another attack on neutrality, this time by Spruille Braden, a recent U.S. Ambassador to Argentina, who was denouncing an unnamed "typically fascist" regime in the hemisphere. Unfortunately, Braden's outburst was typical of U.S. official attitudes. At a time when yet another U.S. Administration busies itself worrying over the internal affairs of other nations, Morley's comments of 1946 take on added meaning. "With pronounced self-righteousness, at best not a lovable characteristic, we are rapidly establishing ourselves as the world's greatest moralizer on the subject of the conduct of other governments". This posture might "succeed" in some sense, but only if uniformly applied, consistently adhered to, and backed by the people. Behind "a blustering foreign policy" must be "a general will to back official pretension with military force". To Morley, the GI demonstrations abroad and strikes at home showed that the people cared neither for the peacetime conscription nor the economic hardships which imperialism, to be successful in its own terms, would require. America was moving, he concluded, perhaps too optimistically, "toward a showdown between these advocates of Imperialism and those who intend to keep America a country in which men are raised as citizens instead of as subjects".

With much of the public cowed by official propaganda and convinced that the "lessons" of Munich and Pearl Harbor proved the necessity of U.S. intervention throughout the world, a real debate over foreign policy scarcely took place. Only a handful of Old Right stalwarts, including Garet Garrett, Congressman Howard Buffett, Frank Chodorov, Lawrence Dennis and Dr. Morley, took the risk of presenting an "isolationist" or noninterventionist viewpoint. In March, 1947, a week before the announcement of the Truman Doctrine, Morley wrote in *Human Events* that the American people were "confronting a political decision more momentous than any presented to them since 1776".[10] We had to choose whether to remain a Republic or "become an empire by assuming responsibility for dependencies which Great Britain can no longer control". Our institutions would change fundamentally if we took the latter course. "It is a reality attested by all history", Morley stated, "that if a republic assumes imperial functions it will not remain a republic". The British Empire was dissolving, and its dissolution would be hastened by the development of domestic collectivism in Britain. Our response was not clear. To pay for British operations in Greece would create tension and increase the risk of war with Russia. Further, inflation, high taxation and permanent conscription lay ahead if we stepped in. Above all other dangers, we would transform "our Federal Republic into a strongly-centralized empire". The Constitution would be in abeyance. Yet the alternative — a Mediterranean Sea and southern Europe under Soviet domination — was highly disturbing. Whether our leaders, on their past record which included a bankrupt and "vindictive policy of 'unconditional surrender'", could be relied on to resolve the problem effectively was a real question. Once again, Morley did not present an answer, emphasizing merely that the issue was one of empire.

As U.S. policy under the Truman Doctrine escalated far beyond the localized conflict in Greece, Morley, as a critic of interventionism, became a good deal less restrained. In March, 1948, he launched a blistering and bitter attack on the whole of America's Cold War foreign policies. American policy supposedly based on "world responsibility" had in fact achieved nothing at all, Morley asserted, other than to "throw our weight around".[11] "Actually", he wrote, "the Administration is now concentrating on preparation for another war, in which there is much to indicate that we would be the aggressor". Such a preventive war would be a confession of moral bankruptcy and could lead to ruin. Attacking intervention and the conscription it required, Morley wrote that "[t]he lives of our youth are not the property of the State, to throw on a rubbish heap in Korea or Yugoslavia as some brass hat may ordain". We were a decent people, and before we were "conscripted for the war that nobody wants, an accurate accounting of governmental performance is in order".

Essaying such an accounting, Morley charged President Truman with giving Manchuria and northern Korea to Russia, with politically motivated concessions to Zionists with regard to Palestine, with leading America into the futile United Nations organization. Finally, he wrote:

> it was Truman who personally indorsed the two cold-blooded atrocities by which America destroyed all of its moral supremacy in the last war — the atomic bombing of Nagaski, after Japan was licked; and the Nuremburg trials, a travesty of justice accomplished in concert with a government which the President himself now indicts as a menace to American institutions.

No one could uncritically accept Administration claims to be working for peace in the light of this record.

The United Nations was defunct as a real force for peace, Morley stated, aborted by those "who, defying everything in the American tradition, attempted to base world peace on a concept of power politics. As *Human Events* has often pointed out, the United Nations was in theory nothing more than an alliance of Great Powers, set up to dominate the world". When the two superpowers failed to get along, the U.N. proved useless.

Recent experience showed, Morley believed, that "the so-called isolationists were essentially *right*".

> They knew that America can run its own affairs reasonably well. They knew that in pontifically declaiming on the world stage we would be likely to prove ourselves blundering fools.

Our political system, our Federal Republic, was "based on foregoing the path of empire, on developing those private ventures in which American genius is brilliant. . . . " Attacking Harry Truman directly, Morley exploded:

> It is not unnatural for a ward politician to be President of the United States. But it becomes grotesque when a man of parochial outlook, inferior training and deficient ability attempts to push a reluctant people down the dangerous road of imperial rule.

It was a bitter realization to see that America "during the past few years, has led the world in smashing the fabric of civilization"; we had not merely dismantled German factories, but "the whole structure of American ideals". As for the struggle against communism, Morley, like his fellow Old Right publicist Frank Chodorov, believed that it should take place first and foremost "in the realm of mind and spirit, saving conscripted bodies as a last and forlorn hope". A year before the ratification of the NATO treaty, Morley argued that while European unity was a good thing, it should not be turned into "a military alliance" with America and against the communist bloc. The Marshall Plan, he observed gloomily, had become "a program for subsidizing and even arming Western Europe as a fringe of imperial outposts"; it was no longer aimed at the economic recovery of Europe. Our leaders' proclivity for solutions based on power was leading us to war. Without a revival of American ideals we could plunge to our doom.

A JEFFERSONIAN REPUBLICAN CRITIQUE

Despite the efforts of a divided and fragmented opposition, which included figures to the Left and the Right of official policymakers, postwar U.S. foreign policy continued along the interventionist path — if anything, at greater speed than before. Dr. Morley elaborated his fundamentally Jeffersonian critique in a speech delivered before the Conservative Society of Yale Law School in November, 1954. Discussing "Conservatism and Foreign Policy", he sketched out the need for a critical conservatism which rested on a genuine belief in free competition in society.[12] After spelling out the content of his essentially libertarian brand of conservatism, Morley set forth a conservative libertarian position on foreign policy. He started from the premise that the American Constitution does not locate final sovereignty in any branch of government, and observed that this lack of an arbitrary element in the State made U.S. foreign policy more uncertain than that of a State whose functionaries are less subject to control by opinion and institutional checks. But this was all to the good. The Constitution was for Morley an essentially "isolationist" document, and the relative "isolationism" we had practised in the 18th and 19th centuries was demanded by the character of our government. The Founding Fathers had "feared that an active foreign policy would concentrate too much power in the hands of the President".

The Monroe Doctrine, which prohibited European intervention in the Americas and pledged the United States not to interfere in the affairs of Europe, was an expression, Morley thought, of our moderate and somewhat "isolationist" foreign policy. But, he wrote, our government had long since "discarded the self-denying feature" of the doctrine, as exemplified by FDR's proclamation that Iceland was a part of the Western hemisphere subject to our protection against German raiders — a declaration made while we were still at peace with Germany. On the other hand, we still cleaved to the "self-asserting" part of the doctrine as "camouflage for our own self-interest". Morley asserted that our foreign policy was thus no longer based on principle, but on "military and financial strength", saying "I can find no principle broad enough to explain why we should take both Fascist Franco and Communist Tito . . . to our breast as allies".

When our policy was based on principle, it had been "isolationist", for the principle at the base of the Constitution had been stated at the Constitutional Convention by Charles Pinckney of South Carolina who said: "Conquest or superiority among Powers is not, or ought not ever to be, the object of republican systems". Such superiority *was* a goal of present policy, Morley declared. He doubted we could prove Pinckney wrong by running "an Empire under Republican forms" — something Rome had been unable to do. "Our foreign policy", he continued, "is now by every impartial test imperial". Imperial centralization, forbidden by the Constitution, especially the Tenth Amendment, must follow such a policy.

The great revenue necessary for the conduct of an imperial policy would drain funds from the states and localities, some of which they might get back — strings attached — as federal aid. In addition, the system of imperial alliances made governmental secrecy inevitable. Agencies like the Central Intelligence Agency and the Atomic Energy Commission "operate in the deepest secrecy", and Congress "tends to become more and more of a rubber stamp for undisclosed executive policy". People and Congress waned in the face of a growing executive bureaucracy.

America's organic law went against this sort of centralization, yet our imperial role in the world demanded it. Something must give way. "To my way of thinking", Morley pessimistically predicted, "it is our republican institutions, rather than our imperial policy, which will be modified". The odd theory of bipartisanship had been advanced to eliminate real criticism of executive conduct of foreign affairs. To take it seriously was to say that the people should have no concern over how they are governed; in which case, we were "ripe for dictatorship". As an anticommunist, Morley expressed concern over what he viewed as a genuine Soviet threat, but expressed even greater concern over the tendency of our imperial policies to undermine our classical liberal, republican institutions.

Almost three years later, well after the greater part of the Right Wing had gone over to anticommunist interventionism with a vengeance, Morley returned to his Old Right theme of Republic versus Empire. Writing in the first issue of *Modern Age,* the conservative quarterly, in the summer of 1957, he focused on the danger of a permanent war economy. We had reached a point, he wrote, where "we have a vested interest in preparation for war".[13] We needed an external threat, for as long as the people and Congress believed in such a threat, Congress would continue voting unlimited appropriations for "defense". This dovetailed nicely with a major tenet of Welfare State othodoxy: Full Employment, and the duty of the State to provide it. Defense spending directly caused a massive expansion of the "hard goods", or capital goods, industries. "If business is good in those industries", Morley observed, "it will be good throughout the nation as a whole". (An Austrian economic analysis, of course, would sort things out a bit more.) The result was that:

> our whole economy now is geared to preparation for war, and if we stopped preparing for war the effect on the economy would be disastrous.

Eventually, the situation would right itself after a stoppage of defense spending, but much hardship would exist in the interim. The people had been encouraged "to expect continuous prosperity" by their leaders and surely would throw out those who were responsible for their difficulties. Other spending could take up the slack and postpone a reckoning, but no other form of spending was so easy to get through Congress as defense — a point the astute "isolationist" writer John T. Flynn had also made many times.

Our addiction to defense spending was evidenced by our reluctance to talk seriously with the Soviets on disarmament. Our representatives "ignore the force and logic of the Soviet position", dismissing them as liars. "Such an attitude is barren of any promise for improvement in this international situation".

Again Morley raised the issue of our federal system versus our imperial conduct. A government seeking the "superiority among Powers" that Charles Pinckney had condemned had to have sufficient rein to formulate a moment-to-moment, flexible foreign policy. To do this in a system such as ours, it had to deceive public opinion continually.

The centralization flowing from imperialism meant that more and more problems were being handled at the national level. But such centralization, growing up in a formally federal and representative system, meant that "we are losing the substance of self-government", Morley wrote:

> The larger the numbers involved, the more certain it is that the will of the majority becomes unascertainable, and is therefore interpreted in specific terms by a very small number of leaders who count on the apathy of the mass to accept their definition.

Under the rubric of democracy, "a self-perpetuating managerial elite" could arise, giving all the verbal professions of faith in democracy necessary. Such were the results of an imperial policy that denied its own name. Morley reiterated his thesis that the federal, republican structure must give way to the necessities of an imperial policy. The alternative was, of course, to abandon the path of empire. Either course would bring foreign and domestic policy into greater consistency with one another, and either might be preferable to the present uneasy reality of public dishonesty. "[O]ur political scientists", he wrote, "should face the issue squarely".

FREEDOM AND FEDERALISM

Dr. Morley's most complete exposition of his political ideas came with the publication of *Freedom and Federalism* in 1959. Here he set forth the connections between democracy, centralization and empire; here he once again defended a Jeffersonian alternative consisting of republicanism, federalism, decentralization and nonintervention. Constitutional government, and its ongoing subversion by democracy and empire, were the book's twin themes.

There is not time to summarize Dr. Morley's fascinating survey of American constitutional and institutional history, except to call attention to the remarkable similarity of his interpretations to those of historian Arthur A. Ekirch in *The Decline of American Liberalism.* For our purposes, Chapter 8 of *Freedom and Federalism,* "Democracy and Empire", is most important. Morley distinguished two major causes for the decline of classical liberal constitutionalism in the United States. First, the reformers, while initially seeking only to "prevent the abuse of power where already centralized", end up crying that "there 'oughta be a law'".[14] Believing in the *volonté générale* of Jean Jacques Rousseau — Morley's *bête noire* — the reformers equate their own will with this "common good", turning to a strengthened bureaucracy to carry it out.

While a major problem in its own right, this "Ralph Nader syndrome", as we might call it today, has not been the chief cause of centralized statism in American history. No, for Morley, the primary destroyer has been just what a classical liberal would suspect: war. Here, Morley, however conservative he may be in temperament, parts company with today's establishment conservatives, whose obsession with communism blinds them to the evils of war and intervention. (Indeed, war and intervention have to a great extent become their sacred cows.)[15] A Morley puts it, "power is most easily centralized by war, or by the expectation of war".[16]

Remarking a paradox to which other writers have recently called attention, Morley writes that "every war in which the United States has been engaged was both immediately preceded by a political flowering of democratic theory and immediately productive of centralization".[17] By "democracy" Morley clearly means the Rousseauian tradition of "virtuous unitary statism" which is so antithetical to the republican federalism of the Constitution. The close connection between "democracy" with an active interfering state at home and interference abroad has been noted by many classical liberal observers, including Herbert Spencer.[18]

As Morley unkindly observes, it was, after all, the Jeffersonian party itself, which, once safely in power, gave us 'Mr. Madison's War' complete with "a national debt, a national bank, a high protective tariff and certainly a great impetus for the strongly centralizing Supreme Court decisions of Chief Justice Marshall".[19] While the so-called Jacksonian movement was many-sided, one side of course emphasizing a *laissez faire* liberal economic program, its strongly democratic side also ran in the direction of unitary Nationalism — as seen in the conflicts leading to the Nullification crisis. And, Morley adds, the imperialist War with Mexico can be viewed as symptomatic of both slavery expansionism and democracy. (Strict constructionists in the South, like Alexander Stephens, opposed the war with logical consistency.)

Democratic theory led to the question: if the people rule, what harm can come from powerful government? By 1860, a Northern majority was prepared to fight for the principle of centralized democratic statism, destroying the evil institution of slavery in the process, but probably for the wrong reasons, and destroying much else besides. The war shook federalism tremendously, but more quakes were to come. They came from the efforts of great centralizers and democrats like Theodore Roosevelt and Woodrow Wilson.

The theory of democracy had no logical limits, writes Morley, and required extending throughout the world in the minds of its advocates. Cuba must be freed from Spain and Spain's possessions made U.S. colonial wards. Soon we could "justify the suppression of the Filipinos"; "[T]he private enslavement of Negroes was ended. The public control of alien populations had begun". Soon we were in World War I (the First Global Bloodbath). These were "years in which the country moved simultaneously towards democracy and towards imperialism". The income tax was but one measure which was "democratic" and imperial. Great ventures could be sustained, great demagogy indulged in.

The *very* "general will" to escape the Depression helped push America into World War II, and Korea showed the degree of centralization previous wars had caused; one man had, on his own motion, precipitated Congress and people into another bloody conflict far away. Assessing the situation as of 1959, Morley, ever cautious, did not describe the U.S. as an empire, but as a Republic with increasingly imperial burdens, attitudes and policies. The chief features of American imperialism were alliances abroad, subsidization of allies militarily and economically, "hostility to the theory of neutrality" (which Morley had noted in the 1940s), the idea that "there should be no political debate over foreign policy", and, finally, a tendency "to dilate in grandiose terms about [the empire's] blessings for mankind".[20]

For Morley, all these things threatened true liberal values of self-government and federalism and freedom, and enhanced only the State, which he had once termed "a cold-blooded instrumentality of power".[21] We stand in his debt for his sustained and consistent critique of state interference at home and abroad. Our only criticism today, if any, might be merely that Dr. Morley has perhaps erred on the side of moderation too many times. His concluding remarks on "Democracy and Empire" are so timely that they deserve quotation in full and require little amplification:

> There is widespread recognition that the national talent is not imperial and that an extremely large number of people all over the globe are more disposed to dislike than to admire our much-vaunted "American Way". As problems of every sort increase at home we realize that what happens to Israel or Ethiopia is not our first concern. And this is not to be called a rebirth of "isolationism", but rather a recognition that federalism, even if we misname it democracy, is not adapted or adaptable to the path of empire.[22]

NOTES

1. Felix Morley, "The Twilight of An Empire", *Human Events,* IV, 10 (March 5, 1947), p. 3.
2. For the varieties of "Jeffersonianism", see Arthur A. Ekirch, *The Decline of American Liberalism* (New York, 1969), chap. 5, "Jeffersonian Compromise".
3. Felix Morley, "Pointing Towards Imperialism", *Human Events,* I, 4 (February 23, 1944), pp. 1-4.
4. Felix Morley, "Civilians and Civilization", *Human Events,* I, 7 (March 16, 1944), pp. 1-4.
5. Felix Morley, "Judges In Our Own Cause", *Vital Speeches,* X, 16 (June 1, 1944), pp. 499-502. The speech was delivered April 29, 1944 (p. 501).
6. Felix Morley, "What Unconditional Surrender Means", *Human Events,* II, 26 (June 27, 1945), pp. 1-4.
7. Felix Morley, "The Return to Nothingness", *Human Events,* II, 35 (August 29, 1945), pp. 1-4.
8. Felix Morley, "Portent in Greece", *Human Events,* I, 46 (December 13, 1944), pp. 1-4. In the 1940s it was widely assumed that Stalin actively supported the Greek Left, first the target of British and, later, U.S. intervention. Recent accounts call this into question. See, for example, Constantine Tsoucalas, *The Greek Tragedy* (Baltimore, 1969), p. 94, and Richard J. Barnet, *Intervention and Revolution* (New York, 1972), pp. 111-112.
9. Felix Morley, "Imperialism and Americanism", *Human Events,* III, 4 (January 23, 1946), pp. 1-4.
10. Felix Morley, "Twilight of An Empire", pp. 1-4. For the background of the Truman Doctrine, see Barnet, *Intervention and Revolution,* pp. 101-128.
11. Felix Morley, "Here Let Us Stop", *Human Events,* V, 12 (March 24, 1948), pp. 1-4. The title of the piece is taken from George Washington's "isolationist" Farewell Address. Morley's critique of the U.N. parallels the left-wing attacks on the League of Nations. Cf. R. F. Pettigrew, *Imperial Washington* (Chicago, 1922), chap. XXX, "The League to Perpetuate War".
12. Felix Morley, "Conservatism and Foreign Policy: Either the Constitution or the Policy Must Give Way", *Vital Speeches,* XXI, 7 (January 15, 1955), pp. 974-979 (pp. 977, 978, 979).
13. Felix Morley, "American Republic or American Empire", *Modern Age,* I, 1 (Summer, 1957), pp. 20-32 (pp. 20, 21, 23, 25, 30, 32). For John T. Flynn's view of defense spending as an economic stimulant, see *Country Squire in the White House* (New York, 1940), pp. 102-107.
14. Felix Morley, *Freedom and Federalism* (Chicago, 1959), pp. 99-100.
15. See, for example, J. Bernard Burnham, "What Liberals Don't Understand About Vietnam", *National Review,* XXIII, 3 (January 26, 1971), pp. 77-80, a defense of interventionism scarcely rivaled anywhere since.

16. Morley, *Freedom and Federalism,* p. 101.
17. *Ibid.,* pp. 101–102. For two recent essays which stress the surprising connections between democracy, empire and war from somewhat different perspectives, see William F. Marina, *Egalitarianism and Empire* (Menlo Park, Ca., 1975) and Robert J. Bresler, *The Ideology of the Executive State* (Menlo Park,Ca., 1974).
18. Herbert Spencer, *The Man Versus the State.,* ed. Donald Macrae (Baltimore, 1969), p. 189.
19. Morley, *Freedom and Federalism,* pp. 102, 104.
20. *Ibid.,* pp. 110–111. Cf. the criteria of empire presented by Garet Garrett in *The People's Pottage* (Boston, 1965), pp. 100–127.
21. Felix Morley, "Twilight of an Empire", p. 2.
22. *Idem, Freedom and Federalism,* p. 114.

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FELIX MORLEY AND THE COMMONWEALTHMAN TRADITION: THE COUNTRY-PARTY, CENTRALIZATION AND THE AMERICAN EMPIRE

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Some years ago in *Modern Age* (Winter, 1958–59), in a poem dedicated to Robert A. Taft, Sr., he was referred to as "Old Roundhead", and compared to the English revolutionary, John Pym (1584–1643). The historical connotations and the loving insights revealed by that designation are highly significant. In the 20th century, Taft, indeed, did represent the anti-Court, anti-Executive Establishment, Country-Party tradition of the Roundheads, the Commonwealthmen, the Independent Whigs. He revealed the courage of that tradition by resisting the blandishments of the modern Court Party, when in 1940 he was offered its support for the nomination to the presidency if he would drop his commitment to the principles of isolationism and if he would support the policy of assistance to England.

When I think of Felix Morley, I am reminded of Robert Taft and his commitment to principle and his courage in standing by his principles. I have no hesitation in referring to Felix Morley as a Roundhead, Commonwealthman or Independent Whig. No doubt influenced by his Quaker forbears, Morley has directed his attention to the 17th century Puritan Revolution in England as the origin of our libertarian heritage. The events which contributed to that revolution were important in the early colonization of the American colonies. In *The Power in the People* (1949), Morley presents the historical background to American liberties drawn from 17th century England. He emphasizes the work of John Milton and the influence of John Bunyan's *The Pilgrim's Progress;* from Bunyan he draws his admiration for the courage and perseverance of Christian. Finally, there is the exposition of a consistent classical liberal philosophy in the writings of John Locke, and those that he influenced.

Given Hobbes' writing of *Leviathan* in reaction to the Puritan Revolution, Morley finds Locke's arguments in opposition to Hobbes of central importance. Locke's distinction between State and Society, Morley views as the philosophical basis of American political thought. Locke emphasizes that even in a state of nature man cannot be called a really vicious animal. Morley sees the same debate restated on the eve of the American Revolution in the answer to Viscount Bolingbroke's *Letters on the Spirit of Patriotism* by Edmund Burke's *Vindication of Natural Society*.

It is on the basis of the development of political philosophy during the 17th and 18th centuries that Morley believes that it is possible for Americans to make a rediscovery of their heritage, and that rediscovered principles will guide us to solutions to the crises of today. Even the failures of the 17th century revolutions will provide lessons for the achievement of liberty. But, paradoxically, critics of liberty have viewed those failures as the success of liberty. Morley notes that Oswald Spengler, viewing the developments of 18th Century English history from an Hegelian perspective, believed that the Lockean revolution of 1688–89 had been successful in abolishing the state. From *The Decline of the West,* Morley quotes Spengler: "In England, The Declaration of Rights (1689) in reality put an end to the State . . . On the other hand, the word 'Society' established itself as the expression of the fact that the nation was 'in form' under the Class- and not under the State-regime".[1] Morley comments that Spengler means that the political state was replaced by the cultural estate — a social system "in general opposed to artificial privilege or monopoly of any kind, especially those that the State seeks to sanctify".[2] This promise of the primacy of Society over the State received partial fulfillment in the England which we associate with the principle of "Salutary Neglect", during the hegemony of Robert Walpole; Henry Pelham; his brother, Thomas Pelham-Holles, the first duke of Newcastle; and Philip Yorke, first earl of Hardwicke.

However, there were critics of the continued strength of the state in that *laissez-faire* period; and as the works (more recent than Morley's) of Caroline Robbins (*The Eighteenth Century Commonwealthman*) and Bernard Bailyn (*The Ideological Origins of the American Revolution*) have shown, it was the heirs of the Puritan Revolution and Locke, the 18th century Commonwealthmen, who had the greatest impact on the Americans of the era of the American Revolution and Constitution. The Roundhead, Commonwealthmen, Country-Party ideas which Morley emphasized as the foundation of American political thought had been concretely and widely presented in the eighteenth century, especially through the *Independent Whig* and *Cato's Letters,* published in the 1720s by John Trenchard and Thomas Gordon. As Bailyn has shown, their work was the most important influence on Americans of the revolutionary era, followed by John Locke. Trenchard and Gordon's works went through more than a half dozen editions in the succeeding decades, including a Philadelphia edition. Trenchard and Gordon's *Independent Whig* "scorns all implicit faith in the State . . . As he never saw much Power possessed without some Abuse, he takes upon him to watch those that have it".[3] *Cato's Letters* (II, no. 43, p. 75) wondered what would happen "if all magistrates, all priests, all officers, were dismissed. Some people at least would feel that the government would be improved".[4] But, Cato feared that people would turn to their private pursuits and relax their vigilance, and power would be restored and abused. Cato insisted that every man must be knowledgeable about public affairs; that there must be independent journals to provide that knowledge about current events. "Cato constantly pointed out the necessity for education and interest in political science".[5]

Morley concludes that the significant lesson learned from the 17th and 18th century political philosophers by Americans was self-reliance or self-government and voluntary cooperation. These constituted the foundations of society in the duality of Society and State. But, for Morley the emphasis on self-government implied "an instinctive hostility to the State".[6] From this, Morley develops the importance of the concept of the social contract.

Noting the universal antagonism of English writers (with the exception of Hilaire Belloc) to Rousseau and his theories, Morley feels that there is a need for revision:

> It is no endorsement of the entire body of Rousseau's thinking to point out that those who dismiss his Social Contract as pure fiction are, on this point, themselves subject to correction. Ironically enough, it was Englishmen, on American soil, who have left us actual records of such contracts — many of them. That their existence, let alone their significance, should have been so consistently ignored by English writers is one of the most curious lacunae in the scholarship of that politically minded nation.[7]

On the matter of social contract, Morley finds Tocqueville a better guide than the English writers. In Jacksonian America, Tocqueville found that "Society governs itself for itself". Tocqueville noted: "Nothing is more striking to a European traveler in the United States than the absence of what we term the government, or the administration".[8] Tocqueville encountered in Jacksonian America the fullest expression of self-reliance:

> When a private individual meditates an undertaking, however directly connected it may be with the welfare of Society, he never thinks of soliciting the cooperation of the government; but he publishes his plan, offers to execute it, courts the assistance of other individuals, and struggles manfully against all obstacles. Undoubtedly he is often less successful than the State might have been in his position; but in the end the sum of these private undertakings far exceeds all that the government could have done.[9]

However, Tocqueville warned that the very vitality of self-reliance is a threat to liberty because "Private life in democratic times is so busy, so excited, so full of wishes and of work, that hardly any energy or leisure remains to each individual for public life".[10] It is in such circumstances that individuals seek to gain an expansion of government power. Morley quotes Tocqueville:

> There is always a multitude of men engaged in difficult or novel undertakings, which they follow by themselves without shackling themselves to their fellows. Such persons will admit, as a general principle, that the public authority ought not to interfere in private concerns; but, by an exception to that rule, each of them craves its assistance in the particular concern on which he is engaged and seeks to draw upon the influence of the government for his own benefit, although he would restrict it on all other occasions. If a large number of men applies this particular exception to a great variety of different purposes, the sphere of the central power extends itself imperceptibly in all directions although everyone wishes it to be circumscribed.[11]

Morley's most significant philosophical contribution is his chapter 5, in *The Power in the People,* "State and Society". The bibliography of that chapter is impressive and instructive: Aristotle's *Politics;* Hilaire Belloc's *The Servile State;* Randolph Bourne's *The State;* Ernst Cassirer's *The Myth of the State;* Edward Corwin's *Liberty Against Government;* Bertrand De Jouvenel's *Power;* Thomas Eliot's *The Idea of a Christian Society;* Sir George Frazier's *The Golden Bough;* William E. Hocking's *Man and the State;* Peter Kropotkin's *The State;* Niccolo Machiavelli's *The Prince* and *The Discourses;* Albert J. Nock's *Our Enemy, the State;* Franz Oppenheimer's *The State;* Vilfredo Pareto's *The Mind and Society;* and Herbert Spencer's *The Man Versus The State.*[12]

Morley based his distinction between Society and State on the origins of the words. Society is derived from the Latin *socius,* a companion. Society and association are rooted in the voluntarism of companionship. "It would be forcing the language to refer to a company of conscripts, or to the prisoners in a tier of cells, as a society. Companionship in both cases is externally enforced (by the State, as it happens)."[13] Morley continues on to the word State which is rooted in involuntary or forced association. He sees the absence of free choice and free contract as the basis of the word *status,* from which state is derived.

Morley holds that society antedates that state. He says: "For the purposes of this study it is unnecessary to debate whether the origins of State and Society are coeval, or where the State in primitive form was originally imposed on pre-existent social groups in order to systematize exploitation of the weak by the strong. Certain observations on the issue will be made for what they are worth".[14] In his observations he locates the origins of the State in the prehistoric launching of an attack by one group on another. Morley finds an analysis of this fundamental aspect of the State in Plato's *Republic* (Eighth Book): " . . . then he is always stirring up some war or other, in order that the people may require a leader. . . . Has he not also another object, which is that they may be impoverished by payment of taxes, and thus compelled to devote themselves to their daily wants and therefore less likely to conspire against him?"[15]

Morley sees the origin of the State in the State. He says: "For the purposes of this study the monopoly of power of the victors over the conquered in a permanent institution over time.[16] However, this tendency toward permanence over time creates its own challenges. The impositions of the State on society eventually will not be accepted. "It may be a law that prohibits men from taking advantage of the natural process of fermentation. It may be a law demanding that on his eighteenth birthday a boy shall be conscripted for military service. It may be a law that fixes an arbitrary price for a pound of butter. The occasion is less important than the result, which is at first individual, and finally collective, rebellion."[17]

From one point of view *The Power in the People* represents a dialogue between Morley and Tocqueville, with Morley applying Toqueville to contemporary America. As with Tocqueville, Morley was led to a comparison between America and Russia. In this case, a comparison between an America almost the reverse of the Jacksonian *laissez-faire* society of Tocqueville's time, and a Soviet Russia which Morley concluded was much more the continuation of Tsarist Russia. Although Morley draws from Alexander Baykov's *The Development of the Soviet Economic System,* and the political analysis of E. H. Carr, William Henry Chamberlin, David Dallin, Bernard Pares, David

Shub and Pitirim Sorokin, he makes the greatest use of Leon Trotsky's *The History of the Russian Revolution.*[18] Based on Trotsky, Morley emphasizes that the cities of Russia were centers of consumption of wealth without production as they were political, administrative and military aggregates rather than cities in the Western European sense. Morley was especially interested to note that the enslavement of the peasants in Russia occurred during the Romanov dynasty's rise in the seventeenth century, which was at the same time as the revolutionary vindication of rights in England and the establishment of local institutions of self-government in colonial America. The Russian peasant was transformed into a serf and in law was considered as property and only as property. Laws gave fugitive serfs no opportunity to gain freedom; they were recoverable throughout their lives and harboring them was punished with the forfeiture of four serf families. Morley underlines Trotsky's analysis of the gulf between the Russian Orthodox Church and Western Catholic Church. Trotsky stated: "The church never rose in Russia to that commanding height which it attained in the Catholic West. . . . The bishops and metropolitans enjoyed authority merely as deputies of the temporal power. The patriarchs were changed along with the Czars."[19]

A point which Morley neglects to underline is that the bishops in Western Europe made possible the development of cities as they had immunities from the royal governments, and shared an interest in the economic development of the cities. (It is worthwhile to recall Augustin Thierry's magisterial works on this subject.) In addition, the bishops established the universities which are one of the most distinctive contributions of medieval Europe, and which found the economic revolution of medieval cities the perfect conditions for their growth. Trotsky also notes that Russia did not experience a Reformation. Morley adds John Maynard's insight that without a Reformation, Russia did not experience the effects of the Counter-Reformation: "so that Russia missed an educative influence such as the later and reformed Roman clergy exercised in the West, while her own clergy neither studied nor taught".[20] Through the Counter-Reformation the Italian Renaissance was spread throughout Europe, including Poland, Bohemia and Hungary. The absence of the Jesuit universities which dominated European education for two hundred years with their classical and Renaissance *ratio studiorum* was a major gulf between scientific and intellectual development in Europe and Russia.

Basic to the long-run success of the Soviet Revolution, Morley found, was the absence of a tradition of private property in pre-revolutionary Russia. Even with the Emancipation of the serfs in 1861, the land was transferred from the lords to the communes. Without private property and its concomitant, equality before the law, egalitarianism remained dominant in Russia and liberty was not a major issue. Morley notes that the first private property system in land in Russia was instituted by Lenin through the New Economic Policy, 1921–28, and reversed under Stalin. Of more immediate significance for the early success of the Bolsheviks, Morley finds, was the centralization of economic resources under the Tsarist regime. Drawing on Tocqueville's insights regarding centralization, Morley is struck by Trotsky's recognition that Russia's industrialization in the later nineteenth and early twentieth centuries was based on very high concentration of industry, mainly due to the role of the goverment in Tsarist "forced industrialization". Through government intervention, Tsarist Russian industry was characterized by very large factories employing very large work forces. Trotsky noted that in 1914 American enterprises of more than a thousand employees employed only 17.8% of the total work force, while in Tsarist Russia they represented 41.4% of the total work force. Morley noted "there was more than sufficient 'Big Business' in Czarist Russia to make the transition to Big Government an easy one".[21] Morley emphasizes the fact that it was precisely in these giant factories, artificially created by government intervention, where the Bolsheviks gained their political strength which gave them control over the Petrograd and Moscow Soviets.

Morley felt that the post-World War II

rivalry was aptly called a cold war because both the doctrines of Communism and of Capitalism were chill in their materialism. However, he feels that in both cases there is more to these societies than their basic philosophies. For Morley, the ideals of America are not economic, it is the means which are economic. "What makes the Republic distinctive is the confidence that it places in Man's ability to plan for himself; its deep-rooted mistrust of governmental planning".[22] This confidence was based on classical and Christian thought. The fear that Morley had was that this confidence sometimes was expressed in restlessness which he felt was a weakness.

The attractiveness of socialism for the young Morley found especially in the absence of spiritual values in capitalist countries. This defect had diverted "the attention of honest idealists from the far greater danger to the individual that lurks behind the architectural drawing of a benevolent Welfare State".[23] Morley feels that the development of socialism was inevitable in Europe due to its feudal background. But, it is not inevitable in America; and he credits the conscientious leaders of business channeling their fortunes into philanthropic, educational and cultural activities. (However, in line with Ralph Raico's analyses of the role of the intellectual, one wonders if the effect has been mainly to benefit intellectuals and make them less active as political reformers.) In the long-run, America might not be immune from the impulse to socialism. Morley has noted that it is the tendency toward political reformism that contributes to socialism. "Thus, the political reformer is more likely to be a Socialist, placing great confidence in the coercive power of the State, than a Radical who really seeks the root of social ailments. To the reformer, cure is generally more important than diagnosis, and reflection does not seem to be a prerequisite for action."[24]

Morley concluded with reflections on the role of foreign policy. He felt that a major defect among Americans was that they were reactive to headlines rather than reflective through a knowledge of history. "Forgetful of their past, and showing little insight as to their future, the American people have twice let themselves be maneuvered into military alliances and essentially suicidal European conflicts of a nature more likely to destroy than to preserve the States with which we were allied."[25] For Morley, American intervention in the Second World War was an even worse disaster than entry into the First World War.

> What William Graham Sumner had called "Blessed Isolation" was indeed abandoned. In its place, unwittingly and unwillingly, the American people had accepted imperial burdens that strongly imply the passing of their Republic.
>
> This unhappy outcome explains why so many patriotic and far-sighted Americans viewed President Roosevelt's casual adventure into the last war with such grave misgivings.
>
> . . . Soon, on a frontier stretching from Korea to Bavaria, an interventionist America was maintaining conscript troops, and pouring forth its substance, in a Herculean effort to "contain" the very forces that our own "diplomacy" has so light-heartedly released.[26]

Morley emphasizes that the isolationist tradition, rooted in Washington's Farewell Address, is not opposed to intellectual, economic or charitable relations with other peoples.

> There has never been a people whose natural instincts are less "isolationist". Mixed blood and mingled origins dispose Americans to think well of men as men. They are happily not disposed to think well of governments as governments. The fundamental American faith responds to associations of men — everywhere. It has no confidence in associations of governments — anywhere.
>
> For essentially the same reason, Americans mistrust empire. Common sense tells us that the Republic was never designed to run an empire. Imperialism requires centralization of power, and all the political institutions of our federal union were carefully planned to make that centralization difficult.[27]

Morley concluded that the strongest bulwark against imperialism was the American home. He thinks that it is more than an accident that American's leading aesthetic contribution has been domestic architecture. The desire and effort toward home ownership was matched by the role of the home in educating for liberty. If the home protected its role of educating for liberty, Morley considered the threat of empire resistible.

In his *The Foreign Policy of the United States* (1951) Morley found the origins of America's foreign policy tradition in the Puritan Revolution's struggle against Charles I. The struggle for the people's control over foreign policy was the cause of the English Revolution. Morley saw the struggle over "Ship Money" — taxes for the navy — as involving Anglo-Saxon freedoms; the militia was central to traditional English defense. John Hampden's refusal to pay "Ship Money" led to his trial and imprisonment, and he became the model of tax refusal leading to the English Revolution.

In 1641 Parliament declared that the judgments "against the said John Hampden were and are contrary to and against the laws and statutes of this realm, the right of property, the liberty of the subjects, former resolutions in Parliament, and the Petition of Right".[28] Morley sees this early connection between the resistance to foreign intervention and military taxation and the broader struggle for liberty as very significant. John Hampden he recommends as a great witness in the struggle for freedom.

Thereafter, the struggle for liberty was tied directly to the struggle against interventionism in foreign policy. John Trenchard's *A Short History of Standing Armies* (1698) was reprinted almost a dozen times in half a century. Felix Gilbert has presented the development of that tradition in *To The Farewell Address.* Morley notes the Congress during Confederation holding that for an independent America the "true interest of the states requires that they should be as little as possible entangled in the politics and controversies of European nations".[29]

In *Freedom and Federalism* (1959), Morley described the growth of centralization of power due to wars and preparation for war. In "Democracy and Empire", he expresses his suspicion that it is more than a coincidence that each war in which the U.S. has been engaged has produced centralization. The War of 1812 caused a national debt, a national bank, protective tariff, and "a great impetus for the strongly centralizing Supreme Court decisions of Chief Justice Marshall".[30] The Mexican War caused extension of slavery, military government and central administration of conquered territories. The Civil War greatly expanded civilian and military bureaucracy.

The Spanish American War caused Americans to suppress Filipino independence after liberating Cuba. Morley sees a connection between the ending of private enslavement of Negroes and the public control over alien populations. For Morley, that imperialism prepared the way for U.S. intervention in the first World War. The Income Tax Amendment provided the resources "whereby the central government could finance colonial operations".[31]

In "Nationalization through Foreign Policy" Morley notes George Washington's warning that,

> overgrown military establishments . . . under any form of government are inauspicious to liberty, and . . . are to be regarded as particularly hostile to Republican Liberty.[32]

Morley insists that any role of world leadership must include "overgrown military establishments". The military budget in peacetime is a centralizing force of the first magnitude.

In "The Need for an Enemy" Morley notes that military security has become a base for economic security — protection against the consequences of bad economic policy, i.e. depressions. Morley shows that logically the government could try to gain legislation for industry similar to that for agriculture. But, this might encounter public or congressional resistance. Industry does not seek that program because it has an alternative — defense production. Morley emphasizes that as long as Congress can be convinced of a military threat, it will vote unlimited funds for hardware. He believes that the growth of the idea that government must provide employment is due to the artificial stimulus of defense spending. Morley concluded:

> For the Federal Republic there is a very serious threat in the combination of undisputed power and calculated secrecy now exercised by the executive branch of the central government. Indeed it may and should be questioned whether the Russian military threat, which of course encourages the centralizing threat here, is the more serious danger.[33]

In perhaps his most important essay "American Republic or American Empire" (*Modern Age,* I, 1 (summer, 1957), Morley began:

> We seem to have reached a stage, in our national evolution, where we have a vested interest in preparation for war. It has become necessary for us to have a powerful enemy . . . Russia could revert to free enterprise; or restore an hereditary Czardom, tomor-

row; and still our Secretary of State would be compelled to question her *bona fides* . . . because our economy apparently needs the constant stimulus of a threat of large-scale war.[34]

Since Americans are not a belligerent people, he notes the need for constant propaganda to build up the threat of an external threat. The management of public opinion becomes a central concern of the government. Morley feared that the differences as to democratic decision making between Russia and the United States were not very great. "It means that in grasping for the shadow of democracy we are losing the substance of self-government."[35]

It was for these reasons that Morley admired Charles A. Beard and his *American Foreign Policy in the Making,* 1932–1940 (1946). He placed Beard with Thucydides as an objective examiner of governments' claims.[36]

In his "Preface" to the *Watershed of Empire* (1976) Morley welcomed the movement toward "correction of what has been too hastily set down as Gospel by the 'Court Historians' or official propagandists"; the correction coming as a result of the Vietnam war and its consequences — Watergate, CIA, FBI, IRS revelations. Morley was impressed by the historical research which revealed the extent that the imperial presidency had been initiated in the New Deal and continued since then.[37]

Morley concludes with a call for greater popular vigilance in foreign policy:

But, when the Republic became imperial, domestic politics had to concern itself actively with foreign policy or else admit that the power of self-government had been surrendered to Washington. And that admission would be to forget the warning of James Madison, in words not of one era but for all time, "We rest all our political experiments on mankind's capacity for self-government".[38]

In the chapter "Filter Them From Yourself" in his forthcoming *Memoirs,* Morley recalls Charles Pinckney of South Carolina in his address to the Philadelphia Convention: "We mistake the object of our Government if we hope or wish that it is to make us respectable abroad. Conquest or superiority among other Powers is not, or ought not ever to be, the object of republican systems." Morley continues:

Recent Presidents, however, happily less arrogantly with Mr. Carter, have laid great stress on the alleged necessity of American military superiority, using the "adversary" strength of Soviet Russia as argument. Whatever the reality of this threat it clearly demands continuous centralization of power, as is also the case with para-military organizations like the C.I.A. and F.B.I. This often surreptitious attrition of popular control runs counter to the carefully planned decentralization of our political institutions and in such basic opposition either post-war policies or traditional institutions must give way. So far the latter have surrendered ground, but not without producing a popular schizophrenia that deeply disturbs the harmony of national thinking. Are we, or are we not, obligated to military intervention in Israel, Korea, Vietnam, Angola, Rhodesia, Cuba, Panama or what-have-you?[39]

Morley, in his criticism of the feudal traditions of Europe against which the Roundheads led their attack, notes that the strength of the concept of self-government in America was connected with the concepts of free contract, in strong contrast to Europe's emphasis on status. In his discussion of the importance of "productive enterprise" without which "the most human theories of distribution are meaningless", Morley refers to Old Jolyon Forsyte, in John Galsworthy's *The Forsyte Saga* as a man "in whom a desperate honesty welled up at times".[40] Perhaps, it is that "desperate honesty" which is characteristic of the Roundhead tradition, and of Felix Morley.[41]

NOTES

1. Felix Morley, *The Power in the People,* 3rd ed. (Los Angeles: Nash Publishing Co., 1949), pp. 11–12.
2. *Ibid.,* p. 12.
3. Caroline Robbins, *The Eighteenth-Century Commonwealthman* (Cambridge: Harvard University Press, 1959), p. 120.
4. *Ibid.,* pp. 122–123.
5. *Ibid.,* p. 123.
6. Morley, *op. cit.,* p.83.
7. *Ibid.,* p. 89.
8. *Ibid.,* p. 90.
9. *Ibid.,* p. 97.
10. *Ibid.,* p. 94.
11. *Ibid.,* p. 93.
12. *Ibid.,* pp. 273–274.
13. *Ibid.,* p. 106.
14. *Ibid.,* p. 111.
15. *Ibid.,* p. 152.
16. *Ibid.,* pp. 118–119.
17. *Ibid.,* p. 135.
18. *Ibid.,* pp. 277–279.
19. *Ibid.,* pp. 216–218.
20. *Ibid.,* p. 218.
21. *Ibid.,* pp. 219–221.

22. *Ibid.*, p. 243.
23. *Ibid.*, p. 246.
24. *Ibid.*, p. 251.
25. *Ibid.*, p. 223.
26. *Ibid.*, pp. 231-232.
27. *Ibid.*, pp. 265-266.
28. Felix Morley, *The Foreign Policy of the United States* (New York: Alfred A. Knopf, 1951), p. 46.
29. *Ibid.*, p. 74.
30. Morley, *Freedom and Federalism* (Chicago: Henry Regnery Co., 1959), p. 89.
31. *Ibid.*, p. 92.
32. *Ibid.*, p. 109.
33. *Ibid.*, p. 154.
34. Morley, "American Republic or American Empire", *Modern Age,* I, 1 (Summer, 1957), p. 20.
35. *Ibid.*, p. 30.
36. Morley, *The Foreign Policy of the United States,* p. 35.
37. Leonard P. Liggio and James J. Martin, eds., *Watershed of Empire, Essays on New Deal Foreign Policy* (Colorado Springs, Colo.: Ralph Myles, Publisher, 1976), pp. vii–viii; see especially, Robert J. Bresler, "The Ideology of the Executive State: Legacy of Liberal Internationalism", *ibid.*, pp. 1–18. On official history and "Court Historians", see Herbert Butterfield, "Official History: its Pitfalls and Criteria", in *History and Human Relations* (London: Collins, 1951), and Leonard P. Liggio, "Herbert Butterfield: Christian Historian as Creative Critic", *New Individualist Review,* I, 3 (Fall, 1961).
38. Morley, "Preface", *Watershed of Empire,* p. viii.
39. Morley, *Twilight Journal,* 1977, mss.
40. Morley, *The Power in the People,* pp. 261–262.
41. Felix Morley in a letter to the author (November 21, 1977) observed: "There is no doubt that both inheritance and association influenced me toward the Puritan tradition and this was deepened when, at Oxford, I made a deep study of the documentation in the Commonwealth era. I was electrified there by discovering the connections between Cromwell's 'Instrument of Government' and our own Constitution and I have always seen the American Revolution as a natural successor to the failure of the first, in England". The author wishes to thank Professors Robert Nisbet and Milton Mayer for their comments on this paper at the 1977 Libertarian Scholars' Conference at Princeton University.