LITERATURE *of* LIBERTY

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Bibliographical Essay

Summaries

Index

Editorial Staff

Literature of Liberty, published quarterly by the Cato Institute of San Francisco, is an interdisciplinary periodical intended to be a resource to the scholarly community. Each issue contains a bibliographical essay and summaries of articles which clarify liberty in the fields of Philosophy, Political Science, Law, Economics, History, Psychology, Sociology, Anthropology, Education, and the Humanities. The summaries are based on articles drawn from approximately four hundred journals published in the United States and abroad. These journals are monitored for *Literature of Liberty* by the associate editors.

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Associate Editors

Editorial

The continuing significance of Anne Robert Jacques Turgot (1727–1781) is both as a founder of modern economic science and as a powerful shaper of the Enlightenment idea of progress. The youthful Turgot was deeply moved by the liberal temper of Montesquieu's *L'Esprit des Lois* (1748). Turgot, however, found Montesquieu's determinism uncongenial; he was deeply impressed by the role of the human mind in molding history. This conviction, Turgot later expressed while a theological student at the Sorbonne (1750), in two major dissertations: *On the Benefits which the Christian Religion has conferred on Mankind,* and *On the Historical Progress of the Human Mind.* On related themes, he wrote the *Recherches sur les causes du progrès et de la décadence des sciences et des arts,* and the *Plan de deux discours sur l'histoire universelle.*

Turgot's *Discourse on the Historical Progress of the Human Mind* laid the foundations for late eighteenth-century writings on the themes of progress. Turgot believed mankind's history revealed that it must make a thousand errors to arrive at one truth. But he dissented from those eighteenth-century writers who overemphasized immediate experience and thereby viewed history as merely the record of human folly. Progress and avoiding past errors was possible only by the action of the human will informed by wisdom culled from a profound knowledge of history. Turgot thus became a diligent student of economic history for the valuable light it shed on the folly of ignoring the interdependence of capital formation and material progress.

As representative Enlightenment thinkers, Turgot and his intellectual friend Adam Smith each planned to write a history of civilization as a narrative of the history of the human mind and its progress. Turgot was a disciple of one of the two masters of the Physiocratic School, the brilliant teacher J. C. M. Vincent de Gournay (1712–1759), in whose honor Turgot wrote his *Eloge de Gournay.* As a teacher, Gournay had familiarized Turgot with the economic analysis of Richard Cantillon (1680–1734). From Cantillon's *Essai sur la nature du commerce en général,* Turgot derived his capital theory; the necessity of capital for entrepreneurs; the general interdependence of all sectors of economic processes; as well as the concept of development by capital accumulation and investment, crucial for the idea of progress.

Turgot was prominent in the rise of market economics and the antimercantilist critique ushered in by the Physiocrats. The most notable of the Physiocrats were François Quesnay (1694–1774), Pierre-Paul Mercier de la Rivière (1720–1793), and Pierre Samuel

Du Pont de Nemours (1739–1817). The Physiocrats derived their name from the Greek term "the rule of nature." They endorsed the Lockean principal that property is the source of law and natural order (cf. Albert Schatz, *L'Individualisme économique et sociale,* Paris: Colin, 1907). In this vein, Turgot wrote in his article on *Fondations:*

> Citizens have rights, and rights that are sacred to the very heart of society. The citizens exist independently of society and are its necessary elements. They enter society in order to put themselves, together with all their rights, under the protection of laws that assure their property and their liberty.

In his writings, Turgot displays the Physiocratic penchant for seeking a nongovernmental or spontaneous order in the economy. Turgot's "Letter to L'Abbé de Cicé on the Replacing of Money by Paper" (April 7, 1749) was influenced by John Locke's *Some Considerations on the Consequences of the Lowering of Interest and Raising the Value of Money* (1691). Turgot's work presents an initial theory of savings, and he demonstrates that financing government by printing money creates inflation. Turgot later elaborated his economic ideas in some of the articles he wrote for the *Encyclopédie.*

Yet another example of Turgot's economic liberalism is his *Réflexions sur la formation et la distribution des richesses*(1766). Through Richard Cantillon's influence, Turgot developed his theory of capital, savings, and investment which contributed to Adam Smith's *Wealth of Nations* (1776). For Turgot, capital received interest because of the time span of the period of production. He derived this early version of the time preference theory of interest from Cantillon's insight that interest rates were related to the scarcity or abundance of savings. Turgot's *Réflexions* also adumbrated the concept of marginal utility later worked out by Carl Menger with J. B. Say as an important intermediary. Carl Menger's successor and pupil in the Austrian School tradition, Eugen von Böhm-Bawerk, was indebted to Turgot for his development of modern capital theory. Böhm-Bawerk's Heidelberg 1876 seminar paper (now in the possession of F. A. Hayek) and his *The Positive Theory of Capital* (1889) show his reliance upon Turgot.

Turgot presented—in embryonic form—a subjective analysis of economic value in his *Réflexions* and later, in his *Value and Money* (1769), developed this subjective value theory through his discussion of *valeur estimative*—the degree of value a person attaches to different objects he desires. Turgot, aware of the crucial innovation of subjective utility, declared it as:

> one of the newest and most profound truths which the general theory of value contains. It is this truth which l'Abbé Galiani stated twenty years ago in his treatise *Della Moneta* with so much clarity and vigor, but almost without further development, when he stated that the common measure of all value is man.

We can thus observe the intellectual lineage linking those (Turgot, the Abbé Ferdinando Galiani, and the Abbé Etienne de Condillac) who anticipated the Austrian Carl Menger and the Marginal Utility Revolution of 1870. (Cf. Emil Kauder, *A History of Marginal Utility Theory,* Princeton University Press, 1965.)

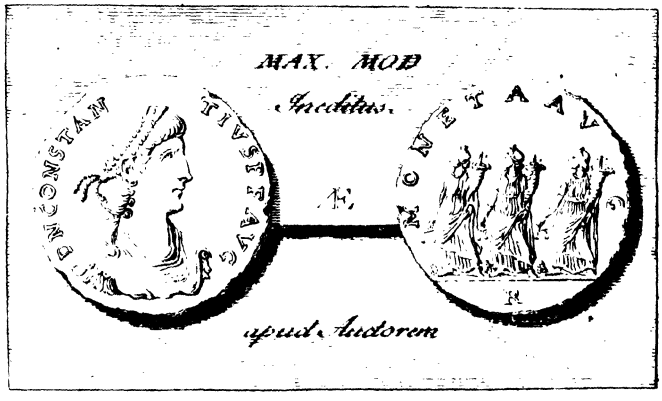
Turgot's economic influence is also evident on J. B. Say's law of markets. In the "Observations on a Paper by Saint-Péravy" (1767), Turgot exposited what later became "Say's Law of Markets." Turgot's analysis of the basic issues inspired Say's effective statement of his theory of markets. As did Say, Turgot noted the economic effects of wars, especially in causing inflation:

> The deadly contrivance of borrowing derives from the mania of spending more than one owns . . . ; the ambition of Louis XIV and other princes has no less been a cause of it [the borrowing] through their stubborn wars pushed to the point of exhaustion. (P. D. Groenewegen, ed., *The Economics of A. R. J. Turgot,* The Hague: Martinus Nijhoff, 1977.)

Turgot's tenure as French controller-general of finance (1774–1776) brought him into a losing battle over government borrowing and the deficit financing of military activities. His dismissal from office specifically involved his memo to the King opposing French military spending. Totally in sympathy with the American rebels, Turgot felt that France would benefit from England's being permanently entrapped in overseas conflict. In any event, he emphasized that France's worst course would be to saddle itself with increased taxation and borrowing for foreign wars. Turgot's fall from office opened the way for France's military intervention in the American Revolutionary War and for the massive government deficits and borrowing that he predicted. The French monarchy's inability to support these loans brought about the French Revolution. [R. R. Palmer, "Turgot: Paragon of the Continental Enlightenment," *The Journal of Law and Economics* 19 (October 1976): 607–619.]

So highly did Thomas Jefferson esteem the liberalism of Turgot that in the honored place of the entrance hall to Monticello he placed a Houdon portrait bust to this Enlightenment hero. Jefferson revered Turgot's strong support of the American Revolution and his contributions to a major debate on constitutional principles. Turgot's apparent approval of the more radical republican constitution of Pennsylvania provoked American and French responses. John Adams wrote his three volume *Defense of the Constitutions of the United States, Against the Attack of Mr. Turgot,* while Adams's friend, the Abbé Mably, a founder of modern socialism's denial of private property, published a work on the American constitutions which disturbed such republicans as Jefferson. [Additional aspects of the debate may be found in Joyce Appleby, "The New Republican Synthesis and the Changing Political Ideas of John Adams," *American Quarterly* 25 (1973): 578–595.]

Turgot's greatest impact, arguably, was being the teacher of Marie Jean Antoine Nicolas Caritat de Condorcet (1743–1794). Especially after the fall of Turgot, Condorcet became the hope of the liberal cause. Inspired by Turgot, Condorcet as secretary of the Academy of Sciences (1776), sought to reorganize scientific activity by giving equal emphasis to research both in the natural and in the historical sciences. From his outspoken controversial pamphlets supporting Turgot's ideas on free trade and on the abolition of forced labor for the state, to his *Vie de M. Turgot,* Condorcet developed the ideas of a free society where the political system would approximate the freedom of the natural order. Continuing Turgot's work on progress, Condorcet's *Esquisse d'un tableau historique des progrès de l'esprit humain* (1793–1794) has been one of the most controversial contributions to the idea of progress. The most recent, and perhaps definitive study of Condorcet's *Esquisse* is that of Keith Michael Baker, *Condorcet, From Natural Philosophy to Social Mathematics,* University of Chicago Press, 1975. The *Esquisse* is the history of progress as the cumulative ordering of ideas into more and more comprehensive combinations. Although truths were turned into errors by social or political interests, error stimulated the human mind to discover truth. "In a sense," Baker suggests, "the *Esquisse* came much closer to a sociology of error than it did to a sociology of progress." Turgot's education of Condorcet has had the greatest influence in the progress of the social sciences, and in the recognition of the limited progress that they have made.



Bibliographical Essay

The Idea Of Progress

by Robert Nisbet

Confusion Over the Meanings of Progress

The essence of the Western idea of progress can be simply stated: mankind has advanced in the past, is now advancing, and may be expected to continue advancing in the future. But what, it will be asked, does "advance" mean? Here matters necessarily become more complex. Its meanings have ranged from the most sublimely spiritual advance to the absolutely physical or material. In its most common form the idea of progress has referred, ever since the Greeks, to the advance of knowledge, more particularly the kind of practical knowledge contained in the arts and sciences. But the idea has also been made to refer to the achievement of what the early Christians called earthly paradise: a state of such spiritual exaltation that man's liberation from all tormenting physical compulsions becomes complete. We find the perspective of progress used, especially in the modern world, to give substance to the hope for a future characterized by individual freedom, equality, or justice. But we also find the idea of progress made to serve belief in the desirability and necessity of political absolutism, racial superiority, and the totalitarian state. In sum, there is almost no end to goals and purposes which have been declared the fulfillment or outcome of mankind's progress.

Progress as an Ancient Idea

In the form I have just described, the idea is peculiarly Western. Other, older civilizations have certainly known the ideals of moral, spiritual, and material improvement; have known the quest for virtue, spirituality, and salvation in one degree or other. But only in Western Civilization, apparently, does the idea exist that all history may be seen as one of humanity improving itself, step by step, stage by stage, through immanent forces, until at some remote time in the future a condition of near-perfection for all will exist—such perfection definable, as I have noted, in a great variety of ways.

There is a widespread misconception of this idea that I must immediately identify. It is commonly believed that the idea of progress is a peculiarly *modern* idea, largely unknown to the ancient Greeks and Romans, wholly unknown to the Christian thinking that governed Europe from the fall of Rome until the late seventeenth century, and first manifest in the currents of rationalism and science. These modern currents, the argument continues, repulsed Christian theology and made possible, for the first time, a philosophy of human progress on this earth. This is the view that governs the contents of the single most widely read book on the history of the idea, J.B. Bury, *The Idea of Progress: An Inquiry into its Origin and Growth,* published in 1920. The view, or misconception, is not original with Bury. It may be found in most of the philosophical and historical writings in the West from the late eighteenth century on. Of all the ideas which Enlightenment and post-Enlightenment thinkers cherished, none was more favored than the idea of progress, so often used to buttress other favored ideas, and with it the fancy that only in the modern world was it possible for so noble an idea to have been born. I venture the guess that in ninety-nine percent of the writing on the idea of progress, the view is commonplace that the idea is inseparable from modernity and that it became possible of formulation only after Western thought had finally been able to throw the shackles of Christian and classical-pagan dogma. The ancients, it is said, were unable to shake off ideas of fate, of degeneration from a golden age, of cycles, and an indemic pessimism. The Christians, although through belief in redemption by Christ possessed of optimism and hope, turned their minds entirely to the supernatural, believing that the things of this world are of no importance, and foresaw an early end to this world and the ascent by the blessed to an unchanging, eternal heaven.

Classical Antiquity and the Idea of Progress

So much for conventional wisdom. Let us turn to the results of still-emerging, specialized modern scholarship on the different episodes in the history of the idea and turn also to the actual texts, from Hesiod to Toynbee, in which faith in progress has been expressed for some 2,500 years.

The thesis that pagan-classical antiquity was bereft of belief in man's material and moral progress has been utterly destroyed by such authoritative works as Ludwig Edelstein, *The Idea of Progress in Antiquity* (the most comprehensive and thorough); W.K.C. Guthrie, especially his *In the Beginning;* E.R. Dodds, *The Ancient Concept of Progress;* and F.J. Teggart, *Theory of History* and his anthology, *The Idea of Progress.* The late Professor Edelstein speaks for them all when he tells us that the ancients "formulated most of the

thoughts and sentiments that later generations down to the nineteenth century were accustomed to associate with the blessed or cursed word *progress.*"

Greek Poets, Sophists, and Historians on Progress

We begin with Hesiod (ca. 700 B.C.) and his *Works and Days,* second only to Homer in the impact that it had upon classical thinkers for hundreds of years. We almost inevitably associate Hesiod with belief in a primordial golden age, from which mankind has been steadily degenerating, reaching, in Hesiod's time, an iron age that is deemed the worst of all. Humanity confined its hopes to an early disappearance of this iron age and mankind's return to the first, that golden age when there was no knowledge but, at the same time, no contaminants to moral virtue and universal happiness. Actually, Hesiod doesn't write of ages at all, but of races: gold, silver, bronze, heroes, and iron. Second, far from there being steady degeneration, the fourth, the age of "hero-men" comes very close to the original "golden race" in quality. The careful reader will in fact find many lines in Hesiod's work which testify to his awareness of a great deal of good in the world around him and, more important, to his conviction that genuine reform is possible if only good men will rally to its cause. The eminent classicist at Berkeley, George M. Calhoun, in his *Growth of Criminal Law in Greece,* refers to Hesiod as the first European reformer, and to his book as the beginning of Western "political literature." F.J. Teggart, in an article, "The Argument of Hesiod's *Works and Days,*" *Journal of the History of Ideas,* January 1947, writes, after long, meticulous analysis of the text, that Hesiod "set before men the first idea of progress."

What Hesiod began, a long succession of classical thinkers continued. Late in the sixth century B.C. Xenophanes, in a surviving fragment, declared: "The gods did not reveal to men all things in the beginning, but men through their own search find in the course of time that which is better." Not long afterward Protagoras, first and greatest of the Sophists, made emphatic his conviction that man's history is one of escape from primeval ignorance, fear, and barrenness of culture, and of gradual ascent to ever-better conditions of life, the consequence of the steady advancement of knowledge. There is no better place than in Plato's dialogue, *Protagoras,* to acquire first the substance of Protagoras' beliefs, and second the clear sense of Plato's own admiration for this great philosopher—admiration sufficient to lead Plato to put down, as it were, his cherished Socrates, also present at the discussion. There is Aeschylus' *Promotheus Bound* with its notable passage in which Prometheus bewails the terrible punishment he has received from Zeus for the "crime" of having brought to mankind fire and thus stimulates men to rise intellectually and culturally to emulate the gods

themselves. There is no more moving passage in all literature than that in which Prometheus, consigned to an eternity of punishment, tells how he had found mankind on earth in a pitiful condition—subject to every kind of deprivation, ever-fearful, ignorant, and living like animals in caves. He brought to man the gift of fire, enabling mankind through its own efforts slowly to ascend the scale of culture, learning language, arts and crafts, technology, and how to live amicably in groups and federations. There is nothing whatever in Aeschylus' drama of any descent in time from an original golden age. The same is true of the celebrated passage in Sophocles' *Antigone,* the ode by the chorus to man's achievements on earth: "Many a wonder lives and moves, but the wonder of all is man . . . Wise utterance and wind-swift thought, and city-moulding mind . . . Full of resource, without device he meets no coming time. . . ." Not solely to past, present, but also future achievement does Sophocles point. Thucydides, in his history of the Peloponnesian War, devotes the first few paragraphs to pointing out that in ancient times the Greeks lived just as did contemporary barbarians and savages, but that over a long period of time they had risen to greatness through their own efforts.

Plato is the next contributor to the idea of progress. It is a serious error to categorize Plato's rich and complex thought as directed solely to the perfect, the unchanging, the eternal, or to see (as Karl Popper has in *The Open Society, and Its Enemies*) a reactionary mind interested only in the return of Greece to a remote past. Such a view, widespread though it be, is false. In Plato's philosophy, as F.M. Cornford emphasizes in *Plato's Cosmology,* two orders of reality exist: one directed toward the world of perfect ideas, the other directed toward this life, with all its variety, changes, conflicts, and needs for practical reforms. In *The Statesman* Plato delineates a historical account of the progress of mankind from lowly origins to its present heights. In Book III of *The Laws* Plato presents an even more detailed picture of humanity's progress from a state of nature, step by step, stage by stage, to ever-higher levels of culture, economy, and polity. And as Edelstein observes, "Nowhere does Plato contradict the assertion that the arts and sciences . . . should proceed in their search 'for all future time.' "

Although Aristotle refers to cycles in some of his writings on physics and allied sciences, he had a linear conception of human history, one that began with mankind in the stage of kinship alone, progressed to villages and confederations, and finally reached the political state. Aristotle's *Politics* makes clear his belief that reason and wisdom will lead to continuous progress with a corresponding growth in knowledge. The theme of improvement through individual effort and action that we find in his *Ethics* is clearly set, as Edelstein emphasizes, in a conception of morality that is not static

but dynamic, one to be envisaged in a progress of development.

Despite conventional assessments of Hellenistic Greece as a period of decadence, withdrawal, and retreat from reason, two of Greece's greatest philosophers thrived during this age: Zeno the Stoic and Epicurus. Epicurus especially taught the immutability of natural processes, among these the process of mankind's steady improvement from lowly origins over a vast period of time. There were indeed philosophers of primitivism—Cynics, Peripatetics, and others—who believed that the best of mankind lived in the remote and simple past, and for whom progress was but a myth. But their doctrines did not compare in influence to those of Zeno and Epicurus.

Roman Philosophers on Progress

Perhaps the greatest description (in the sense of a systematic and developed awareness) of human progress to be found in all of ancient thought is the Roman Lucretius' *On the Nature of Things* written in the first century B.C. It is an Epicurean account of complete sciences—astronomy, physics, chemistry, anthropology, psychology. In very modern fashion, Lucretius explains the beginnings of the world through atoms in the void forming clusters which then become tangible matter, and the eventual development of the world with all that grows and lives on it. Book V of this general evolutionary treatise is concerned solely with mankind's social and cultural progress. It commences with primitive man living naked and shelterless, dependent upon his cunning and ability to join forces with other men in order to find safety from larger and more predatory beasts, in constant fear of the elements. To assuage this fear mankind generally formed religions for mental protection, and step by step *(pedetemtim progredientes)* advanced to huts, then to houses and ships, diverse languages, the arts and sciences, medicine, navigation, improvements in technology, making for an ever richer existence. And, Lucretius is careful to tell us, despite the grandeur of all that man has achieved on earth through his own efforts, the human race is still in its infancy, and even greater wonders may be expected.

The final philosopher of progress I shall select from classical antiquity is Seneca. A Stoic, an adviser to emperors and others, he was also a scientist in every sense of the word. His *Quaestiones Naturales* presents a remarkable collection of observations and experiments in the natural world and embodies virtually a Darwinian theory of evolution (as there is in Lucretius also), with more than mere hints of the mechanism of natural selection. But Seneca the social scientist, the anthropologist, is best seen in his *Epistulae Morales*. Here is another classical text in human progress. There is passing, uninterested reference to some aboriginal golden age when

virtue was ascendant amid cultural simplicity and to a fall from this primeval state (not different, really, from what Rousseau would write many centuries later on the state of nature and of man's social and cultural ascent from it). But what thoroughly engages Seneca's attention is the means and the stages through which humanity has climbed to its present vast knowledge. He grants philosophy some credit, but it is "man's ingenuity, not his wisdom" that discovered all the really vital things in civilization—farming, metallurgy, navigation, tools and implements of every kind, language, and so on. And, despite Senecan ruminations from time to time about the age and decrepitude of the world, there are other, scintillating passages in which, like Lucretius, he foresees long ages ahead of increase in knowledge. "The time will come," he writes in the *Quaestiones Naturales,* "when mental acumen and prolonged study will bring to light what is now hidden . . . the time will come when our successors will wonder how we could have been ignorant of things so obvious." And in his *Epistulae* Seneca enjoins his contemporaries: "Much remains to do; much will remain; and no one born after thousands of centuries will be deprived of the chance of adding something in addition."

Christianity and the Idea of Progress

Let us now examine the Christian contribution to the idea of progress in the West. It is very large indeed. As I have already noted, the same bent of mind that denies to the Greeks and Romans any real conception of progress is prone (with a few exceptions such as John Baillie, *The Belief in Progress,* which attributes to Christianity what it takes from the pagans) to deny Christianity any vision of mankind's progress. But, as with the Greeks and Romans, a substantial and growing body of scholarship demonstrates quite the opposite. Such impressive studies as Gerhard B. Ladner, *The Idea of Reform: Its Impact on Christian Thought and Action in the Age of the Fathers;* Charles N. Cochrane, *Christianity and Classical Culture;* Karl Löwith, *Meaning in History;* and Marjorie Reeves, *The Influence of Prophecy in the Later Middle Ages* make it certain beyond question that a very real philosophy of human progress appears almost from the very beginning in Christian theology, a philosophy stretching from St. Augustine (indeed his predecessors, Eusebius and Tertullian) down through the seventeenth century.

The Augustinian Legacy: Stages of Historical Development

St. Augustine's *The City of God* has been often called the first full-blown philosophy of world history, and it would be hard to refute that statement. Augustine, as even J.B. Bury acknowledges, is the earliest to emphatically insist upon the unity of mankind, the

ecumenical idea. This introduces the conception of a history of mankind that, although predetermined by God in the beginning, has undergone an unfolding, a realization of essence, a struggle toward perfection through forces immanent in humanity. Augustine fused the Greek idea of growth or development with the Jewish idea of a sacred history. As a result Augustine sets forth the history of mankind in terms of both the stages of growth understood by the Greeks and the historical epochs into which the Jews divided their own Old Testament history.

Thus, in a celebrated and influential passage, Augustine writes: "The education of the human race, represented by the people of God, has advanced, like that of an individual, through certain epochs, or, as it were, ages, so that it might gradually rise from earthly to heavenly things, and from the visible to the invisible." The phrase "education of the human race" and the analogy of the development of mankind to growth in the individual would persist in Western thought, and we find it both in philosophers of the eighteenth and nineteenth centuries who would no doubt have been astounded had the actual origin of the phrase and the analogy been revealed to their secular minds. St. Augustine is not completely consistent in his divisions of historical time. In one section, it is twofold: before Christ and after. In another we get what is perhaps the first usage of a three-stage human history, unquestionably the most popular version in the history of progress, with the nineteenth-century Comte setting it forth in his "Law of Three Stages." In still another section, at the end of *The City of God,* Augustine refers to seven stages of earthly history, with the seventh stage (one of happiness and peace on earth) yet to come. Augustine gives it no precise length; it may be short or long. But he is clear that prior to Judgment Day and the final destruction of the earth, mankind, or at least the blessed, will know an earthly paradise, the consequence of inexorable historical development from the primitivism of the Garden.

Of all the contributions to the idea of progress by Christian thought, none is greater than this Augustinian suggestion of a final period on earth, utopian in character, and historically inevitable. When these two ideas, namely, historical necessity and a utopian period that is the culmination of man's progress on earth, become secularized in the late eighteenth century, the way has been cleared for the emergence of such modern secular millenarianisms as those associated with the names of Saint-Simon, Comte, and Marx. The structure of progress created by Augustine was comprehensible to him and subsequent Christian philosophers only by virtue of the omnipotence of God. For Augustine progress entails a premised origin within which potentialities exist for all future development of man; a single, linear order of time; the unity of mankind; a succession of fixed stages of development; the assumption that all

that has happened, and that will happen, is *necessary;* and, not least, the vision of a future condition of beatitude. Much of the later history of the idea of progress amounts to little more than the displacement of God, but with the structure of thought otherwise left intact.

Finally, it must be emphasized that, God- and Spirit-intoxicated though St. Augustine was, his early pagan rearing, during which he read the Greek and Roman thinkers omnivorously, gave him a solid sense of the wonders of material progress in the world. Too few students of Augustine are aware of the striking passages which appear in *The City of God* Section 24 of Book XXII: passages which rival in eloquence anything Protagoras or Aeschylus or Sophocles wrote on the wonders accomplished by mankind, in which Augustine refers to "the genius of man." In this section we have an inspired cataloguing of the great inventions and scientific discoveries by which mankind, slowly, over a long period of time, has conquered the earth; and a cataloguing too of all the sensual delights man has made possible for himself as the result of this same "genius." His appreciation of both the physical and the mental beauties of the human figure is utterly pagan in nature, but it is not the less a signal part of the Augustinian contribution to the Western philosophy of progress.

Space prevents adequate account here of the direct influence and legacy of Augustine: the philosophies of history written by such Christian minds as the fifth century writer Orosius (student of Augustine, who instructed him to write his *Seven Books of History Against the Pagans);* Otto of Freising's twelfth century *Two Histories* which built upon both Augustine and Orosius; and, in the seventeenth century, the Bishop Bossuet's immensely influential *Discourse on Universal History,* dedicated in effect to Augustine, a book that Turgot, after his loss of religious faith, took as a model for his own secularized *Universal History.* Additional elements in Augustine's legacy of progress include: the conception of time as linear and divisible into developmental-historical ages; the doctrine of historical necessity that would be, when purged of the divine, the stock in trade of a host of "scientific" historians and social evolutionists; and, to reiterate, the mesmerizing, the seductive conception of an earthly state ahead in which man would know liberation from the toils and torments of prior history and, for the first time, a condition of earthly paradise.

Joachim of Fiore and the Millennialist Legacy of Progress

One medieval figure must be given space here: the extraordinary Joachim of Fiore, who lived and wrote in the second half of the twelfth century. He, encouraged by at least three popes, declared that human history must be seen as an ascent through three stages,

each presided over by a figure of the Trinity. First, the Age of the Father or of Law; second, the Age of the Son, or of the Gospel; and third, still ahead, a thousand-year Age of Spirit when human beings would be liberated from their physical-animal desires and would know a contemplative serenity and happiness of mind scarcely even describable. Joachim was nothing if not radical. Not only will all secular government disappear during this age but even the organization of the Church itself, and all its hierarchy, would no longer be needed. Man would, for a whole millennium prior to ascent to heaven, know absolute peace, tranquillity, freedom, and contentment.

Marjorie Reeves, in her magisterial *The Influence of Prophecy in the Later Middle Ages,* has given us the most authoritative insights into this remarkable prophet, and has shown with meticulous documentation the deep, widespread, and long-lasting influence Joachimite doctrines had upon a great many later minds, not all of them overtly theological or millennialist, by any means. Joachim preached that before the third great Age of the Spirit could come into being, there must be a prelude of destruction and conflict, the death throes of the second age. More than a little of the special kind of terrorism Norman Cohn has written of in his *The Pursuit of the Millennium* was activated and justified by hope that human beings, by commencing the work of destruction themselves, through fire and sword, could hasten the onset of the Joachimite Age of the Spirit.

Melvin Lasky, in his excellent *Utopia and Revolution,* has pointed out how Joachim's teachings became sources of inspiration not only to Renaissance prophets and Reformation rebels but also to at least a few major navigators and explorers. Columbus, as Lasky observes, was buoyed up to a substantial degree in his Atlantic crossings by the expectation that he would find the *Otro Mundo,* the Other World, the terrestrial paradise "where all land and islands end," where the promised *renovatio mundi,* the reborn world, would have its beginning. And, as Reeves, and also the Spanish-Americanist historian, J.H. Elliott have made clear, those Franciscan explorers who were to leave so substantial a heritage in the New World, were also steeped, and had been for centuries, in Joachimite promises.

We associate one of Joachim's influential followers, the Dominican Campanella, usually with but one book, his *The City of the Sun.* This work describes a relatively secular utopia in which all men are governed by reason and science and live in a socialist community of property. He wrote it while in prison, but well before this classic utopia of 1602, Campanella, powerfully influenced by Joachimite doctrines, had written other utopian works, but of a deeply religious character.

Christian, including Joachimite, prophecy also played its part in

the Puritan Revolution of the seventeenth century. In 1615, James Maxwell, with his *Admirable and Notable Prophecies,* declared Joachim to have been "extraordinarily inspired." Ernest Lee Tuveson, in his profoundly important *Millennium and Utopia,* shows how easily secular progress conceived of as the rule of reason and of the sciences could be derived from religious progress conceived of as divine fulfillment. Thus he quotes a passage from Sheltoo a Geveren in which we are told that God shows his affection for mankind by raising up "some Valla, Agricola, Erasmus, Melancthon and others" in order to bring "all sciences and knowledge of the tongues to their purity" . . . and to attain "the perfect knowledge of them all by which almost all Europe is set free from barbarousness." Tuveson's book was one of the very first to point out the crucial importance of *religious* ideas of man's progress on earth—of his destined existence in an earthly paradise for a long period before Judgment Day comes, and of the liberation of men from all want, superstition, ignorance, and tyranny—as the forerunners of those *secular* ideas of progress which flourished in the eighteenth century. The great weakness of so many studies of the idea of progress in the eighteenth and nineteenth centuries is their serene conviction that between Christian prophecy and the kind of idea of progress we find in, say, Condorcet at the end of the eighteenth century, there is no affinity (in the sense of historical lineage) whatever, only conflict. Not, this erroneous argument goes, until Christianity with its idea of Providence had been routed, was it possible for a perspective of human progress to make its appearance.

A host of contemporary scholars have made clear to us the deep roots which modern science has in Christian theology and prophecy. Copernicus, Kepler, Newton, are major names among literally scores of minds working in the sixteenth and seventeenth centuries on the physical universe and its laws, but in perfect confidence that what their scientific labors would demonstrate was the wonder of God and His design. The Isaac Newton of the *Principia* was a deeply religious mind, and he saw no discontinuity whatever between this scientific classic and the overtly religious studies which preoccupied him during most of the years which followed publication of the *Principia.*

Precisely the same holds for the history of the idea of progress. The fundamental structure of the idea, its governing assumptions and premises, its crucial elements—cumulative growth, continuity in time, necessity, the unfolding of potentiality, all of these and others—took shape in the West within the Christian tradition. The secular forms in which we find the idea of progress from the late seventeenth century on in Europe are inconceivable in the historical sense apart from their Christian roots.

The Seventeenth Century Battle of the Books: The Ancients vs. The Moderns

It is generally agreed that the first secular statement of the idea of progress in modern Europe occurred during the so-called Quarrel of the Ancients and Moderns in France in the last part of the seventeenth century. R.F. Jones, *Ancients and Moderns* and H. Rigault, *Histoire de la querelle des anciens et des modernes* are the most complete and authoritative studies of this elegant donnybrook. On the one side were those in the seventeenth century who believed that nothing written or otherwise intellectually achieved in modern times equalled the quality of that which had been contributed in classical antiquity. No modern Homer, Aeschylus, Plato, Lucretius, or Seneca is to be found: so declared the Ancients, the most learned and effective of whom was undoubtedly Boileau, the most delightful being Jonathan Swift in his notable *The Battle of the Books.*

The Case For and Against the Moderns and Progress

Quite the contrary, argued the Moderns, foremost among them Fontenelle and Perrault in France. Here Fontenelle's *Digression on the Ancients and Moderns* (1688) will nicely serve as the most eloquent brief in behalf of the superiority of modernity over antiquity. He makes his fundamental premise Descartes's principle, set forth in his *Discourse on Method* a half-century earlier, of the invariability of nature's laws. We may assume, Fontenelle argues, that in light of this invariability, the human mind is as good today, as rich in reason and imagination, as ever it was in the past. There is no evidence whatever to support any view of the degeneration of human reason since the time of the Greeks. And if men today are as well constituted physically and mentally as were the men of antiquity, then it follows that there has been and will continue a definite advancement of both the arts and the sciences, simply because it is possible for each age to build upon what has been bequeathed to it by preceding ages.

Here Fontenelle introduces the analogy we have already found in St. Augustine (it was a common one in the seventeenth century, though it is unlikely that many of those who employed it were aware of its origin in *The City of God).* The history of mankind can be likened, in its constant development through time, to a single individual living through all ages, beginning as an infant, advancing to adolescence, and finally reaching maturity and then old age, always improving himself through education. But there is one signal difference between Fontenelle's and Augustine's use of the analogy. The latter had followed through with the implications of the analogy, declaring mankind to be now in its very old age, with degenera-

tion of faculties to be expected and, eventually, death. But here, Fontenelle makes inconsistency a virtue, a polemical weapon, and although willing to let the metaphor speak for past and present, he drops it so far as the future is concerned. Mankind, he declares, will have no old age or "to drop the metaphor, men will never degenerate."

Georges Sorel, in his *The Illusions of Progress,* would pronounce the conclusion, indeed the whole Fontenellean argument, a shabby piece of bourgeois trickery. The reasoning of the Moderns, Sorel writes, is entirely circular. First, Molière, Racine, and others are pronounced superior to Aeschylus and Sophocles. From this superiority, progress as a principle in human history may be deduced. But how can we be sure that a Molière is the superior to an Aeschylus? Because mankind is always advancing, improving, progressing in its knowledge, and those who come later are the inevitable beneficiaries of those earlier. We, as a human race, know more than did our primitive forerunners: *ergo,* a seventeenth century dramatist is bound to be greater than one of the fifth century B.C.

Circular the reasoning most certainly is, and confused and superficial the conclusion; but this notwithstanding, it was the Moderns who carried the day, won the battle—at least by their and their successors' standard. By the beginning of the eighteenth century this modernist view was supreme among a growing number of intellectuals: that mankind has advanced in culture, is now advancing, and will continue to advance during a long future ahead, and that this advance is the result solely of natural and human causes.

Turgot and the Christian Legacy of Progress

Probably the first full and complete statement of progress is that of Turgot, expressed in his celebrated discourse before an admiring audience at the Sorbonne in December 1750, one entitled "A Philosophical Review of the Successive Advances of the Human Mind." In this discourse progress is made to cover not simply the arts and sciences but, on their base, the whole of culture—manner, mores, institutions, legal codes, economy, etc. Even more comprehensive is Turgot's "Plan for Two Discourses on Universal History" which he wrote in 1751, just prior to his entry into government service and eventual fame, and final humiliation as minister of finance. (All of Turgot's writings on progress can be found, translated, in Ronald L. Meek, ed., *Turgot on Progress, Society and Economy.)* In Turgot's "Universal History" we are given an account of the progress of mankind which, in comprehensiveness and ordering of materials, would not be equalled until Turgot's ardent admirer, Condorcet wrote his *Outline of an Historical Picture of the Progress of the Human Mind* during the French Revolution. Condorcet wrote it in a period of but a few weeks all the while hiding from the Jacobin

police in an attic (a staunch supporter of the Revolution, Condorcet had managed to incur Robespierre's hostility).

Before leaving Turgot, it is important to stress once again the historical importance of Christianity in the formation of the secular modern conception of progress in Western Europe. In the first place, Turgot began his career as a reasonably devout student of theology at the Sorbonne, his aspiration then linked to a future in the Church. Second, just six months before the discourse on "The Successive Advances of the Human Mind" was given in 1750, he had presented another public discourse, this one on the crucial importance of Christianity to the progress of mankind. And third, it was Bossuet's *Universal History,* which I have already referred to, that Turgot acknowledged to be his inspiration for the writing, or the preparation of a plan of his own "Universal History." Bossuet, proud and convinced Christian that he was, constructed his history in terms of a succession of epochs, all designed and given effect by God. Turgot allowed God to disappear (he had lost his faith by 1751 when he wrote his "Universal History") and replaced Bossuet's "epochs" by "stages": stages of social and cultural progress, each emerging from its predecessor through human rather than divine causes. But Turgot's alterations notwithstanding, it is unlikely that his own secular work on progress would have been written apart from the inspiration derived from Bishop Bossuet and other Christian philosophers of history. He is an epitome, in this respect, of the whole history of the modern idea of progress.

The Eighteenth-Century Views of Progress

There are many expressions of belief in mankind's progress to be found in the late eighteenth century—in Germany, England, and elsewhere as well as in France. For reasons of space I must confine attention here to but a few of the principals.

Germany

In Germany there is Gotthold Ephraim Lessing, most famous for his *Nathan the Wise,* and the author of *The Education of the Human Race,* commonly described as incorporating "Enlightenment-born" ideas of human advancement in his otherwise religious structure of thought. But, as is evident from the title, the entire work owes its argument to the Christian, and more specifically, the Augustinian tradition. Much more substantial and systematic is Johann Gottfried Herder, *Outlines of a Philosophy of History of Man.* Here we are treated to mankind in a ceaseless process of evolution: commencing with the very beginnings of the human race, proceeding stage by stage, with potentiality unfolding into actuality, driven

by an immanent necessity, and reaching the level of civilization which Herder thought to be Germanic at its best, but extending to the rest of the West as well. And, Herder concludes, mankind will go on developing into a very long future—in culture, institutions, government, learning, and in man's own happiness.

The final German I shall mention here is the remarkable Immanuel Kant. He is of course universally known for his *Critique of Pure Reason* and *Critique of Practical Reason,* and the idea of progress cannot be said to figure significantly in either of these. But Kant is also the author of a brilliant and suggestive shorter work, *Idea of a Universal History from a Cosmopolitical Point of View,* one in which the progress of mankind is made central. Some of his propositions drawn from this work are worth citing here:

> All capacities implanted in a creature by nature are destined to unfold themselves completely and conformably to their end, in the course of time;
>
> The means which nature employs to bring about the development of all capacities implanted in men, is their mutual antagonism in society, but only so far as this antagonism becomes at length the cause of an order among them that is regulated by law; and
>
> The history of the human race, viewed as a whole, may be regarded as the realization of a hidden plan of nature to bring about a political constitution, internally, and, for this purpose, also externally perfect, as the only state in which all the capacities implanted by her in mankind can be fully developed.

England and Scotland

In England, or rather the United Kingdom, including Scotland, there are several works of first water in advancing the popularity of the idea of progress and also its influence upon public policy. Foremost is Adam Smith, *The Wealth of Nations,* the first systematic textbook in economics, if we like, but a work written with the theme of mankind's natural progress as the warp of Smith's classic. Fundamental to this book is Smith's declaration that there is a natural order of the progress of nations and that the reason England, and Western Europe generally, now find themselves economically crippled, threatened with stagnation, is that by unwise edict, law, and custom they have interfered with the processes of the natural progress of wealth, labor, skill, rent, and profits. Smith's "invisible hand" is as much directed toward the mechanics of progress through time as it is the stability of the economic system.

William Godwin, *Enquiry Concerning Political Justice* is usually categorized as a plea for absolute anarchism, with removal of all forms of authority and power deemed necessary to man's achievement of true freedom. But it should be understood that Godwin too found it proper to set this plea in the context of a theory of progress. Such has been mankind's development over many thousands of years and such is the rate of present advancement, that we may

confidently anticipate a long future in which human beings will be liberated not only from the torments of environment—hunger, squalor, tyranny, and exploitation—but from the torments too of physical and mental illness. In one enraptured passage Godwin actually foresees a time when humanity will even be removed from the inevitability of death.

It was Godwin's work, as well as Condorcet's (which I shall mention momentarily) that led Malthus, in his *An Essay on the Principle of Population,* to point out that should such conditions ever actually prevail, the earth would suffer such over-population as to make any thought of sustenance fantastical; not that Malthus was indifferent or antagonistic to a belief in progress. Both Gertrude Himmelfarb (in her superlative volume of essays, *Victorian Minds)* and William Petersen in *Malthus for Our Time* have highlighted in exhaustive fashion Malthus's belief that social and moral checks to human fertility were possible, even probable—this belief appears in subsequent editions of Malthus's *Essay.* In addition, Malthus took the progressive view that humanity was destined to very real and fruitful advancement into the distant future.

We must not neglect the Scottish moral philosophers (of whom Adam Smith was of course one). Preeminent, apart only from Smith, is Adam Ferguson, *An Essay on the History of Civil Society;* in this lucid and elegant work, Ferguson lays out in considerable detail the steps and stages through which mankind's arts, sciences, and institutions have undergone almost continuous advancement. This volume has been called the foundation of modern social science, but that is declaring too much. Suffice it to say it is assuredly among the stones of the foundation. There were others of great importance in Scotland at the time, at Glasgow, Edinburgh, chiefly, and they have all been dealt with in masterly fashion by the late Gladys Bryson, *Man and Society: The Scottish Inquiry of the Eighteenth Century.* Also to be recommended is William C. Lehman, *Adam Ferguson and the Beginnings of Modern Sociology,* which covers far more than that title might indicate.

France: Rousseau and Condorcet

Passing to the French (having already mentioned the seminal Turgot) there is Rousseau's *Second Discourse,* the *Discourse on the Origins of Inequality.* It may come as a surprise to many readers to see this work put under the rubric of progress, for, it will be said, that long essay is in fact a kind of dirge, a lament for mankind's degeneration into social inequality and all the vices which spring from inequality. Such readers have not read closely enough. What Rousseau gives us with extraordinary insight and detail (it is, allowing only for its polemical thrust, a prime beginning of modern evolutionary anthropology) is a panorama which has the state of

nature for its beginning and then traces, stage by stage, the ascent of mankind to ever higher cultural levels, including those of morality, language, kinship, the arts and sciences, and others. It was long ago pointed out by the great Arthur Lovejoy, in an important article titled "On the Supposed Primitivism of Rousseau's *Second Discourse*" (found in Lovejoy's collected essays), that for Rousseau the initial state of nature was *not* man's happiest condition on earth. But we still encounter the widely stated belief that for Rousseau, man has never since known the happiness, the bliss, and contentment he knew when he was in the state of nature. In point of fact, as Lovejoy noted, and as Rousseau plainly states in the *Discourse,* it was a later stage, approximately the fifth, when a great deal of culture and social organization had evolved, including families, villages, nations, and the like, that man enjoyed "the happiest and most stable of all epochs," to use Rousseau's words. Even more absurd is the prevalent conviction that Rousseau "advocated return to the state of nature." On the contrary: what he advocated was the political state, one resting totally upon the general will.

Returning to the *Second Discourse,* it is true that Rousseau emphasizes the harshly negative impact of, first, private property and, second, the discovery of the agricultural and mechanical arts upon what had previously been a felicitous development. Because now it became possible, he tells us, for man to exploit man and thus make impossible any longer the kind of equality men had hitherto known. So it is rise and fall that we see in the *Discourse.* But it doesn't end with that. For in the *Third Discourse on Political Economy* and in the famous *Social Contract,* we are shown in explicit detail just how mankind's degeneration can be halted and progress achieved—through the instituting of the general will and, with this, complete and enveloping social equality. In sum, Rousseau belongs among the philosophers of progress. And this despite his authorship of the *First Discourse,* namely, that on the arts and sciences and their baneful effect upon human morality. Rousseau in that work is pointing out, as Marx would a century later, the iniquities of the present. But, also like Marx, Rousseau sets these in a developmental context, one that when properly aided by human action, will yield a golden future.

The one other French philosopher of progress I want to cite has been mentioned, but without even brief description: Marie Jean Caritat, Marquis de Condorcet (1743–1794). He had been deeply impressed by Turgot's discourses and writings of 1750–1751, and had even written a biography of Turgot before the outbreak of the Revolution. Progress was in Condorcet's very marrow. He hailed the Revolution and never weakened in his support of it, but, as I have already noted, he incurred the hatred of Robespierre who consequently put the Jacobin police on Condorcet's trail. It was while

he was hiding from the police that he wrote his *Outline of a Historical Picture of the Progress of the Human Mind.* The three stages of progress Turgot and others had premised for human advancement from past to present become nine stages for Condorcet, with a tenth, still ahead, when man would know all joys of freedom, equality, justice, and humanitarianism. Each of the nine stages is given an identity drawn from some signal element of economy or culture; thus the primitive pastoral stage, the agricultural, that of the towns, the handicraft stage, etc., culminating in the kind of civilization that had reached its highest level in Western Europe. For Condorcet there were invariable laws of development, arising from man's own nature, laws which, when finally discovered, as Condorcet believed that he had discovered them, would guide our vision of the future. "If there is to exist a science for anticipating the future progress of the human kind, and for directing and hastening this progress, it must be based primarily on the history of the progress already made."

This progress can be divided, Condorcet suggests, into some nine epochs. The first, an epoch glimpsed only through imagination, is that of mankind living in kinship organization, with the simplest possible economy and material culture and the beginnings of religion ("the most hateful of all despotisms upon the human mind"). The eight succeeding epochs take us through the origins of language, handicraft, pastoralism, villages, towns, commerce, and so on, reaching the first great heights in ancient classical civilization. Next followed the "barbarism" of Christian-medieval society, succeeded by the Renaissance, the rise of modern science, with the ninth epoch culminating in all that Condorcet and his fellow philosophers prized so greatly. "Everything points to the fact that we are verging upon the epoch of one of the great revolutions of the human race . . . The existing state of knowledge guarantees that it will be auspicious." The next, the tenth epoch still in the future, will represent man's achievement at last of full equality, liberty, justice, and abolition of not merely want and hunger but of all remaining restraints upon the human mind.

America

Few places in the eighteenth century displayed a stronger belief in the philosophy of progress than did the American colonies and, then, the new, infant republic. Henry Steele Commager, in his recent *The Empire of Reason,* gives a good deal of stress to this; so does Edward McNall Burns in his *The American Idea of Mission.* Thomas Jefferson, in 1824, two years before his death, marvelling at the progress already to be seen on earth and all that he had seen in his 81 years of life, writes: "And where this progress will stop no one can say. Barbarism has, in the meantime, been receding before

the steady step of amelioration, and will in time, I trust, disappear from the earth." The sometimes dour John Adams, in the Preface to his *Defense of the Constitutions of Government of the United States,* writes of "the regular course of progressive improvement" in the arts and sciences, and goes so far as to declare that "The institutions now made in America will not wholly wear out for thousands of years." Benjamin Franklin, in a letter to his friend Joseph Priestley in 1780, writes: "It is impossible to imagine the Height to which may be carried, in a thousand years, the Power of Man over Matter." Such sentiments were commonplace in the America of the Founding Fathers.

The Nineteenth Century's View of Progress

In the nineteenth century, on both sides of the Atlantic, the belief in progress attained the status of a popular religion among the middle class, and was widely declared by intellectuals to be a fixed law.

France: Auguste Comte

Auguste Comte's *Positive Philosophy,* published in successive volumes during the 1830s is probably the most systematic and dedicated of all works on progress in the century, and, as Teggart has shown in his *Theory of History,* this work exerted immense influence upon the social and moral thought of the century—upon minds not always willing to acknowledge the influence. The essence of human progress for Comte is intellectual. Mankind's mentality has evolved over the millennia through three stages: the theological, the metaphysical, and, coming now into existence, the positive or scientific. Comte argues that all physical disciplines have reached scientific status—astronomy, physics, chemistry, and biology, in that evolutionary order—and the time is now ripe for the creation of a true science of society.

Comte first labelled this new science "social physics" then "sociology." It would be a master-science, with economics, politics, and others sections within sociology. The great object of the science of sociology is demonstration to governments and citizens of the basic laws of human behavior. These, for Comte, fall under two great divisions: Social Statics, the study of social relationships; and Social Dynamics, the essence of which is the study of the principles which underlie human progress. "No real order can be established and still less can it last, if it is not fully compatible with progress; and no great progress can be accomplished if it does not tend to the consolidation of order . . . The misfortune of our present state is that the two ideas [progress and social order] are set up in radical opposition to each other."

Such was Comte's absolute confidence in his own powers of prevision that, working from his claimed laws of progress, he wrote a second major work, *The Positive Polity,* published in the early 1850s, with a subtitle, "Treatise on Sociology," in which he actually described, in abundant detail, the utopia that would exist on earth once human beings, instructed by Comte's science of society, liberated themselves from all existing beliefs, customs, and laws. Although this work did not have the influence upon the developing social sciences that his earlier one did, it played nevertheless a significant role in Western utopianism, resulting in the creation of a Religion of Humanity which had chapters in many parts of both European and American societies. Messianic, Comte may have become the butt of sneers from Marx and his followers, but his was a mind of power, and allow all we will for the shaping influence Saint-Simon had on Comte during his early years, his first major work, *The Positive Philosophy,* is highly original. It is the fusion of a brilliantly creative mind and a vast amount of reading done in his youthful years, which have been fully treated in Henri Gouhier, *La Jeunesse d'Auguste Comte.*

Germany: Hegel and Marx

In Germany, G.W.F. Hegel's *Philosophy of History* (published after Hegel's death in 1831) assumed much of the same influence that Comte's writing held in France. Growth, dialectical in character, plays a strong part conceptually in all of Hegel's work, but it is in his *Philosophy of History* that the importance of the idea of progress is best to be noted. The most striking difference between human history and what is revealed in the study of sub-human species consists in "an impulse of perfectibility" that the human species alone possesses, as the consequence of its powers of reason and also of the cumulative character of its mental experience. For Hegel human history is "the development of spirit in time," and the essence of Hegelian spirit is "freedom." The history of mankind has moved, he tells us, from east to west, and fundamental in this history is the develpment and enlargement of the sense of freedom. "The east knew and to the present day knows only that *one* is free; The Greek and Roman world that *some* are free; the German world knows that *all* are free." The laws of history have contrived to produce "only in the history of the German nations" the political state, which for Hegel is the acme of historical progress, within which the idea of freedom attains "concrete reality."

By no means all of those who were deeply influenced by Hegel shared Hegel's view of the state as the most perfect of institutions, least of all the Prussian state to which Hegel gave utter devotion during his years of lecturing at the University of Berlin. Shlomo Avineri, *Hegel's Theory of the Modern State* deals illuminatingly

not only with Hegel's philosophy of political progress but with its impact upon the generation or two following Hegel's death. The important point in this impact is that Hegel's dialectic, his view of history as the war of opposites continuously and cumulatively reaching ever-higher syntheses, in sum, Hegel's perspective of mankind in ceaseless progress, touched a great many minds, in fact helped shape these minds, which were in no way whatever sympathetic to Hegel's veneration of the state.

Among these minds, is of course Karl Marx. In his Preface to the second edition of *Capital* Marx pays his respects to Hegel, declaring himself "the pupil of that mighty thinker" even though Marx felt obliged to separate himself from the "mystification which dialectic suffers in Hegel's hands." As far as Marx was concerned, Hegel was the first to clarify in systematic and thorough fashion the process of change in history even if he did, in Marx's opinion, have it "standing on its head." Is there a clear-cut, deterministic belief in mankind's progress in Marx? A generation ago, the affirmative answer was almost universal. Today, however, there are enough followers of the "humanistic" Marx, the Marx of "praxis" to get controversy rather than instant consensus when the question is asked, at least in the Western world. No doubt there are passages in Marx's voluminous writings to make possible both an affirmative and negative reply. But in my judgment Marx cannot possibly be separated from the same basic philosophy of progress that we find in dozens of other influential minds in the nineteenth century.

Marx believed *Capital* to be his greatest and most seminal work; so did Engels and scores of other followers who talked with or corresponded with Marx. And in the Preface to the first edition of *Capital* Marx leaves us in no doubt whatever of a philosophy of history, leading toward capitalism's demise and the rise of socialism, one "working with iron necessity towards inevitable results." Granted that "one nation can and should learn from another," but even when a society has "got on the right track for the discovery of its natural laws of movement . . . it can neither clear by bold leaps nor remove by legal enactments the obstacles offered by the successive phases of its normal development." And in the slightly earlier *Critique of Political Economy,* Marx writes: "In broad outlines we can designate the Asiatic, the ancient, the feudal, and modern bourgeois methods of production as so many epochs in the progress of the economic formation of society."

Who can miss in the most famous and powerful of all Marx's writings, *The Manifesto,* the virtual ode to progress, an ode that allows, even compels, him to hail the wonders of capitalism for its work in preparing the industrial and technological scene for the eventual and, by virtue of the fatal contradictions in capitalism, necessary appearance of socialism when at long last humanity will

"have an association in which the free development of each is the condition for the free development of all." And, to offer just one more bit of evidence in support of the reality of the "deterministic" Marx, there is the fascinating article Marx wrote, in English, for the New York *Tribune* in 1853 on "The British Rule in India." The imperialist devastation of traditional Indian society by England may spring from the crassest, most venal and exploitative motives, Marx writes, but: "The question, can mankind fulfill its destiny without a fundamental revolution in Asia? If not, whatever may have been the crimes of England, she was the unconscious tool of history in bringing about that revolution."

England: J.S. Mill and Spencer

John Stuart Mill wrote an entire book on Comte's philosophy, which he admired greatly in the form it had taken in the *Positive Philosophy*. Dealing with the proper methods for the social sciences in Book VI of his *Logic,* Mill not only endorses Comte's 'law of three stages' but declares: "By its aid we may hereafter succeed not only in looking far forward into the future history of the human race, but in determining what artificial means may be used . . . to accelerate the natural progress . . ." He also insists that "The progressiveness of the human race is the foundation on which a method of philosophizing in the social science has been of late years erected, far superior to either of the two modes which had previously been prevalent, the chemical or experimental, and the geometrical modes." In his most famous essay, "On Liberty," Mill distinguishes between "stationary" and "progressive" societies, and argues that the greatest possible freedom of the individual is the natural outcome of the laws of progress in society.

Very probably the most famous single philosopher of progress in the nineteenth century, famous throughout the world, the Far East included, was Herbert Spencer. For Spencer, as for so many others of the age, the words "development," "evolution," and "progress" were synonyms (so are they in Darwin's *Origin of the Species*). Spencer devoted his life to demonstration of the operation of laws of progress throughout nature and human society. Such demonstration is the declared objective of his vast, ten-volume *Synthetic Philosophy*. But early on, in *Social Statics*, Spencer set forth the guiding principle of his thought. "Progress, therefore, is not an accident, but a necessity. Instead of civilization being artificial, it is a part of nature; all of a piece with the development of the embryo or the unfolding of a flower." Since Spencer defines all evil as only a maladaptation of an organism to nature, (and as maladaptation must, through evolutionary processes, disappear in time) then "all excess and all deficiency must disappear; that is, all unfitness must disappear; that is, all imperfection must disappear." Not by an iota does that con-

ception of progress change in any of Spencer's later works. For him the theory of progress was the golden thread making possible a single, unified science, one whose principles would embrace the natural and social worlds alike. It is doubtful if any philosopher has come even close to having the influence upon social thought, lay and scholarly, that Spencer had for nearly a half-century.

America

In nineteenth century America, as David Marcel documents in detail in his *Progress and Pragmatism*, progress became either religion directly or the context of religions. George Bancroft devoted nearly fifty years to the writing of a history of the United States that would prove beyond question the operation of an iron law of progress, leading to ever-widening freedom, in America. In New York City, at the height of the agonizing, bloody Civil War, the philosopher-historian John W. Draper spoke to large audiences to propound his thesis that American history embodies a "social advancement . . . as completely under the control of natural law as is the bodily growth of an individual."

Even Emerson, so often critical of American values, asked, in his "Progress of Culture": "Who would live in the stone age or the bronze or the iron or the lacustrine? Who does not prefer the age of steel, of gold, of coal, petroleum, cotton, steam, electricity, and of the spectroscope?" Such words no doubt strike chill into the hearts of our environmentalists today, but they struck no chill in Emerson's day. And in 1893, the midst of the worst single depression America had yet experienced, Chicago opened the gates to its 600 acres of spectacular exhibits of technological progress, more than 27 million people went through, to marvel and even worship. Much the same had happened in England in 1851 at the great Exhibition of London; its aim, in the words of a writer in the *Edinburgh Review*, "to seize the living scroll of human progress, inscribed with every successive conquest of man's intellect."

Nineteenth Century Skeptics of Progress

There were assuredly skeptics with respect to progress when those words were written, and there would be a continuing line of skeptics from Jacob Burckhardt and Friedrich Nietzsche, through Arthur Schopenhauer, down to Oswald Spengler, W. R. Inge, and Austin Freeman in the early decades of the twentieth century. Only, really, during the last quarter-century have we recognized those who doubted or hated the changes in the natural and cultural landscape, which most people deemed progressive. (Even in the French Enlightenment, as Henry Vyverberg has shown in his *Historical Pessimism in the French Enlightenment*, there were those who looked at past, present and future with but little if any hope.)

No idea, however grand and encompassing, ever captures the loyalties of everyone in an age. But even though we acknowledge the skeptics, there is no doubt whatever that the overwhelming majority of people in the nineteenth and early twentieth century embraced faith in human progress, with economic and technological advancement the necessary *vis creatrix*, and accepted it as a fact of nature and history. "You can't stop progress" had become a universal colloquialism in this country well before the nineteenth century ended, and that theme, variously stated, served our major scholars and intellectuals as well as our politicians and statesmen.

The Dark Side of Progress: Power, Nationalism, and Racism

It would be misleading to imply that the idea of progress has been invariably linked to philosophies of liberalism, democracy, and legal equality. There is a dark side to the idea, manifest in the writings of those, on the one hand, who celebrated political power as the magic key to human salvation on earth and, on the other, who linked progress with some given race, usually "Nordic," "Teutonic," or "Anglo-Saxon," though not seldom "French" and "American" during the latter part of the nineteenth and early part of the twentieth century. The same conception of a principle of mankind advancing necessarily to perfection that we find in the liberal philosophy of a Herbert Spencer is to be found in the absolutist philosophies of those who followed J. G. Fichte and Hegel in dedication to the political state or the racialist philosophies of Arthur de Gobineau, Houston Stewart Chamberlain, and their numerous followers.

From Fichte's *Addresses to the German Nation*, through Hegel's *Philosophy of History*, down to the spokesmen, Left and Right, of the twentieth century's totalitarianisms, there has been a continuing philosophy of progress in the West rooted in the transforming, redemptive uses of power. Hegel, in his *Philosophy of Right,* had written: "The march of God in the world, that is what the state is." And that is what the state or nation meant to a great many in the nineteenth century, and continues, in effect, to mean in our own day. It is one thing to declare oneself in favor of an absolute state, however rooted. It is something vastly different and greater in potential effect to say, as Fichte, Hegel, and their followers said, that political absolutism is the necessary and benign outcome of the principle of human progress.

Marx may have been hostile to the state as he knew it in its "bourgeois" form,and have actually believed what he wrote in the *Manifesto,* that the triumph of the proletariat and the ending of class rule would mean the abolition of the political state. But when late in life he wrote his *Criticism of the Gotha Program,* he could

give vent to the following words: "Between capitalist and communist society lies a period of revolutionary transformation from one to the other. There is a corresponding period of transition in the political sphere and in this period the state can only take the form of *a revolutionary dictatorship of the proletariat*" (italics Marx's). We can do Marx the charity of supposing that in his view this dictatorship would be short-lived and would be literally of the proletariat, not of a small clique; but it is hardly necessary here to point to the ease with which proletariat became party and party became governing committee and governing committee became one man in the history of Marxism from Marx to Stalin. Without the sustaining, sacralizing belief in human progress, and in the uses of state and political power to facilitate this progress, it is unlikely that totalitarianism as we have known it in the twentieth century would have come about.

But we should not rest with the view that progress-as-power is to be seen only among those who are intellectually descended from Hegel, or any of his followers, Left or Right, Marx included. As Carleton Hayes, in his *Essays on Nationalism,* Hans Kohn in his *Idea of Nationalism,* Boyd Shafer in his *The Faces of Nationalism* have all made incontestable, the union between the idea of progress and the idea of the nation with a mission affected the entire Western world. Leonard Krieger, in his *The German Idea of Freedom* and Edward McNall Burns in *The American Idea of Mission* have demonstrated so effectively that no people in the West has been free, in some degree at least, of the view that *national* progress, the advancement of the scope and interests of a nation, is not merely progress but freedom, justice, and goodness too. There is no coincidence whatever in the fact that those at the turn of the century in this country who took the name Progressives for themselves in politics combined belief in manifest destiny with belief that true liberalism meant willingness to use the powers of government in economy, society, and culture as the means of accelerating American progress toward its destined purpose. A great deal of the difference between liberalism as we know it today in the West and the liberalism of Mill and Spencer is explainable in terms of the rhetoric of progress—with the state made crucial in this rhetoric.

The same has to be said of racialism. It is doubtful that the kind of racial obsession we have known in this century, reaching its ugliest peak in German Nazism, would have existed had it not been for the nineteenth century "proofs" by such minds as Gobineau, in his *Essay on the Inequality of the Races,* Houston Stewart Chamberlain, in *Foundation of the Nineteenth Century,* and, in this country, John W. Burgess, in his *Political Science and Comparative Constitutional Law* that behind all genuine progress in civilization is the factor of race. And, more important, behind all modern progress in

the world lies the contribution of a particular race—Teutonic, Nordic, call it what we will. I am not suggesting that belief in racial superiority is inseparable from some kind of belief in progress; of course it is. But with race, as with political power, far more can be done to advance the cause when it is linked with a progressive philosophy of history than when it is put forward alone on its own merits.

To summarize and to reiterate: the idea of progress as we have known it for two and a half millennia in the West is hydraheaded. It may mean, as it meant to the Greeks and Romans, no more than advance of the arts and sciences, with consequent boons to human welfare. It may mean a Christian march to a final perfect millennium on this earth and then eternal bliss in heaven. It may mean the constant increase in knowledge, in free institutions, and in creativity, as it did to the Founding Fathers and their kindred spirits in England and France. But it may also mean the relentless enhancement of the political state, the ever-more intrusive role of the state—and its military and police—into our individual lives, or the equally relentless ascent to domination of the world by a given race.

The Fate of Progress in the Twentieth Century

We have reached the twentieth century in our historical look at the idea of progress. It is often said that this vaunted faith is dead, in the West at least—killed by World War I, by the Great Depression, by World War II, by the spectacle of military despotism, under whatever ideological label, galloping across the earth at rising speed, by belief in the exhaustion of nature and her resources, by malaise compounded of boredom, apathy and disillusionment at one extreme and by consecration to mindless terror at the other, or by some other lethal force. Perhaps it is dead, or at least *in extremis*. Certainly it cannot be said of the idea that it enjoys the favor that it did in the nineteenth century, either as popular dogma or as intellectual creed. But, for reasons I shall come to presently, it is unwise to administer last rites, just yet at any rate.

The Early Twentieth Century's Faith in Progress

One point must be emphasized. The idea of progress entered the twentieth century at flood tide. Among industrialists and small businessmen alike, the idea had all the buoyancy during the first three decades of the century that it ever had in nineteenth century Manchester. Even during the Great Depression when Robert and Helen Lynd revisited *Middletown* (Muncie, Indiana) they found faith in progress as strong as they had ten years earlier when

America was in the throes of prosperity. And, as even casual review of the books and articles written in the 1930s will make clear, there was no significant waning of faith in progress among the economically and politically active. There were those who believed that progress would be best served by a full return to the principles of the free market, with a retreat of government from the economy mandatory. But the most determined opponents of the New Deal were hardly lacking in faith that progress had been a reality and would be again, once natural economic processes became ascendant.

Side by side, a growing number were both convinced of the reality of progress and saw rational governmental planning as the necessary key. Michael Freeden, in his *The New Liberalism*, traces this belief back to the influence of John A. Hobson and Leonard Hobhouse in England at the beginning of the century. It found fertile soil in this country, in the minds of intellectuals at least, commencing with the presidency of Woodrow Wilson. From about 1915 through the 1950s, the New Liberalism was very strong indeed, and it was premised upon faith in progress just as was the Old Liberalism of Spencer and Mill. William E. Akin, in his valuable *Technocracy and the American Dream,* has recently reminded us of the breadth and seriousness of the technocratic movement during the early decades of this century, reaching its height in the Depression. Belief in progress, or the possibility of progress once control of government was placed in the hands of scientists and technologists, was as strong in technocratic minds as belief had been among St. Simonians, Comteans, and Fourierists in the nineteenth century. Nor is such belief dead even yet.

Nor can we forget radical progressive flowerings during the early decades of the century. Whether native radicalism of the kind we associate with Thorstein Veblen, Henry George, and Edward Bellamy, or imported, chiefly Marxist, radicalism, there was profound conviction that the future would be bright. This radical progressive faith prophesied that all present barriers to abundance and happiness would necessarily be removed by the forces of history, and that the day was impending when equality, justice, and reason would govern our lives. And as far as Communism is concerned, we find all the old faith in humanity's golden future still intact in official pronouncements of the Russians and the Chinese. It was the Chinese Liu Shao-chi only a few years ago who declared for the world's benefit that Communism (Maoist in thrust) "is the road that all humanity must inevitably take, in accordance with the laws of the development of history." Maoism does not currently reign in China, but we may take for granted that belief in progress through Marxist Communism does.

There are other evidences of the persistence of belief in progress. The philosophy of "social evolution" has never really disappeared

from the social sciences, though there was something of a lull for a number of years. And right now this philosophy is undergoing a veritable efflorescence. In my *Social Change and History*, I have argued that the doctrine of social evolution has nothing to do, either historically or logically, with biological evolution. The panoramas of social evolution propounded today by Talcott Parsons and his followers (not to mention those of the increasing number of anthropologists who take Leslie White as their guide) all descend from the panoramas of progress which Comte, Marx, Spencer, E.B. Tylor, and so many others put before us in the last century. Exactly what would be the response from any one of our present-day social evolutionists if asked whether the future of mankind will be as rosy as that foreseen by a Spencer, we cannot be sure. But the methodology, the structure, of current theories of social evolution is almost precisely that generated by the Western idea of progress, with its built-in assumption of slow, gradual, continuous change—cumulative, purposive, and self-driven.

Current Skepticism on the Idea of Progress

But if the belief in progress, considered eudaemonistically, was still strong during the first half of the twentieth century, it cannot be so declared at the present moment. Without much doubt, it seems to me, the idea has fallen upon hard times in this, the second half of the century. The doubts, skepticisms, and repudiations of the idea of progress during the nineteenth century—those of Alexis de Tocqueville, Burckhardt, Nietzsche, Schopenhauer, and Max Weber—have grown steadily in our own century. W. R. Inge, in his famous lecture-essay, "The Idea of Progress," of 1920; the works of Henry and Brooks Adams, especially the latter's *Law of Civilization and Decay;* Georges Sorel, *The Illusion of Progress;* Austin Freeman, *Social Decay and Regeneration;* Spengler, *Decline of the West;* A.J. Toynbee, to very considerable degree, in his *Study of History;* Pitirim Sorokin, *Social and Cultural Dynamics;* Freud, *Civilization and its Discontents*—these are but a few of the works which, building in effect upon the doubts and disbeliefs of the nineteenth century figures I have cited, have given the intellectual atmosphere a darker and darker hue. True, there is Teilhard de Chardin, the Roman Catholic scientist-philosopher who, almost alone, has given our century a systematic and complex, if not always intelligible, philosophy of history based entirely upon the principle of ever-perfecting mankind. Not even Spencer outdid Teilhard in expression of long-run optimism. And, as I have noted, most, if not all, of those committed deeply to Marxism, are inextricably committed also to a progressive view of the future. The idea of progress, in short, lives: but precariously, so far as a growing number of people,

intellectual and lay are concerned.

At the heart of late twentieth-century skepticism lie several related convictions, all at odds with the beliefs that held sway during the heyday of progress.

First, a spreading conclusion among intellectuals that we have reached the limits of economic advancement. Fred Hirsch, in his *Social Limits of Growth* and E.J. Mishan, *The Costs of Economic Growth* and *The Economic Growth Debate* represent, intelligently and eruditely, this point of view. In essence, this position holds that industrialism's lavish productivity has by now weakened the desire for further material benefits and has even dampened interest in those already achieved. Both Hirsch and Mishan argue that each new advance in technology and industrialism weakens ever more visibly the social and moral values which we cherish and which, for so long, seemed entirely congruent with economic development. Max Weber, at the very end of his famous *The Protestant Ethic and the Spirit of Capitalism,* predicted that the very ethic which had nurtured the historical rise of capitalism would in time wane, even die, and that capitalism would thence be all superstructure without any vital psychological foundation to hold it up for very long.

Second, a growing conviction that we are rapidly depleting nature and her resources. Fundamental to the idea of progress, as we have seen, from the time of the Greeks to our own century, was the belief in what Descartes called the "invariability of the laws of nature." Implicit in this belief, or certainly deducible from it, was a confidence that nature's resources would never give out; that the only real challenge was man's capacity for exploiting them. Today, whether with genuine foundation or not, a suspicion spreads that our prodigality is rapidly destroying nature's riches, or using them up without regard to the future. Talbot Page, in his recent *Conservation and Economic Efficiency,* expresses this view most soberly and learnedly (even if in my judgment without full justification), but one need only look at the manifestoes of environmentalist movements to see the view in its fullest light. Ernest Beckerman, *In Defense of Economic Growth* presents, by my lights at least, a very convincing refutation of the depletion-argument, but it has had little if any effect upon those who follow that argument.

Third, it is impossible to overlook the still small perhaps but constantly enlarging belief that science has reached the limits of its own capacity to advance. Or, if it be premised that science can still make epochal discoveries, that science has reached the point where further achievements will be adverse rather than beneficial so far as human morality and psychology are concerned. A very perceptible dethronement of knowledge, in all of the sciences, physical and social, is taking place. Thus Gunther Stent, notable molecular biologist, has put forward his view, in *The Coming of the Golden Age: A View of the End of Progress,* that the law of diminishing

returns has set in, that further *significant* advances in science become less and less likely. He candidly adds to this view of science the belief that a widespread revulsion, presaged by the beatniks and hippies, will take place against science, with something resembling the life of pristine South Sea Islanders becoming more and more mesmerizing to people.

I am not suggesting that any such view is at present endemic among scientists; far from it. But it reflects nevertheless a state of mind that shows considerable evidence of hardihood, even within science. And there is a related belief, becoming rapidly widespread, I fear, that science, for all the good it has done mankind, is now at a point where it is more likely to be bureaucratic, oppressive in its prohibitions beginning with tobacco, now extending to so many areas of our recreations and pleasures, and likely to extend even farther in the future, and, not least, to become increasingly mired in its own controversies and contradictions. Nor can we forget here the Tocquevillian law of rising expectations, with disillusionment and disenchantment the inevitable consequences. Scientists, to be sure, have contributed to the operation of this law by their own extravagant promises, nowhere more evident than with respect to cancer a few years ago. Disillusionment with science and technology is very much a part of the intellectual landscape, and it would be a rash soul indeed who declared it a purely peripheral and transitory thing.

Fourth, boredom is spreading in Western society: boredom with the very goods, material and psychic, which modernity has heretofore largely blessed. In his profoundly absorbing *Inventing the Future,* scientist Dennis Gabor has suggested that "work is the only occupation yet invented which mankind has been able to endure in any but the smallest possible doses." But, through technology and the fast-developing cult of leisure, we are pushing work into a constantly diminishing place in Western society. The work-ethic wanes and the leisure-ethic grows. But all present evidence is that few if any human beings can endure leisure without becoming bored, succumbing to alcohol and drugs, or other modes of escape, or turning to violence and terrorism in mounting degree. Nothing in the bio- and psychological evolution of mankind has prepared it in slightest degree for the leisure that, by criteria drawn from even the recent historical past, envelops us all in considerable, and rising, degree. Technology has permitted us to make a virtual fetish of leisure, but even while seeking it in constantly expanding dimensions, we are at bottom unable to tolerate it—that is, without recourse to narcotic, psychological, religious, sexual, and violence-saturated releases from the tensions leisure generates. The spread of subjectivism, of what Tom Wolfe has called "Me-ness," proceeds apace with leisure, inviting a view of the future in which the bond of humanity, of community, and mutual awareness will have disappeared altogether.

The Prospects for Progress

What is likely to be the future of the idea of progress? Only the most tenuous speculation is possible. It may disappear altogether in Western thought and life, victim of the forces I have just described, or of some thermonuclear war so vast and encompassing and prolonged as to destroy almost everything, intellectual as well as material. But it may not. And if it doesn't disappear, my own prediction is that its survival will be nurtured, not by rationalist-secular confidence, once so great in Western society, now fast-diminishing but, rather, by a renascence of religion, a renascence that may have already begun, most evident in fundamentalist and pentecostal spheres. As I have shown, the Western idea of progress was born of Greek imagery, religious in foundation; the imagery of growth. It attained its fullness within Christianity, starting with the Church Fathers, especially Augustine. Central to any genuinely Christian form of religion is the Pauline emphasis upon *hope*: hope to be given gratification in this world as well as the next. Basically, the Christian creed, its concept of Original Sin notwithstanding, is inseparable from a philosophy of history that is overwhelmingly optimistic about man's estate in this world and the next, provided only that due deference and commitment to God are given. To the degree that we may properly expect the future spread of the now-burgeoning millennarianism, I would assume that we may also expect religion to fill the vacuum brought on by those elements of modernity I have described—disillusionment with science, boredom, etc.—and with this, a shoring-up of the idea of progress from past to future. But that, obviously, is speculative in highest degree. Notwithstanding the futurologists to the contrary, it is not possible, and never will be possible, to predict the future. We are left with surmise, intuition, hunch, and hope! ⊡

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I

Progress

Professor Nisbet has traced the evolving meanings attached to progress from 700 B.C. to the present, and shown the multifarious disagreements over mankind's advancement or progress. Professor Nisbet's essay questions the belief that the idea of progress is simply a modern notion that arose exclusively in the cradle of Enlightenment rationalism. Greco-Roman pagan antiquity and the nurturing soil of Christianity together with the Augustinian philosophy of history were vital to the flourishing of our modern idea of progress. Nisbet also sketches the darker side of progress. As against the idea that human reason and science always emancipate man and lead to continual human betterment, Nisbet points out the more sinister, irrational, and illiberal uses of "progress."

Nisbet's tentativeness about the prospects of human progress in the future is a somber summons for us to reexamine the meaning and chances for progress. Can we be optimistic about the chances for human advancement in such fields as the intellectual, moral, political, scientific, and technical? Should theorists of progress regard moral, political, and technical development as interrelated parts of a whole? If human progress is meaningful, then what are its ethical and political preconditions? In this last regard it would repay study to examine anew the liberal rationalist tradition that stresses the ethics of natural reason and the politics of liberty as the sources most conducive to stimulating human betterment.

The following summaries explore a number of areas—some only indirectly addressed in Professor Nisbet's essay. These studies aim to explore the implications for progress of the thought of such individuals as Godwin, Marx, Popper, Dewey, and Koestler. In addition to clarifying theories of the growth of knowledge, the summaries also discuss the idea of progress in relation to religion, the rise of individualism, and a free economics.

Godwin: Flux vs. Stasis

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The popular notion that Godwin believed mankind was of "necessity" compelled toward some future state of perfection oversimplifies Godwin's view of human nature, human institutions, and the idea of progress.

A dialectic of *stasis* and *flux*, central to Godwin's philosophy, helps us to understand his theory of progress. He sees these two opposing concepts as manifest everywhere. The evidence of *stasis* is abundant in human society, as its etymologically related words suggest: state, estate, static, statism, stagnate, status quo, statute, and standardize. In opposition to this insidious stagnation and inflexibility inherent in the concept of stasis, Godwin posits his liberating and progressive principle of flux. Flux is exemplified "by a spirit of enquiry to which a philanthropic mind will allow no pause." Above all "we should never stand still, . . . everything most interesting to the general welfare, wholly delivered from restraint, should be in a state of change, moderate and as it were imperceptible, but continual."

According to Godwin, the nature of government reflects stasis whereas the nature of the human mind exhibits flux. Godwin, however, acknowledges that the mind also has a sluggish tendency, a "vis inertiae" that withstands stimulation and makes it all the more critical to maintain a process of detachment in one's pursuit of truth.

Both political institutions and the law come under attack as instances of lethargic stasis in Godwin's philosophy. In his *Political Justice* (1793), Godwin envisions a utopian anarchism which allows for continual flux and a democratic pursuit of truth, replacing the dictates of a stagnant hierarchy. While writing *Political Justice* Godwin reversed his belief in the necessity of government and came to embrace its elimination. By logical extension, Godwin's philosophy is inimical to the inherent stasis (and therefore evil) embodied in law. Theoretically, law should have the same inferior status as opinion, yet law hypostatizes its own opinion, thereby transforming it into a universal truth duly enforceable by the state. In direct contradiction to Bentham's view of law in which crime and punishment are quantifiable and formulaic, Godwin advances the belief that "delinquency and punishment are, in all cases, incommensurable," and that no "two crimes are ever alike."

Paradoxically, despite his radical criticisms of the existing social order, Godwin's own belief in progress was of a gradual and reformist nature. He saw intellectual progress, the cultivation of truth and sincerity, as hinged upon a collective effort which evolved by small, imperceptible degrees. Godwin did not see political revolution as intellectual progress; in fact he viewed it as a hindrance to progress: a time when reason became clouded by "the passions of revenge, hatred, fear, selfishness." Ultimately, he entrusted his faith to "the achievement of revolutionary consciousness," but until that time "There will be oppressors, as long as there are individuals inclined . . . to take party with the oppressor." Thus, Godwin identifies human intelligence and its capacity to reason as the final authority.

Godwin's philosophy admits of several paradoxes, such as the problematic nature of all truth-seeking, and the necessary "atomistic subjectivism" that results from his scrupulous respect for the individual. Still Godwin's outlook for human progress is indeed bright, both in its source and in its vast possibilities.

"Godwin's Philosophy: A Revaluation." *Journal of the History of Ideas* 39 (October/December 1978): 615–626.

Progress, Naturalism, and Religion

R.F. Baum

"Notes on Progress and Historical Recurrence." *The Intercollegiate Review* 13 (1978): 67–78.

Substantial evidence undermines the notion that progress is strictly a modern phenomenon. The idea of progress is ancient. Antedating the eighteenth century's Enlightenment, it reappears throughout history. Also erroneous is the notion that Christianity emancipated man from the imprisonment of historical cycles to the freedom of linear progress. This faulty view has persisted down to the present day, but is now receiving sober criticism and challenge.

Ludwig Edelstein's impeccable documentation of progress's presence in Greek and Roman times has refuted past contradictory claims. Edelstein's parallelisms in *The Idea of Progress in Classical Antiquity* conclusively show that the ancient world entertained the idea of progress in much the same way as did Renaissance Europe (demonstrated by J.B. Bury). We may see progress more accurately as "the overview characteristic of a recurrent type of mind or culture . . . that will not abide the sense of human limits instilled by traditional piety."

Rather than being an outgrowth of Christianity, progress can be seen as its logical substitute. Progress, by its nature, displaces traditional theism. During its periods of dominance, progress effectively becomes the reigning "religion" in every sense of the term. At such times the state replaces the church, and political conviction replaces religious feeling. This other "religion" of progress, then, operates from a naturalistic world view in which the vision of a better world supplants traditional theism's promise of personal salvation.

Yet naturalism, dependent as it is upon empiricist knowledge, has been dealt shattering blows by such modern-day thinkers as Leibniz, Hume, Popper, and Kuhn. Utilizing empiricist principle itself, Kuhn has authoritatively invalidated the very possibility of knowledge, rendering naturalism's base somewhat, if not completely, unsound. By consequence, one is faced with the seemingly absurd conclusion that "only by recourse to a theism" can human knowledge escape the skeptic's verdict and "lay claim to thinking men's acceptance." So also, "only by recourse to theism can morality be made intelligible."

With human history oscillating between the two extremes of theism and naturalism, both of uncertain truth, surely our idea of linear progress must give place to the more realistic ebb and flow of human achievement.

Individualism vs. Peasant-feudalism

Alan MacFarlane
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"The Origins of English Individualism: Some Surprises." *Theory and Society* 6 (September 1978): 255–277.

The founding fathers of modern sociology, Marx, Weber, Maine, and Tonnies, focused on England as the first industrialized, modern capitalist society to construct models for the progressive stages of social development. Their interpretation of English history became central to their understanding of how human societies historically evolve. Their key but questionable assumption held that England's social evolution during the period 1350-1650 was marked by a "great transition" from a peasant-feudal ideal type of society to an industrial-capitalist type.

They further assumed that this transformation occurred this early only in England, and that it provided a model for similar transformations in other later societies. The "peasant-feudal" ideal refers to the view that English rural society was not yet split apart into separate economic and social worlds. In this view the basic element in society was not the individual, but rather the patriarchal family which acted as a unit of ownership, production, and consumption; the household was the basic unit of the economy, and production was mainly for use, not exchange; authority was patriarchal, land unalienable without consent of heirs, and heirs could not be disinherited.

But the alleged peasant-feudal ideal is a historical myth. Detailed studies of recent medieval economic historians disprove the concept of "a great transition" in the Tudor-Stuart period from peasant-feudal to industrial-capitalist model stage. There is no evidence that such a peasant model stage existed at any time since documentation became available in the late twelfth or early thirteenth centuries. On the contrary, thirteenth-century English society exhibits a cash economy throughout the countryside with most items from labor to property rights marketable for a cash price. Furthermore, products of the land were raised for markets as well as use; hired labor was already common; geographic and social mobility was also common among all classes; land was held by individuals, not patriarchal families, who could alienate it by sale at will. In fact, markets were as active as in the later periods with sales and purchases of land by both freemen and villeins; households were predominantly nuclear and kinship systems were quite similar to those of modern England or America. In short, thirteenth-century English society displayed no more a peasant-feudal ideal type than did sixteenth- or seventeenth-century England. It was, in fact, already an individualistic, mobile, and capitalist market society.

If MacFarlane's thesis is correct, paradigmatic shifts will be necessary in the fields of history, sociology, anthropology, and economics. The theories of Marx and Weber are very intimately linked to what are dubious assumptions on the character of English society during the transitional period. If we continue to take them as guides in studying the origins of capitalism, we may well be asking the wrong questions. If Marx and Weber's chronology is incorrect, then we will need to revise the role of the Reformation, Renaissance, and Enlightenment in creating modern individualism. We would also see fall apart the theories of Karl Polanyi, who believed that before the sixteenth century, true markets and free labor played no important role in the economy. Adam Smith's assumption that *homo economicus* had existed for centuries in England seems more correct.

In one sense R. M. Hartwell is right in holding that purely economic explanations for England's Industrial Revolution are not sufficient. But unlike Hartwell,

we could place this social environment not in the seventeenth century, but push it back to some time prior to the thirteenth century when documentation already shows an individualistic, capitalistic market society.

This article is a synopsis of his argument presented in Professor MacFarlane's recently published book, *The Origins of English Individualism: The Family, Property, and Social Transitions* (Cambridge University Press, 1978).

Materialism, Determinism, and Progress

Frederick Gregory

"Scientific versus Dialectical Materialism: A Clash of Ideologies in Nineteenth-Century German Radicalism." *Isis* 68 (1977): 206–223.

In the nineteenth century "scientific materialism" denoted mechanistic materialism, not a scientific but rather a metaphysical position that claimed to be derived from natural science. Its major tenets were that (1) there is an independently existing world; (2) all objects, including human beings, are material entities; (3) the human mind does not exist as an entity distinct from the body; and (4) no nonhuman being could exist with a nonmaterial mode of existence. Its popular proponents were Karl Vogt, Jacob Moleschott, and Ludwig Büchner—all singled out for criticism by Marx and Engels, later themselves to be characterized as "dialectical materialists."

Both scientific materialism and Marxian dialectical materialism shared conceptual debts to Ludwig Feuerbach, but differed on three key issues: religion, political activity, and philosophical materialism.

The scientific materialists used Feuerbach's arguments in their anticlerical polemics to replace traditional religion (and its alleged alienation) with a humanitarian, progressive religion based on love. But Marx and Engels wished to banish religion and not simply expose religion's anthropomorphic foundations or merely secularize it.

Feuerbach and the scientific materialists believed political activity and political emancipation would solve man's lack of freedom, by rooting political action in the values of German liberalism. For Marx, political action was a means to achieve progress and human emancipation, even from the political state—and man could break out of the political assumptions of his own society. The important thing was a social revolution, and as Marx and Engels came to see this as an inevitable development, political activity became even less important.

As reductionists, Vogt, Moleschott, and Büchner explained all forms of matter by the same deterministic general laws of physics. But neither they nor Feuerbach ever resolved the contradiction between their determinism and their call for human responsibility and political action. Although Marx opposed mechanistic determinism, his and Engel's materialist conception of history holds that man is determined by his surroundings. But Marx resolved the scientific materialists' contradiction by returning to Hegel's dialectic: the world of objects (mechanistic determinism) does not exist independently of the world of subjects (human responsibility). To be "scientific," an explanation of reality must involve the acting subject as its core.

Marx and Engels *were* close to Feuerbach in that all three held that attention to empirical facts is necessary, but not sufficient, to philosophy, whereas the scientific materialists regarded it as sufficient.

Popperian Growth of Knowledge

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"Traditional Rationality vs. a Tradition of Criticism: A Criticism of Popper's Theory of the Objectivity of Science." *Erkenntnis* (Holland), 12 (1978): 329–338.

Karl Popper's theory of the objectivity of science is ambiguous. Does it guarantee correct evaluations of theories or only help uncover errors in such evaluations? The second alternative seems to flow from Popper's fallibilism and learning theory, but this leads to weaknesses in a fallibilist theory of scientific progress.

Popper's theory of science sees science progressing through criticism. Scientists do not discover "true" theories, but they do form theories what enable them to get progressively closer to the truth. Because objectivity in science cannot be guaranteed by knowing the truth of its theories, Popper forms a theory of scientific objectivity that differs from traditional accounts.

Science, for Popper, is objective because one scientist can replicate the theories and experiments of another scientist, and thus uncover error. Thus, although individual scientists cannot be objective, the scientific community can be objective and progress in knowledge through mutual criticism and discovery of mistakes. Popper also believes that this collective sifting process (through mutual discovery of mistakes and evaluation of theories) maintains the unity and rationality of science.

Popper's theory displays weaknesses. If his theory of objectivity means providing a guarantee (that the scientific community will correctly evaluate theories through criticism), it is inconsistent with his fallibilist theory of learning. If, on the other hand, his theory of objectivity shares his fallibilist views, he may have a theory of scientific objectivity but he needs to reconsider his theory of scientific method as well as of scientific unity and rationality.

Popper vs. Historicism

Peter Urbach
London School of Economics

"Is Any of Popper's Arguments Against Historicism Valid?" *British Journal for the Philosophy of Science* (UK), 29 (1978): 117–130.

In his 1957 edition of *The Poverty of Historicism,* Karl Popper presents a famous polemic against the so-called doctrine of historicism. It is widely believed that Popper wreaked irrevocable damage on this doctrine. Popper's "refutation" of historicism proceeds as follows: (1) The course of human history is strongly influenced by the growth of human knowledge; (2) We cannot predict, by rational or scientific methods, the future growth of our scientific knowledge; and (3) We cannot, therefore, predict the future course of human history. This plausible argument involves the questionable suppressed premise: we cannot predict (by rational or scientific methods) events which are strongly influenced by events which cannot be so predicted. But, Urbach contends, Popper's arguments do not hit historicism at all.

Popper describes historicism as: "An approach to the social sciences which assumes *historical* prediction is their principal aim, and which assumes that this aim

is attainable by discovering the 'rhythms' or the 'patterns,' the 'laws' or the 'trends' that underlie the evolution of history."

Four nonconclusive arguments against historicism appear in Popper's work:

(1) Popper's claim that historicist theories are unscientific (which means that they are untestable) simply misses its mark. Popper fails to provide good reasons for accepting his claim.

(2) Popper's claim that historicist theories are necessarily false ought to be compared to Popper's philosophy of physics. It is argued that there is no good reason to think that any of the things Popper says about the social sciences do not apply equally well to the natural sciences. This Popperian claim fails because of a curiously non-Popperian set of assumptions about scientific work.

(3) Popper's argument against prediction in the social sciences, and against "prophecy" in general, relies upon forgetfulness with regard to Popper's own discussion of prophecy within the natural sciences.

(4) Popper's argument from our inability to predict the growth of our own scientific knowledge relies upon a false suppressed premise, and upon a questionable explicit premise.

The conclusion is that none of Popper's arguments is valid, and that therefore the principle of the unity of the natural and the social sciences is unimpugned by these arguments.

Koestler: Chance vs. Reason

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University of Chicago

"Arthur Koestler's Theodicy: On Sin, Science, & Politics." *Encounter* 52 (February 1979): 46–57.

What philosophical viewpoint underlies all of Arthur Koestler's criticisms—whether against behaviorist psychology, or neo-Darwinian biology and evolution, or quantum mechanics, or statistical interpretations of history? Koestler's main concern (as suggested by a careful reading of his 1978 book *Janus: A Summing Up*) is to extirpate any hint of indeterminacy, randomness, or chance as explanatory forces in these sciences. Whether writing about science, philosophy, or history, Koestler's unifying thread is to uphold rationalism, order, and the providence of nature. In a politically chaotic era, Koestler is endeavoring to restore order where chaos reigns. Although Koestler's effort is to justify an anti-Marxian rationalism as a basis for human progress and qualified optimism, Toulmin believes that Koestler still finds the scientific socialist ideal appealing.

Koestler's main targets are: (1) behaviorist psychology; (2) neo-Darwinian evolution theory; and (3) the belief in historical coincidences. All three targets horrify Koestler's rationalistic aversion to "happenstance" or randomness in nature and man. As a secular rationalist, Koestler wished to provide nature with a "theodicy" or justify natural phenomena as being "rationally necessary." Koestler's three positive theses likewise reflect the rationalistic search for stability amid chaos: (1) Bisociation (the purposeful, nonrandom faculty of human thinking) orders the human mind to be creative; (2) "Holons" and "holarchies," entities that behave as parts as well as wholes and achieve order, hierarchy, and purposeful integration, create complex organization without randomness of a blind kind; and (3) "The hypothesis of a 'paranoid streak' in human beings, which acts as the Worm in the Apple of human affairs but proves . . . to be the outcome of an 'evolutionary mistake' in the development of the human brain, and corrigible by pharmaceutical means."

Koestler's proposed solution to the

"paranoid streak" in human nature (the evolutionary mistake that allows the dark, chaotic emotions of the primitive brain to overthrow higher reason and lead to destructive social or political movements) reveals his underlying attempt to restore order to human affairs through a rationalism that resembles his earlier "scientific socialism." Koestler proposes turning to psychopharmacology, to a drug to reunite the primitive and more rational parts of the brain and thus usher in the Age of Reason. Koestler's drug aims to counteract irrational obedience, but even if it worked who would administer and control it? This question reveals that the real hope of human progress, of eliminating conflict and irrational fanaticism in politics, is not through psychotropic drugs in themselves but by devising new political institutions.

Social Engineering for Progress

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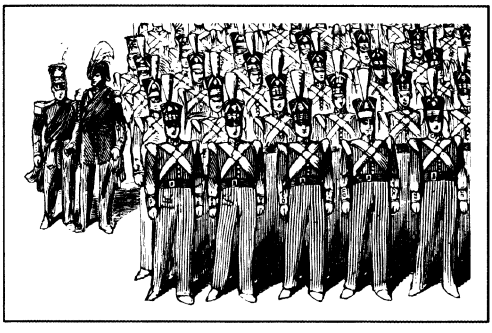
"Radicalism vs. Liberalism: C. Wright Mills' Critique of John Dewey's Ideas." *American Journal of Economics and Sociology* 37 (October 1978): 413-430.



C. Wright Mills errs both in his claim that Dewey's instrumentalism fails to stress and criticize the structure of liberal society, and in assuming that Dewey was unwilling to change that society to work for progress and social development.

Dewey's instrumentalist philosophy seeks truth not in the mind's objective and speculative grasp of reality but in the practical way of judging truth by whether it "works," whether its consequences are valuable to society. Dewey's pragmatic version of truth shapes his ideas about man and society. Dewey thought that man must associate with others to achieve life, full development, "growth," and progress. Through scientific method Dewey sought to evaluate such human associations by the standard of their social effects and consequences.

The state enters when such associations are judged to be hindering "growth" and social progress. Not simply an umpire, that state more positively aims to reorder those associations in order to achieve social development. State action in education is contenanced by Dewey when parents have not been able to educate their offspring. State education would prepare future citizens to maintain conditions conducive to progress.

It is true that Dewey lacked a vision of an immutable social order or ultimate good society. New conditions rendered outmoded the old principles that governed failed societies. But Dewey had clear ideas about what was not "good" or not "working" in his own society. Among the cultural conditions that he judged were blocking progress were big business and modern industrialism (with its alleged overproduction in the midst of poverty). *Individualism Old and New* (1930), written in the critical period of the Depression, expressed Dewey's preference for socialism (as a "socially planned and ordered development") over capitalism ("a blind, chaotic and unplanned determinism"). Although critical of Roosevelt as not radical enough to satisfy the socialistic ideal, Dewey (in Edward Bordeau's words) applauded the New Deal as "greatly under the influence of his instrumentalism and pragmatism even if this pragmatism was more ad hoc and headless than his own."

Progress in Economics

Madsen Pirie

"Progress in Economic Life." In *Trial and Error and the Idea of Progress*. LaSalle, Illinois and London: Open Court, 1978, pp. 123–156.

Thomas S. Kuhn alleged that our notion of progress correlates with science but this leaves "progress" unexplained. To attribute progress to science is straightforward because it is oriented toward an accepted end of greater ability to predict the observed universe. "Progress" is only intelligible in terms of aims, and wherever those aims are agreed upon (e.g., in science, but also in games, say golf), progress is most readily ascribable.

Attributing progress to a society is difficult, however, because of its members' unshared or changing aims. General progress can be claimed when advancement occurs toward one objective that most members of a society share; or a group can be said to make progress if its members, pursuing individual objectives, simultaneously approach them. The second kind of progress is possible (except in cases of coincidence) only if individuals' aims are self-referring, or do not require that others fulfill some objective. We can in this sense speak of *collective progress*. However, progress must be evaluated with respect to individual aims. Then, if only some but not all members of a group "progress" (in achieving their individual aims), there will be no common scale—because no common objective—enabling us to judge that the advance of some compensates for the regress of others (contra the utilitarians).

Individuals have personal, and disparate, economic aims. A society's economic progress amounts to most members advancing toward those aims. Self-referring economic aims tend to be comparative (a better house, a more efficient car) and thus achievable simultaneously by many individuals (since total wealth is not fixed).

As scientists improve their predictive power over nature by testing models and selecting better alternatives, business people improve consumer satisfaction by testing new and better products and processes in the market, where consumer preference is the ultimate test. In a market situation, individual competitive proposals and elimination of inadequacy thus increase consumer satisfaction. Such a system also allows for the pursuit of nonmaterial ends because it demands fewer resources for self-sufficiency.

Some claim that centrally directed economies eliminate waste and inefficiency implied in the market economy's testing of alternatives. But just as in science, only comparative testing shows which theory to prefer (so the scientist must "waste" time and resources on a later-to-be-rejected theory), so with economic goods, processes, and resource allocation: only testing shows which is preferable. To eliminate "wastage" is to eliminate the possibility of progress.

Some object that the market system emphasizes self-seeking. But the system does not *generate* ends; it merely excels at allowing pursuit of particular ends, whether individual or social, material or nonmaterial.

The market system is morally neutral since it allocates rewards on the basis of economic, not moral, worth. Some criticize this as unfair, but any attempt to impose moral ends on the economic system means frustrating some individuals from fulfilling their economic ends. Since ideological aims in the economic sphere are not self-referring, they cannot be pursued without disappointing personal aims. This frustrates consumer satisfaction and the fulfillment of noneconomic as well as individual objectives. ◻

II

Autonomy

Autonomy refers to the individual's capacity and freedom to be psychologically, morally, and socially self-governing. It encompasses self-esteem, self-awareness, self-acceptance, self-responsibility, and self-assertion—values difficult to achieve and sustain. What further complicates or impedes the demanding exercise of personal autonomy are various forms of social paternalism, controls, and interventions. The following summaries examine how various are the infantilizing constraints that infringe or deny individual autonomy. The fields surveyed are various: mental health law, state institutional supervision, medical paternalism, educational dictation, the psychology of privacy and rewards, and the use of mercenaries. The dominant antagonist to the full flowering of autonomous self-governance in these fields is the state or other experts that would subordinate the individual to a child-like status "for their own good." In the final summary dealing with the Ferrer Center we glimpse the possibilities for human growth and creativity when social institutions respect individual autonomy.

Mental Health Law and Autonomy

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"Crazy Behavior, Morals, and Science: An Analysis of Mental Health Law." *Southern California Law Review* 51 (May 1978): 527–654.

Mentally disordered or "crazy" behavior is a complex, debated phenomenon in the Anglo-American legal system and needs to be clarified by social, moral, logical, and scientific disciplines. This need arises because mental health laws raise perplexing questions with assumptions concerning a "crazy" person's self-responsibility, legal status, rights, and autonomy.

Specifically, mental health law adjudicates three basic questions: "Is the person normal?; Could the person have behaved otherwise?; and How will the person behave in the future?" Mental health law should primarily deal with moral and social evaluations of human conduct, and should view persons as possessed of free will with moral and legal responsibility for their actions. Law "should not treat mentally disordered persons significantly differently from nondisordered ones because there is little persuasive scientific evidence that the former have significantly less control over their legal relevant behavior or are more predictable than the latter."

Presently, however, law usually treats mentally disordered persons as less responsible and less autonomous than "normal" persons and thus relegates the "crazy" to moral, political, and legal disadvantages. Mental health laws discriminate—without justification—by depriving some persons "of liberty, autonomy, or dignity by confining him or by negating the usual legal significance of his actions." It is more respectful and moral to treat "crazy persons like everyone else." Many "normal" persons behave either incompetently or dangerously and have as much or as little control over their behavior as "crazy" persons.

Little scientific evidence supports special treatment of all the "crazy" on the grounds that they cannot control themselves or be truly autonomous. Some small fraction of "crazy" people may lack fundamental control over their behavior. But, nevertheless, "in nearly all cases it will be possible to devise other means of protecting society and caring for disabled people that do not stigmatize crazy persons and deprive them of their rights."

Sexual Repression vs. Autonomy

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"Sex and Confinement." *Civil Liberties Review* 5 (July/August 1978): 6–16.

When, if ever, does the state have the right to intervene in the noncriminal sexual activities of its citizens? This question touches on an intimate area of personal autonomy and choice.

One of the least discussed issues of institutionalization involves controlling the sex lives of the confined. The magnitude of the problem becomes alarming when we realize that about 2.5 million Americans are confined in jails, prisons, mental hospitals, institutions for the retarded, and

nursing homes. Of the 2.5 million, fewer than 400,000 are confined as punishment for wrongdoing. These institutions are typically "total institutions"; that is, they attempt to manage all aspects of the lives of those confined. Since these institutions strive to totally control their inmates' lives, privacy for inmates is virtually impossible. The lack of privacy and institutional policies intended to prevent sexual activity by the inmates make sex largely unavailable. Within those institutions designed for individuals in their sexually active years, institutional separation of the sexes is the rule.

In addition to concerns over institutionally imposed celibacy are many issues raised by laws which permit the state or guardians of the handicapped and the retarded to have such "deficient" persons sterilized. Also noteworthy is the fact that the government has frequently used the threat of withholding various kinds of benefits in order to encourage sterilization.

Since most of the institutions the author discusses are government institutions, and the overwhelming majority of those confined have done nothing more serious than perhaps being a nuisance, there is a clear question of the state's right to impose celibacy or encourage (or force) sterilization.

Medical Paternalism vs. Autonomy

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"Medical Paternalism." *Philosophy and Public Affairs* 7 (Summer 1978): 370–390.

The medical paternalist model of the physician-patient relationship corrupts both medical practice and the patient's autonomy in deciding on medical treatment. The defective arguments propping up the medical paternalist's practice of withholding information from patients and their families reveals the flaws of the paternalist model. Furthermore the distinction between 'ordinary' and 'extraordinary' therapy is a symptom of the pervasive influence of the paternalist model.

Three arguments seek to justify withholding information from a patient or his family about a physician's diagnosis, and the possible treatments or risks of each kind of treatment. The first or "Prevention of Harm Argument" defends a physician's withholding information to minimize the harm alleged which bad news would work on the patient. Scant evidence ever supports this complex judgment, nor are the harms alleged wholly clinical or medical. Some invoke the Hippocratic Oath, which mentions preventing harm to patients to

justify the paternalist withholding of information even from patients' families.

A second or "Contractual Version of the Prevention of Harm Argument" alleges that the patient, by contracting for a physician's services, authorizes that physician to withhold information which he judges would harm the patient. But clearly not all patients subscribe to this stipulation as part of their agreement with the physician. Since contract between physician and patient is conditional and limited, the patient is entitled to judge the physician's performance, and to terminate the relationship if in his judgment the physician has failed to live up to his obligations.

A third argument holds (particularly in treatments of defective newborns) that the physician alone can understand and unemotionally evaluate the consequences of alternate treatments. The physician is obligated to make a reasonable effort to make consequences of alternatives understood; he is not and cannot be obligated to succeed in making them understood. Moreover, this tends to nurture in patients and their families the very medical ignorance used to justify paternalism.

The medical paternalist view also governs the troublesome distinction between "ordinary" and "extraordinary" therapy. This distinction separates those treatments that do not involve any grave burden to the patient or another from those treatments that do. However, although medical practitioners may be qualified to judge the medical complexity of a treatment, they are not especially qualified to make the *moral* judgment of what is extraordinary or gravely burdensome to a patient. For the physician to usurp the patient's moral evaluation and decision of the kinds of therapy he may desire is to impose medical paternalism in place of personal autonomy.

Deschooling and Autonomy

Ivan Illich and Etienne Verne

Imprisoned in the Global Classroom. London: Writers and Readers Publishing Cooperative, 1976.

Autonomous education involves "deschooling" and "permanent education" (lifelong education based on human spontaneous social experience and exchange of data and skills) unprogrammed by institutional or professional mediators. However, several governments have perverted voluntary permanent education into a scheme of lifelong, compulsory, adult education directed by "the capitalists of knowledge and professionals licensed to distribute it," and financed by an involuntary tax upon the wages of its victims, the working people.

This coercive permanent education involves France, but also threatens America where a 1974 panel of the President's Science Advisory Committee urged a similar policy for the United States. Dramatically underlining the influence of the Chinese Communist system of permanent education upon government and education officials, was a little noticed 1974 speech of President Ford that urged a closer coordination of industry and public education and praised the Chinese model.

One principle purpose of the perverted scheme of "permanent education" is to adapt, integrate, tame, and dominate the industrial working people to the needs of their political and economic rulers. Another aim is to sustain unemployed intellectuals by creating a new class, a new profession of "permanent" schoolteachers and administrators whose social status and privileges will be secured by taxing the wages of its victims, the workers. The role of these professionals will be to weaken the self-sufficiency and competence of the workers by monopolizing the

technical knowledge needed in the new industrial society. Thus the autonomous ideal of replacing the monopolistic and debilitating professional expertise of the school with diffused sources of knowledge (in a spontaneous marketplace without formally institutionalizing such knowledge) has been perverted by a state institutionalization of so-called "permanent" education.

Illich foresees several results of this monopolized education. The subjection of full grown adults to compulsory job training or pedagogy will perpetuate a childlike sense of dependency and weaken autonomy. An infantilization of the adult worker occurs which further enhances and legitimizes technocratic domination and ruling elites. Existence becomes "scholarized"; life becomes a never ending apprenticeship. Society will become an enormous, planet-sized classroom watched over by a few satellites unless the "deschoolers" can prevent the perversion of their complementary ideal of education as a lifelong, spontaneous, unprogrammed, and noninstitutionalized human experience leading to autonomy or self-rule rather than perpetual dependence on technocratic experts.

Education and Family Autonomy

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Family Choice in Education: The New Imperative. Washington, D.C.: The Heritage Foundation, 1978, 60 pp.

The National Education Association and the American Federation of Teachers hold the upper hand over education consumers. Faced with growing state power over the lives and destinies of their children, many parents have concluded that the public education system, by its very nature, cannot respond to the real needs and wants of education consumers. The state will be "responsive" only to the extent that it sees its political survival as dependent upon responding to public demands.

The "hidden curriculum" of any school plays a crucial role in forming the values of students. The standards of conduct, the peer ethos and influence, the teachers' adult example, all weave the complex web of relationships which form the hidden curriculum. Until recently, the hidden curriculum was assumed to be a matter of community consensus. The nineteenth-century American ideal of the public school system presupposed that local majorities would agree on sanctioning conduct, practices, and beliefs. However, modern trends have virtually eliminated local control over school content and programs.

School officials find it increasingly difficult to act for the good of the community in setting standards of conduct. For over a decade, the courts have usurped the function of adjudicating disputes between the school officials' exercise of authority and the "individual rights" of students. As a representative dispute, some students in Fairfax County, Virginia protested as a violation of their rights the presence of undercover agents in their schools. These narcotics agents were intended to stop the high rate of drug use in the public school which functions as a logistic, distributive, and contact center.

By its very nature, schooling involves the inculcation of values and beliefs. It cannot be "value free" even when "value free" is understood as the absence of standards of behavior or conduct. Increasingly, there is conflict between the rights of families who wish to exercise their liberty

to control the educational destiny of their children.

Many courts have equated neutrality with secularism. And yet the founding fathers formulated the free exercise and establishment of religion clauses of the First Amendment in reaction to the religious oppression in their English homeland. They wished to prevent the state from taking sides on religious issues which should properly be left within the free realm of choice and debate. Courts have used the First Amendment to drive theistic religion into a closet. The choice left is to adopt secularist or humanistic religion or find oneself subject to alien indoctrination via public education, an arena where the state virtually emasculates family autonomy. Such policy violates the essence of American pluralism.

Consequently, one of the most salient issues concerns who shall have ultimate control over the child's education: the family or the "professional" educators acting as agents of the state?

One possibly fruitful avenue of litigation is the issue of whether compulsory education laws can warrant educators to impose upon students courses in value inculcation without the prior informed consent of parents. Also, a viable question is whether humanistic courses expressly designed to mold and develop non-theistic values violate the First Amendment rights of believers. A variety of "proposals for family choice" are reviewed. To suggest, as many "professional" educators have, that the choice is between state "standards" and illiteracy is an oversimplified and erroneous dichotomy.

State Paternalism vs. Family

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"*In loco parentis:* A Relationship between Parent, State and Child." *Journal of Moral Education* 6 (May 1977): 181–189.

The term *in loco parentis*, despite its quasi-legal tone, does not refer to a specific set of rights and duties which a parent somehow may delegate to another adult or agency. Quite often it is used by some adult or agency to violate personal autonomy and to maintain power and authority over either a child or even over a parent or guardian. This ideological doctrine has often been used in England to define the rights of parents in order for the state to more easily seize wider control over areas of the child's life and actions. As quasi-parental persons, god-parents, kinsmen, masters of apprentices, and neighbors lost their role in the care and protection of children, the way was open for the state to define, and appropriate responsibility for children. And parents themselves were displaced in many of their obligations and rights as the state defined enforcement of these *in loco parentis* whenever it deemed it necessary.

We need to devote more historical research to gathering empirical evidence of the parental behavior which led to the state's seizure of control of children under the doctrine of *in loco parentis*. One theory speculates that the underlying concept of patriarchial authority (in which the child is "owned" by the father) was transferred to the state, i.e., the King, and hence influences most legal and sociological attitudes in present day notions of children's and parents' rights.

Teaching vs. Student Autonomy

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"Teacher Anxiety." *Review of Educational Research* 48 (Spring 1978): 273-290.

Does the manner in which teachers tend to cope with their feelings of anxiety affect their individual liberties and those of others? Some reseachers have treated reductions in teacher anxiety as an end in itself. Of course the teacher regards reducing his anxiety as a positive gain. However, the method by which the teacher reduces anxiety may not actually be positive for the teacher's students or even for the teacher himself.

Research evidence suggests that one way in which beginning teachers reduce their anxiety is to become more dogmatic and less open to knowledge about their pupils, including their pupils' interests and concerns. This tends to be reflected in the teacher's teaching behavior. Such dogmatic explanations tend to be like "two plus four is six because it is" or "because I say it is." A study has shown that student teachers under the supervision of senior teachers with six or more years of experience tend to become more dogmatic than their counterparts who teach under the supervision of less experienced teachers. This suggests that those older teachers may well have become more dogmatic.

Given this and other evidence, it is becoming clear that teachers tend to exhibit authoritarian behaviors while cultivating those students that work well under such a system and punishing those who are independent and nonconforming. This obviously has serious consequences for free societies. It also raises important questions about the systems of schooling that presumably support and encourage such behavior in the teachers themselves.

Privacy in Social Psychology

Ellen Berscheid
University of Minnesota

"Privacy: A Hidden Variable in Experimental Social Psychology." *Journal of Social Issues* 33 (1977): 85-101.

Social psychology can help to answer a variety of questions relating to privacy including: "Under what circumstances will individuals seek to leave a state of privacy? When will they voluntarily and deliberately grant access to themselves, or information about themselves, to specific others? . . . Under what conditions will individuals try to achieve privacy? When will they express the desire to exert effort to prohibit access to themselves, or information about themselves? . . . What are the behavioral consequences of individuals' beliefs that their behavior or other self-related artifacts are private, unknown to anyone except themselves and to certain others to whom they have granted access to that information? . . . What are the behavioral consequences of an individuals' beliefs that their behavior is public to certain others?"

The areas of social facilitation, conformity, anonymity, reactance, attitude formation, and attitude change render important data for current social psychological research on privacy and autonomy. In addition, research could clarify the unrefined distinction between "private" and "public." Finally, if we view the "need for privacy" through a sociobiological filter, we might ground this need to human nature in biological evolution.

Autonomy vs. Extrinsic Rewards

Yaacov Trope
Hebrew University of Jerusalem

"Extrinsic Rewards, Congruence Between Dispositions and Behaviors, and Perceived Freedom." *Journal of Personality and Social Psychology* 36 (1978): 588-597.

Studies of the conditions under which a person feels a freedom of choice in determining his or her behavior indicate that perceived freedom is greatest when: (1) the behavior alternatives are similar in attractiveness; (2) the behaviors are unpredictable rather than predictable; and (3) the options are highly attractive.

The present research assesses the role of intrinsic vs. extrinsic reinforcement and congruence with dispositions in generating perceptions of personal freedom. (Intrinsic reinforcements are rewards from the nature of a behavior itself, for example, enjoyment of the activity, whereas extrinsic reinforcements are rewards from contextual variables, for example, money or prestige.)

This research indicates that when extrinsic rewards are expected to determine a person's choice, he or she is seen as having relative freedom, even when the options involved are highly attractive. Such extrinsic rewards, however, are expected to prevent the actor from expressing personal dispositions. The effects of extrinsic rewards tend to equally reduce the perception of "decision freedom," whether they are biased in favor of one's personal disposition or operate against it.

These results have some interesting implications for the consequences of governmental policies that offer subsidies to influence an individual's behavior. Such subsidies (extrinsic reinforcements) are likely to reduce the recipient's perception of his or her freedom of choice, even when the subsidy is used to further a behavior which the person has a prior disposition to perform. This agrees with the observation that as government operations increase, citizens progressively feel a decreasing sense of control over their lives.

Job Autonomy vs. Contract

David W. Ewing
Harvard University

"Winning Freedom on the Job." *Civil Liberties Review* 4 (July/August 1977): 8-22.

It is incongruous and wrong that while Americans enjoy civil liberties and personal autonomy in many contexts, they do not do so at work. The primary obstacle to extending Constitutional guarantees of civil liberties to the workplace is the common law view of employment. Under common law, an employee is obliged to be obedient and loyal. While an employee can refuse to perform illegal or unethical acts,

he may do so only by withdrawing from the firm. He has no right to refuse and to remain. In general, the law regards the relationship between employer and employee as one based on freedom of contract. Thus, in the absence of contractual provisions to the contrary, either side may terminate the employment relationship at any time for any reason.

The freedom of contract analysis of employment, the author argues, is outmoded and should be discarded because: (1) freedom of contract is premised upon substantively equal bargaining power, but such is not the case; (2) 'actual' freedom and constitutional freedom are not the same, and it is the former 'actual' freedom which is determined by the power of the employer; and (3) the distinction between private and public institutions makes no difference. In effect, large private companies affect the public interest as much as public institutions and therefore should not have sanction to be operated "selfishly."

Employees should have a bill of rights affording: (1) the right to refuse to carry out directives that violate common norms of morality; (2) the right to criticize their employer's ethics without being fired; (3) the right to refuse to take personality, polygraph, or other tests in addition to prohibiting audio or visual recordings without prior knowledge and consent; (4) due process rights to a hearing if an employee thinks he has been discharged for asserting the rights given by the employee's bill of rights.

Student Press and Autonomy

Annette Gibbs
University of Virginia

"The Student Press: Institutional Prerogatives Versus Individual Rights." *Journal of College Student Personnel* 19 (1978): 16–20.

Student newspapers have created numerous problems for college administrators while the benefits of such newspapers often appear dubious. Court decisions indicate that "public institutions have little leeway with respect to the First Amendment's prohibition against 'abridging the freedom of speech, or of the press.' " The college is limited in its powers even when a mandatory student activity fee is used in the financing of the student newspaper. This question also raises issues of autonomy.

Not only is political material appearing in student newspapers protected, but also materials which may be offensive to good taste or which violate conventions of decency. Only material that meets the Supreme Court's narrow definition of obscenity escapes protection. Further, it must be shown that actual harm would result from exposure to obscene material and that it "outweighs the danger of free expression in censorship without procedural safeguards" (from Antonelli v. Hamond, 1970).

One recommendation suggests that college newspapers be set up as independent corporations, separately financed and not legally connected to the institution. However, it is doubtful how many campuses would be able to maintain a paper which did not receive financial support from the

school or from student activities fees. It is true that such a system would provide legal protection to the school regarding material appearing in the student newspaper. But such protections may not be needed. The author reports being unable to find a single instance in which a university was held liable for defamatory words appearing in its student newspaper. (The individuals writing defamatory material are, of course, legally liable for what is published.)

Enrollment in a college or university does not convey special privileges upon a student. It does not "give them rights to immunity or special consideration and does not permit them to violate the constitutional rights of others."

Private colleges and universities appear to have greater latitude in censoring student publications since they are not agencies of the state. This privilege, however, seems educationally indefensible to Gibbs.

Mercenaries and Autonomy

H.C. Burmester
Principal Legal Officer in the Australian Attorney General's Department

"The Recruitment and Use of Mercenaries in Armed Conflict." *American Journal of Jurisprudence* 72 (January 1978): 37–56.

Mercenaries have been used throughout history in both international and civil disputes. Although they were once even looked upon as necessary components of war, attending the rise of modern nation states with their standing armies and powers of conscription, the importance of mercenaries has declined. The public's awareness of, and interest in, mercenary activity has similarly declined. However, recent events in Rhodesia and Angola have again brought mercenaries to the public's attention. More importantly, these events have also stimulated governments and international bodies to restrict the recruitment and organizing of mercenary forces. These recent developments call for reviewing existing laws and making some proposals for dealing with mercenaries and their recruitment.

Under traditional international law, neutral states are obligated to prevent the formation of armed expeditions or the operation of recruit offices on their territory. But states are not obligated to prevent their citizens or foreign nationals from leaving to enlist in the armed forces of a belligerent nation or in a mercenary organization. Further, international law generally does not impute responsibility to a state for the actions of its nationals serving as mercenaries unless there has been state complicity in their recruitment. In addition, some states have laws that prohibit or restrict travel abroad for the purpose of serving in the armed forces of other nations. Nevertheless, such statutes do not usually apply to traveling abroad for the purpose of serving as a mercenary or the recruiting of mercenaries.

Since the early 1960s conflict in the Congo, the United Nations and the Organization of African States have appealed to states to deter mercenary activity, particularly the recruitment of mercenaries by "colonial and racist regimes." These proposals urge that: (1) the practice of using mercenaries against movements for "national liberation and independence" be made a crime and that mercenaries should be punished as criminals rather than as prisoners of war; (2) governments should enact legislation branding financing, recruitment, and training of mercenaries as

a punishable offense; and (3) governments should prohibit their nationals from serving as mercenaries.

Although it is difficult to define what a mercenary is and antimercenary proposals would probably involve restrictions on the autonomous right of citizens to travel, Burmester supports governmental action to prohibit a state's citizens from mercenary activities on two grounds: (1) the use of foreign nongovernmental forces tends to bring into conflict the states whose nationals are involved and so the use of foreign private armed forces poses a threat to world peace; and (2) the liberties of citizens may be limited or denied for a "compelling" public purpose.

Autonomy, Creativity, and Radicalism

Ann Uhry Abrams
Spelman College, Atlanta, Georgia

"The Ferrer Center: New York's Unique Meeting of Anarchism and the Arts." *New York History* (July 1978): 306–325.

Historians have long noted a correspondence between periods of radical political activity and unconventional, autonomous, artistic experimentation. The early twentieth century saw political radicalism flourish alongside innovations in the arts. In New York City between 1912 and 1915 the Ferrer Center, an Anarchist-sponsored organization brought together political radicals and soon-to-be-famous artists and writers, all ostensibly committed to liberating the individual from the bonds of contemporary society.

Dedicated to the memory of the Spanish anarchist educator Francisco Ferrer, the Ferrer Association was sponsored by two distinct groups of political radicals: the Thomas Paine National Historical Association, composed of American radical liberals who promoted both civil liberties, and experimentation in the arts; the other group was the pro-Spanish Revolutionary Committee, a small cadre of anarchists such as Emma Goldman who desired political revolution, and viewed the arts as a breeding ground for radical activity.

The Ferrer Association opened a tumultuous "Modern School for Children" modeled on Ferrer's Spanish progressive school. Meanwhile, a vigorous adult education program brought lectures by Clarence Darrow, Lincoln Steffins, Margaret Sanger, Emma Goldman, and Will Durant.

The art students who came to classes held by Robert Henri and George Bellows, included many future well-known artists such as Man Ray and William Tisch. Henri applied his anarchist convictions to his teaching and art, and communicated it to his pupils. Austrian immigrant Moritz Jagendorf brought the European tradition of the "free theatre," an experimental innovative theater, to the Ferrer Center. Plays by Lord Dunsany, Floyd Dell, and Maurice Maeterlinck introduced iconoclastic themes of social criticism. The participants later went on to pioneer popular drama in such famous groups as the Provincetown Players.

While the anarchist cultural milieu stimulated remarkable achievements among the artists of the Ferrer Center, the revolutionary politics of many participants provoked disputes. Gradually the Center lost its more creative talents and in the hostile political atmosphere of World War I, the Ferrer Center lost the magic of its earlier creative years. L

III

Law and Public Policy

Rival interpretations of law and jurisprudence raise profound questions of right and justice and intertwine with complex social, economic, political, and religious issues.

The first three summaries sketch the working out of two such rival legal philosophies from the eighteenth to the twentieth century. An outgrowth of the tradition of natural rights and common law, the first philosophy, that of classical liberalism, espoused an individualist legal doctrine; liberalism viewed the legal system as a bulwark of individual rights to life, liberty, and just property titles, securing persons from private assault, and more particularly, from the threat of state power. Liberalism's rival as a legal doctrine, the more statist positivist-utilitarian tradition conceived of the legal system as a political tool to promote various state policies and gave rise to the bureaucratic and regulatory state. Posner's summary dramatizes this clash of rival legal philosophies by contrasting the liberal Blackstone with the utilitarian and social engineer Bentham. The liberal legal theory implies that the complex order of society arises from the free choices of individuals, legally protected from coercion. By contrast, the positivist-utilitarian tradition from Bentham to Brandeis and their successors seeks state intervention to bring about social reform.

The Meckling summary illustrates, in the area of bankruptcy law, the policy implications of a statist legal code in contrast to an individualist legal theory. Similar thematic undercurrents contrasting these rival legal philosophies run through the following summaries whether the legal point at issue is judicial review, first amendment rights (to scientific research or freedom of religion), or the meaning of liberty and property in the Fourteenth Amendment.

The concluding seven summaries, beginning with Graff's, delve into various aspects of legal penology and alternate conceptions of meting out justice. What are the ethical and political philosophical issues involved in punishment theory? Is legal punishment justifiable, and, if so, on what basis? Does restitution fit the crime better than retribution? Finally, the Smith and Person summaries return us to the rival legal theories of liberalism and statism by raising the possibility of a free market solution to providing individual justice.

Law without Justice?

Morton J. Horwitz
Harvard Law School

"The Legacy of 1776 in Legal and Economic Thought." *The Journal of Law and Economics* 19 (October 1976): 621–632.

Applying his ideas in *The Transformation of American Law,* Professor Horwitz considers specifically the demise of faith in the American Revolution's classical liberal ideas. He concludes that the realities of the American state and its legal system have negated these ideals, spawned doubt, and eroded faith.

Two antithetical legal doctrines emerged in the ninteenth century. One endorsed the premises of liberalism. These liberal premises supported equality of opportunity (procedural equality) while opposing equality of results (substantive equality).

The second doctrine focused on how the legal system could intervene to promote economic growth and a narrowly conceived efficiency. Law became a political tool of state policy, a view in sharp contrast to that of the law as nonpolitical and neutral among clashing interests. With its commitment to equal results rather than opportunity, the second doctrine treated law as redistributive.

The nineteenth century saw the clash of these conflicting legal doctrines. Eminent domain and bankruptcy law represent the triumph of the forces using the politicized law as a growth-supporting institution. By the end of the century, Americans were choosing between the market system, which depends on decentralized economic power, and the centralized property system that was the outcome of a legal transformation. Moreover, the natural rights justification for the market was eclipsed by the realities of the new legal-political system.

The rule of law itself suffered from this development, for the primacy of the rule of law depended upon acceptance of eighteenth-century natural rights thinking. The rule of law now faces its most important challenge in today's bureaucratic and regulatory state. But those who advocate change to achieve allocational efficiency represent the same positivist-utilitarian intellectual tradition that undermined both natural rights thinking and traditional legal constraints.

For Horwitz it is too late to return completely to the earlier liberal ideal of justice. We must "recreate the ideal of legality anew." Nonetheless, he sees one clear legacy of 1776: "After two hundred years we have finally begun to understand that there can be no law without justice and no justice without law."

Blackstone vs. Bentham on Law

Richard A. Posner
University of Chicago Law School

"Blackstone and Bentham." *The Journal of Law and Economics* 19 (October 1976): 569–606.

Blackstone's originality lay in analyzing the abstract social function of law and then demonstrating how these English laws operated to achieve the economic, political, and other goals of English society. With this in mind, Bentham's violent attacks on the *Commentaries of the Laws of England* are all the more mysterious.

Among other things, Blackstone presented a "competent statement of the economic theory of property rights." For Blackstone, the ultimate objective of law is to secure fundamental rights so that people can pursue their own ends—the liberal or eighteenth-century conception of rights. Though Blackstone denied that a court could invalidate a duly enacted Parliamentary statute, he argued that abridgments of fundamental rights legitimated revolution. He here accepted the Lockean argument, an argument later incorporated into the Declaration of Independence. Likewise, Blackstone strongly defended a separation of powers and trial by jury. His strong adherence to common law was a commitment to rediscovering pre-Norman and pre-feudal Saxon justice, and applying it to new circumstances—an evolutionary view of law. This contrasts sharply with Bentham's attack on Blackstone as a defender of the status quo, "the dupe of every prejudice . . . the abettor of every abuse."

Indeed, the more one analyzes Blackstone's views, the more difficult it is to comprehend Bentham's antipathy toward them and their author. For example, Blackstone adopted a utilitarian or preventive rationale for punishment, rather than a retributive one. In this, Blackstone and Bentham each drew on a common source, Beccaria. In seeking to apportion punishment to guilt and in attacking the extensive use of capital punishment, Blackstone anticipated Bentham. Why then Bentham's hatred of his ex-teacher?

Blackstone was most of all "guilty" of having eloquently demolished a number of what were to be Bentham's pet proposals. This appears in the codification of law. Moreover, history vindicates Blackstone's skepticism about codification. Similarly, Blackstone's commitment to procedural rights, to trial by jury, to the right to refuse making self-incriminating statements were commitments to what became the basis of our Bill of Rights. Bentham viewed these as impertinent obstacles to his reformist measures. "Bentham is not a little the fanatic whose willingness to sweep aside the obstacles to implementation of his proposals draws sustenance from a boundless confidence in his own reasoning powers." Blackstone, on the other hand, had spent so long studying the complex order of society that he had developed a respect for its powers to evolve and to adapt without superimposing reforms on it.

Above all else, what separated Blackstone and Bentham were their attitudes toward political power. Blackstone adopted an essentially classical liberal view of the state. "Bentham's blind spot about the problem of social order is of a piece with his enthusiasm for social planning. He worried about all monopolies except the most dangerous, the monopoly of political power."

Evolving Jurisprudence

John W. Johnson
Clemson University

"Adaptive Jurisprudence: Some Dimensions of Early Twentieth Century American Legal Culture." *Historian* 40 (November 1977): 16–35.

Johnson attempts to synthesize what was happening to American law and legal culture between 1908 and 1940. He contrasts this period with the "age of creativity" in American law, that is, the first half of the nineteenth century.

In the earlier period judges, attorneys, and legal scholars used law to promote social change. But in the years studied, law was more reactive, what he calls an "adaptive jurisprudence." It reacted to interest groups, nonlegal disciplines, the general

temper of the time. It was a time of accommodation rather than originality.

1908 is indeed an important date in the history of American law, as that was the year of the "Brandeis brief," itself a manifestation of the new adaptive jurisprudence. In the progressive period, lawyers (like other professionals) were attempting to bring more exacting standards to legal education, admission to the bar, and to utilize "new sources" which began to rationalize legal doctrines. Examples included the *Corpus Juris* (1913), the *American Law Reports* (1919), and the American Law Institute's *Restatement* (orginally conceived of in 1914). Then there was the Brandeis brief and the "Brandeis opinion;" these views in *Mullery-Oregon* brought extralegal materials to the attention of the courts (medical reports, psychological treatises, and factory inspector reports).

In the meantime, the judicial mind responded in the legal profession itself: common law was looked at less closely; statutory law more intensively (including legislative history). The "case method" (which had really been launched in the 1870s) seemed to undergo drastic changes—one book on criminal law contained citations from Catherine II of Russia; an article from the *Nation*; newspaper accounts of trials and vigilante activities; reports from various investigatory committees; psychoanalytical literature; excerpts from books; and book reviews on criminology.

Finally, there emerged in the 1920s a concept known as legal realism: legal professors and lawyers began being quite skeptical about traditional legal maxims and traditional legal institutions.

These forces and others combined to issue in a new view of the law.

Is Bankruptcy Law Bankrupt?

William H. Meckling
University of Rochester

"Financial Markets, Default, and Bankruptcy: the Role of the State." *Law and Contemporary Problems* 41 (Autumn 1977): 13–38.

Economic analysis discloses that bankruptcy law adversely distorts the cost and allocation of credit.

Bankruptcy (both corporate and noncorporate) is a legal device by which the state legally and economically intervenes to absolve insolvent debtors from their full financial obligations once the debtors have paid their debts to the limited extent that their assets allow. By releasing debtors from their contractual obligations, bankruptcy gives the illusion of benefitting debtors at the expense of creditors. But at best, this benefit is for the very short run. In practice, creditors take the risk of bankruptcy into account as a cost of extending credit. Borrowers will ultimately bear these costs either in the form of higher interest rates or by less available credit. Because the anticipated losses to creditors from bankruptcy are reflected in higher interest rates and reduced availability of credit, bankruptcy statutes are only nominally "pro-debtor" and actually transfer wealth from those who do repay their loans (and those who are denied loans) to those who get loans but do not repay.

Corporate bankruptcy reorganizations produce similar problems. Congress, the courts, and the federal SEC refuse to make stockholders merely "residual claimants." That is to say, in many cases creditors need not be fully repaid before stockholders in the corporation get something of value. To the extent that this generous treatment of shareholders imposes costs on lenders, lenders will pass on these costs in the form of greater borrowing costs and reduced

credit. Here again, instead of transferring wealth from creditors to debtors, bankruptcy law redistributes wealth and opportunities among debtors.

In large measure, current bankruptcy statutes and various proposed bankruptcy "reforms" (which claim to be more "lenient" with debtors) redistribute wealth in complex ways. Furthermore, often the supposed beneficiaries of such statutes actually prove to be their victims.

Reviewing Judicial Review

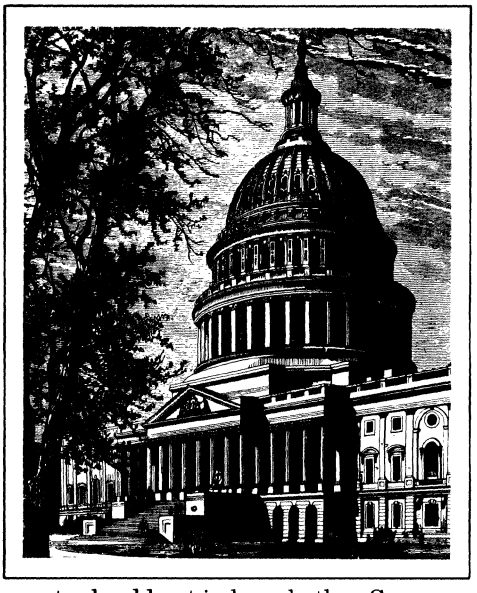
Jesse H. Choper
University of California, Berkeley

"The Scope of National Power Vis-à-Vis the States: The Dispensability of Judicial Review." *The Yale Law Journal* 86 (July 1977): 1552–1621.

What should the appropriate role of the federal judiciary be on questions of apportioning authority between the nation and the states? The Court should abandon judicial review of federal questions when powers inherent in the federal legislative and executive branches can themselves resolve issues of constitutional federalism.

Constitutional issues of federalism fundamentally differ from constitutional issues of individual liberty. Constitutional issues of federalism define which level of government has the power to engage in permissible conduct. Choper takes the position that state representation in the national legislature makes the President and Congress trustworthy to view issues involved in federalism disputes. By contrast, beneficiaries of individuals rights, such as blacks, may not be adequately "represented" in the political branches. Therefore it is necessary that the judiciary assume a more active role in personal rights cases involving judicially favored minorities. However, in other cases "when democratic processes may be trusted to produce a fair constitutional judgment," popularly responsible institutions are suitable to decide.

The major thesis disallows the federal judiciary to decide the ultimate constitutional power of the national government vis à vis the states. Nor should the judiciary decide whether federal action is constitutionally forbidden to the central government (and thus violates state hegemony). For example, the federal



courts should not judge whether Congress has the constitutional power to promote governmental favoritism to blacks.

Also immune from the federal judiciary's concern would be Congress's use of the spending, commerce, belligerency, or other powers. The author would quash state rights challenges to national actions except when they involved individual rights. The Court would not have jurisdiction over state rights claims that "only dissipate the Court's energies and undermine its ability to perform the critical task of protecting *all* individual constitutional liberties."

The Court should reject traditional judicial review over questions of state rights. That the Court now "rarely exercises its power of review to invalidate national action is no guarantee that it will not revert to a mistaken policy."

The Supreme Court and the Law

Louis Lusky
Columbia University

By What Right? A Commentary on the Supreme Court's Power to Revise the Constitution. Charlottesville, Virginia: Michie Company, 1978.

Beginning this volume as an exoneration of the Court's activities since 1937, Professor Lusky gradually became convinced that the Court's record of achievement is significantly flawed and began to suspect that the justices of the Supreme Court have come to consider the Court to be above the law.

The catalyst decisions for Lusky were *Roe v. Wade* and *Doe v. Bolton* (the bellwether abortion cases announced on January 22, 1973), which signaled that the majority of the Court was ready to engage in freehand constitution-making to combat whatever they viewed as basic injustice in any field wherein they desired to intervene.

Reviewing representative cases following President Nixon's appointments discloses that at least two of three most recently appointed justices have been as willing as their senior colleagues to engage in constitution-making well outside the historic boundaries thought proper for the Court. Furthermore, the deaths of justices Black and Harlan have left the Court without a member highly sensitive to this judicial failure to make clear the constitutional limits of its own authority, with the possible exception of Justice Rehnquist.

By tracing the evolution of the concept and practice of judicial review, and its expansion beyond governmental power cases to definitive judicial review, Lusky suggests that "the Justices may have come to consider themselves to be masters of the Constitution rather than its servants."

Courts and Social Science Evidence

Ray C. Rist
Cornell University

"On the Limits of Social Science Evidence: Educational Policy Making and the Courts." *Urban Education* 13 (July 1978): 127–146.

Courts have become deeply involved in adjudicating controversial social issues. Within the realm of education, many state and local educational officials now must carry out educational policies dictated by the courts. The courts' arbitration of otherwise unresolvable public issues has several implications for the judicial process. As one example, the courts have increased their consultation of new sources and forms of data.

Perhaps the most dramatic area where courts have assumed wholesale policy making functions is "public law litigation" or "class action suits." The emergence of such litigation in the sphere of education (in the case of school finances, the location of school buildings, the treatment of handicapped students, the use of proper evaluation procedures, and the desegregation of schools) are examples of court efforts to apply legal precedents to large categories of persons rather than to select individuals.

The courts now need greater amounts and different kinds of information than in earlier legal proceedings. Ever more central to the adjudicative process, the court's task of "fact finding" continually grows. However, this does not necessarily imply the utility of social science in judicial decision making. In fact, "with a significant number of the educational suits which find their way before the courts, social science data are far from indispensable, and are more likely irrelevant. This is so, because it is not evident how social science evidence can inform the adjudication of constitutional principles."

One limitation of social science data is that social science is in a continual state of flux and the findings in vogue at one time may be totally disavowed in another. Constitutional interpretation ought to be based on constitutional principles rather than on a particular data set. Otherwise, liberties and rights would be subject to the findings of social science. Courts should not use social science claims as the touchstone of constitutional interpretation because such data are not substantive in nature. Furthermore, the adversary, partisan nature of legal proceedings minimizes educational and information benefits to be derived from social science inquiry. Legal adversary hearings cannot judge whether social science testimony is adequate nor resolve contradictions that may emerge between conflicting bodies of evidence.

The social sciences cannot substantiate constitutional liberties; they may, however, play a proper role assisting the courts in righting wrongs by evaluating how well remedial programs work.

The Goals of the First Amendment

Thomas I. Emerson
Yale University School of Law

"Colonial Intentions and Current Realities of the First Amendment." *University of Pennsylvania Law Review* 125 (April 1977): 737–760.

What were the basic purposes of the system of freedom of expression that America's founders sought to implement in the First Amendment together with its specific protections of freedom of speech, press, assembly, and petition? Also, to what degree have these original purposes of the First Amendment been realized under our current legal system?

Historical evidence reveals that American colonists intended legally protected freedom of expression to fulfill four functions: (1) to discover truth and advance knowledge and progress through free and rational inquiry or a "free trade in ideas;" (2) to allow a democratic, self-governing process by respecting the need to arrive at common decisions through freely expressed individual judgment (and, by implication, to allow individuals in nonpolitical areas of human learning and knowledge to develop religion, art, and science); (3) to allow for necessary social change without resorting to violence through a vital, rational, and peaceful discussion of issues. These first three functions of freedom of expression are encapsulated in the Continental Congress's letter to inhabitants of Quebec:

> The last right we shall mention regards the freedom of the press. The importance of this consists, besides the advancement of truth, science, morality and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs.

The fourth goal of free expression transcended social good and progress by stressing personal fulfillment and the realization of full individual potential.

The author judges that the "major discrepancy" between colonial intentions concerning free expression and today's system is the nature of the marketplace which gives some citizens more of a voice than others. However, he does not regard government regulation of press or expression as the answer: "the one thing it cannot be, and still remain a free system, is government controlled." And further in the same vein: "The paradox of looking to government for regulation of a system that, by definition, is immune from government control presents one of the most difficult problems of our age."

[The author's present discussion is complemented by his earlier article: "Toward a General Theory of the First Amendment." *The Yale Law Journal* 72 (1963): 877–956.]

Freedom of Scientific Inquiry

Don Erik Franzen

"Science and the First Amendment: The Case of Wilhelm Reich." *Law and Liberty* 4 (Spring 1978): 1–3, 6–8.

After escaping from Germany in the 1930s, the psychologist Wilhelm Reich conducted experiments in the United States from which he concluded that all living things were suffused with a subatomic primordial energy which he named "orgone energy." Reich believed that neuroses, and even physical disease, were the result of the physiological blockage of the release of orgone into the body. Elimination of this blockage would rid the world not only of diseases such as cancer, but also of sociological malfunctions such as authoritarianism and totalitarian governments.

His research was assisted by a number of doctors in the New England area. Reich constructed metal-lined boxes, called orgone energy accumulators, which he claimed collected the omnipresent energy for use in therapy. He published articles claiming success through orgone therapy in treating diseases such as cancer, and as news of this spread there was a demand for orgone boxes which Reich began to send to interested persons.

In 1954 the Food and Drug Administration maintained the accumulators were misbranded and adulterated within the meaning of the Food and Drug Act, and filed an action on libel of information seeking an injunction to prevent Reich and others from doing business in interstate commerce. Reich declined to enter an answer or appear in court, but wrote the judge that to participate "would, in my mind imply admission of the authority of this special branch of the government to pass judgment on primordial, pre-atomic cosmic orgone energy." Moving by default, the government enjoined the defendents from further business and ordered the destruction and dismantling not only of the devices, but also of "certain listed descriptive literature." When Reich ignored the injunction, he was found guilty by a jury and sentenced to two years in prison. He appealed arguing he was "engaged in basic scientific research which no agency of the Government had jurisdiction to interfere with or control." The government replied that it had the power to prevent interstate commerce of devices of "alleged" therapeutic value if they were adulterated or misbranded. Reich's appeal was denied, his books were withdrawn from circulation,

and his magazine and accumulators seized and burned. After eight months in prison, Reich died, late in 1957.

Franzen believes only two arguments *might* be advanced to treat scientific thought differently from other First Amendment speech: that it was never intended to protect demonstrable falsehood, and that science, unlike religion, offers objective proof so that there need be no objection to restrict the dessemination of demonstrably false scientific statements. But the Supreme Court has recognized the need to protect "some falsehood in order to protect the speech that matters." And, even in the area of science, if we examine the case of the Copernican Revolution, it took almost 300 years to devise instruments to prove such concepts as "stellar parallax," which Galileo had advanced centuries earlier. "Laboratory 'proof' of a theory has often followed rather than preceded its acceptance." Since, it turns out, science is not as readily "objective" as many imagine it to be, government should allow it the same kind of First Amendment freedom as is given to religion and politics. "Orgone energy boxes cure cancer," ought not to be any more liable to censorship than, "God will cure you if you pray" or, "Socialism will cure the ills of society."

Protection of Dissenting Belief

Peter J. Riga

"Yoder and the Free Exercise of Religion." *Journal of Law and Education* 6 (October 1977): 419–472.

The Supreme Court decision in *Wisconsin v. Yoder* (1972) represents a great revolution in the area of free exercise of religion. Riga develops this theme by tracing the relationship between religion and education from the earliest days of the Republic to its current adjudications. Considerable attention is given to the question of state interest in education and the Court's various rationales for this interest.

Reynolds v. United States (1878) introduced a belief-action distinction enabling the Court to uphold a conviction against practicing polygamy. The Court upheld conviction of a practice said to be a tenet of the Mormon religion, by saying that the First Amendment classified opinion as absolute but that some actions were not absolutely protected since they could violate and subvert social order. However, the Court provided no practical test to distinguish actions which were from those which were not protected by the First Amendment. In the 1940 case of *Cantwell v. Connecticut,* the Court moved from a somewhat obfuscating "belief-action" criterion to a "clear and present danger" standard. Later, in *Prince v. Massachusetts* (1943), the Court refused to apply the latter standard in a case involving a member of a religious cult who claimed it a religious duty to violate the child labor law. In this case, the Court apparently made a decision without justifying it by showing how it followed from balancing interests. However, the clear and present danger test was reaffirmed in a number of subsequent decisions.

One of the troublesome issues of the Yoder case is that the Court involved itself in determining whether the religious beliefs professed were truly held. Justice Douglas recognized this to be a step backward from the more liberal standards expressed in *United States v. Seeger* (1965) and *Welsh v. United States* (1970). In these

cases the Court had extended military exemption to nontheists who opposed the war for philosophical rather than religious reasons. Justice Douglas could see no reason to refuse a similar exemption from secondary education. The nontheist should be no less protected than a religious dissenter from claiming a bona fide exemption.

The Court did not face the distinction between a philosophy and a strong commitment to an established religious belief. Nevertheless, the issue is important since it is quite apparent that a judicial category which requires membership in an organized traditional religious group as a condition for exercise of First Amendment rights is constitutionally suspect.

Law vs. "Liberty" and "Property"

Henry Paul Monaghan
Boston University

"Of 'Liberty' and 'Property.'" *Cornell Law Review* 62 (1977): 405–444.

We tend to view the Constitution's Fourteenth Amendment as limiting the separate states' actions in much the same way that the Bill of Rights limits the national government. Few observers believe the language of the Amendment has played a significant role in its historical evolution, but rather that "behind the words . . . are postulates which limit and control."

These postulates have evolved over time from conceptions of vested rights and laissez-faire economics to more recent concerns for representative democracy, equality, and individual dignity. This debate has tended to blur any distinction between equal protection and substantive due process. The equal protection clause forbids few discriminations that are not similarly forbidden by the due process clause of the Fifth Amendment. "The history of the Fourteenth Amendment has always been the history of the due process clause."

An overriding consensus viewed every individual "interest" as encompassed within the "liberty" and "property" secured by the due process clause and protected by the "baseline requirement of rationality." More recently, the "right-privilege" distinction, the last barrier to such a consensus, has completely fallen apart through theoretical weakness.

Several recent cases have significantly affected the concepts of liberty and property as once defined. Prior to *Board of Regents v. Roth* (1976), "Supreme Court definitions of 'liberty' and 'property' had amounted to taking the words 'life, liberty or property' as a unitary concept embracing all interests valued by sensible men." Now each word must be examined separately, and, "so examined, we find that they do not embrace the full range of state conduct having serious impact upon individual interests."

This break with tradition has altered the nature of the interests (such as the terms 'liberty' and 'property') secured by the due process clause. To examine these terms involves a lengthy discussion of "liberty," including its historical origins, something of its development within our language, its relationship to substantive due process as equal protection, the narrowing of the meaning of the term through the gradual process of exclusion, the importance of *Paul v. Davis,* and the Burger

Court's efforts to define the "New Liberty."

A similar analysis of the term "property," especially relating to entitlements in recent jurisprudence, would emphasize the case of *Bishop v. Wood* as an example of this issue. What Monaghan fears from the above history and analysis is that the "gradual process of exclusion," while it has not yet resulted in much narrowing of the "liberty" and "property" protected by due process, derives from cases capable of "broader mischief." In short, "They are capable of generating doctrine and results that are inconsistent with long standing conceptions about the meaning of 'liberty' and 'property' in a 'Constitution for a free people.' "

Crime Demographics and Law

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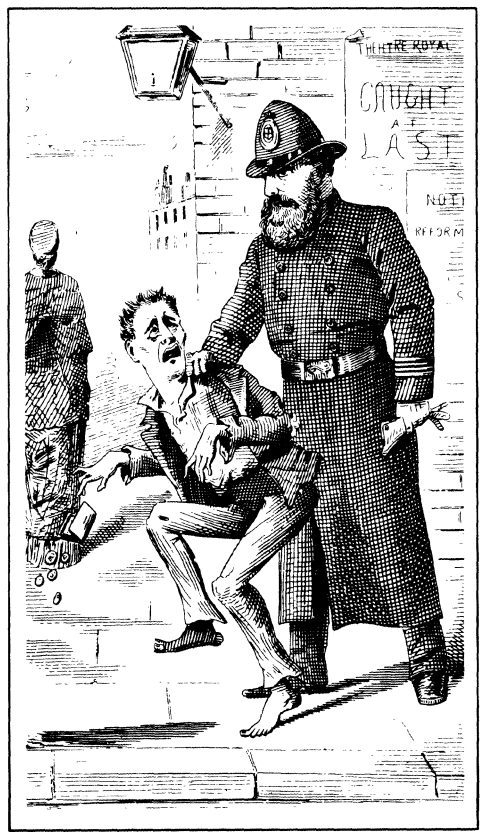
"Crime and Punishment in the Nineteenth Century." *Journal of Interdisciplinary History* 7 (Winter 1977): 477–491.

The study of nineteenth-century crime and punishment, and hence social policy, has been hampered by the quality of crime statistics during that century. "There has been a general lack of interest in systematically describing the criminals, or the arrested, themselves: their social origins, demographic characteristics, their offenses, and their treatment by the judiciary."

We now need to focus on the criminals and their treatment," and study materials that can clarify questions about crime and the criminal. Significant materials are the jail (or gaol) registers of various municipal areas, which the author has used for Ontario, Canada, but are widely available for large parts of Canada, much of the United States, and parts of Great Britain. These registers with their data offer the opportunity for quantification and a collective portrait, of those accused of crime based upon such factors as religion, ethnicity, class, occupation, residence, and other demographic information.

The registers permit a direct approach to such nineteenth-century stereotypes as viewing criminals often as members of a destructive, self-perpetuating class, home-



less and rootless, urban-based, immigrant, intemperate, and ill-educated. The registers help to delineate the lifestyles of criminals, but also other groups such as prostitutes, drunkards, and vagrants.

As a final consideration by way of example about what may be gleaned from such registers is an analysis of one year's registers (1867–1868) for Middlesex County, Ontario.

Crime in the county tended to be overwhelmingly (two-thirds) urban-based and very much related to the lower classes. Crimes against property and vagrancy were the most common, totalling more than half of all arrests, while alleged offenses against persons, prostitution, and crime related to drink, comprised over a third of the crimes. (It is interesting that today crime against property runs at a seven to one ratio as compared to the two to one of a century ago.) Vagrancy was mainly female, while for many poor the jail was a place of refuge. Like the stereotype, the Irish were often arrested for crimes related to drinking. White collar workers and small proprietors were more often arrested for offenses against other persons in contrast to the relative stability of the skilled worker, indicating the tensions of those groups most subjected to the changes accompanying modernization.

It is also clear that punishment was not administered equally. Irish Catholics and women had a higher conviction rate and a greater severity of punishment. The relationship between crime, its punishment, and the social order may be clarified through examining jail registers.

Is Legal Punishment Good?

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"The Ethical Justification of Legal Punishment." *American Journal of Jurisprudence* 22 (1977): 1–19.

Just what is the problem involved in justifying legal punishment, and how do we evaluate the various proposed solutions to this problem?

First we must define crucial terms, the most central being "punishment" which:

> Must be unpleasant, inflicted on an offender because of an offense he committed, deliberately imposed by an agent authorized by the system of rules that has been offended.

Historically, two major traditions have justified punishment. The first, the consequentialist or utilitarian tradition, asks whether a punishment maximizes the general welfare. The weakness of the utilitarian view is the obscurity of the standard ("the greatest good of the greatest number"). In addition utilitarianism permits the punishment of innocent men if it would yield a net social benefit.

Retributivism is the second major tradition justifying punishment. A retributive theory of justice punishes simply because the criminal *deserves* punishment and must "pay" for his crime. Pure retributivism is found in the Old Testament and in the writings of German idealists such as Kant. Most modern ethicists, however, find retributivism distasteful, even if it is not logically as weak as consequentialism.

Legal punishment requires first a workable practical psychology and secondly an understanding of the kind of good a well-ordered community requires.

The Anglo-American tradition fails as an adequate psychology because it attempts to explain mental activity in mechanistic terms. A sound philosophy of law requires a model of the mind which can grasp universal meanings. A proper theory of practical psychology must also give an account of willing. "Willing" commits oneself to an action because it participates in some universal good.

The second element of a sound legal punishment theory is a clearer understanding of the good of the community and not just the good of individuals. Consequently, the "primary reason for state laws is to promote the community good of the state." Thus, to justify legal punishments we focus not primarily on the criminal's good or that of other individuals, but rather on maintaining good order in a civil society. Consequently, rehabilitation, reformation, education, or expiation can't be the basic rationales for punishment. Rather, just punishment aims at maintaining good order in society and may contain both retributivist and consequentialist elements.

Punishment and Behavior Modification

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"Behavior Modification as a Punishment." *American Journal of Jurisprudence* 22 (1977): 19–54.

What are the consequences of using behavior modification as punishment in criminal correction programs? If coercive behavior modification programs are limited to persons who have committed crimes, we can regard such programs as punishment. An imprisoned criminal need not give consent to punishments for society to impose them. How, then, is behavior modification a punishment, and what moral limits do various theories of punishment impose on the use of compulsory behavior modification?

Behavior modification constitutes punishment because:

> . . . the individual is deprived of a right to participate, on the same basis as his fellow citizens, in the criminal justice system, conceived with Hart, as a system of social control which maximizes individual freedom.

A system of criminal punishment (as opposed to a preventative system), says Hart, maximizes freedom since it defers action until a harm or a violation of the law has occurred. It functions by announcing standards of behavior, attaching penalties for deviation, and then leaving people free to choose. This can be contrasted with the "manipulative techniques of the Brave New World" which effectively deprive people of the choice to obey the law or not. In particular, this could prevent someone from expressing his moral disapproval of a law through civil disobedience. When employed as a punishment, behavior modification deprives the criminal of a portion of his "responsible self-hood."

Next, can utility and fairness justify us in imposing behavior modification? Since a prisoner cannot freely give his "consent" to such treatment, ". . . a behavior modification program may be presented to a convicted person as an alternative only if it would be justified on utilitarian and fairness grounds if imposed without such a choice." Imposing behavior modification would be justified on utilitarian grounds if "the aggregate suffering imposed by the punishment doesn't outweigh the suffering to society of the crime unchecked." Fairness bids us to ask whether "the society considers the specific offense sufficiently grave as to warrant the imposi-

tion of this punishment on this person . . ."

Another argument holds that if the prison term is justified on utilitarian and distributive grounds, then "there could be no objection to allowing the criminal to choose some other punishments (such as behavior modification)." This, however, would allow someone to opt out of the criminal justice paradigm which interprets action as having a moral, responsible dimension. Action now becomes mechanically or therapeutically devoid of personal choice—a development which could augur grave consequences for our political system.

Punishment vs. Pure Restitution

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Emory University

"Criminal Remedies: Restitution, Punishment, or Both?" *Ethics* 88 (1978): 348–357.

Some have advocated a pure restitution theory of criminal remedies. Randy Barnett, for example, would reduce all criminal wrongs to torts, which he would then rectify by having the criminal compensate his victim ["Restitution: A New Paradigm of Criminal Justice" *Ethics* 87 (1977): 279–301]. No longer would criminals be made to "suffer" for their wrongdoing; making good their mistake is all that would be required.

But is this right? Can we treat crimes as mere torts? Does compensation alone right the criminal wrong?

Barnett's argument has correctly shifted the focus away from public law toward the private relationship created by the criminal transaction. Nevertheless, the theoretical questions remain. Can we eliminate punishment? Or does crime call for restitution *and* punishment?

Indeed, what Barnett has left out of the account is the *mens rea* element, or criminal intent: the criminal has not simply harmed his victim; he has affronted his dignity. He has intentionally *used* his victim, for his own ends. The inadequacy of restitution as the sole remedy for this wrong appears in the case of the wealthy criminal, or victim, or when both are wealthy. In such cases the remedy of compensation simply cannot reach the affront to dignity that is the criminal wrong.

In order to develop a more satisfying account of criminal remedies, we must more thoroughly analyze what the original criminal transaction involved. If justice requires treating all parties as equals, the remedy should return precisely what the original wrong took away. In torts cases we do this by noting that the original act was "wrong" only in the sense that it

caused wrongs or harms, and we remedy it by compensation. Thus, the remedy reflects the original "wrong" by undoing it. But in the case of crimes, compensation will not be equal to the whole of the wrong involved, which extends beyond the mere causing of harms. In addition to creating in the victim a right to compensation, then, the criminal act creates a right to punish the criminal; for only compensation and punishment (the victim's use of the criminal) will be equal to that original wrongful act.

Thus from state-of-nature theory, and arguing on deontological grounds, we can derive restitution as the just remedy for torts, but restitution *and* punishment as the just remedy for crimes.

Does Punishment Fit the Crime?

Walter Kaufmann
Princeton University

"Retribution and the Ethics of Punishment." In *Assessing the Criminal: Restitution, Retribution, and the Legal Process.* Edited by Randy E. Barnett and John Hagel III. Cambridge, Massachusetts: Ballinger Publishing Co., 1977, pp. 211–230.

Critical ethical reflection invalidates retribution as an ethical basis of legal punishment. That wrongs call for retributive punishment (visiting the "same" or a "proportionate" wrong back on the wrongdoer in an "eye for an eye" fashion) has neither been universally accepted nor is it morally defensible. Retribution and its kindred notion of desert (i.e., the criminal "deserves" to be punished) futilely claims to undo past wrongs. But "the past is not a blackboard, punishments are not erasers, and the slate can never be wiped clean: what is done is done and cannot be undone."

Three movements have weakened the appeal of retribution in punishment theory: the eclipse of Christianity, the impact of humanitarianism, and the emergence of depth psychology in the works of Dostoevsky, Tolstoy, Nietzsche, and Freud. These thinkers reveal how closely the "law-abiding" citizens resemble the criminal in demanding retributive punishment since such punishment serves as a cathartic release for their darker, unedifying emotions.

The strongest argument against retributive justice is that "punishment can never be deserved" nor wholly proportionate to the crime (as in seducing a child, genocide, or forgery). Not even capital punishment for murder is a commensurate punishment. The sudden death of the murdered victim differs from the criminal's protracted trial and long imprisonment under a death sentence. Desert in punishment theory is a confused notion impossible to calculate. In fact, devising "proportionate" punishment has produced "a veritable pornography of punishment and allowed the sadistic imagination rather free rein" as when Thomas Jefferson urged as a punishment for a polygamous woman: "cutting through the cartilage of her nose a hole of one half inch in diameter at the least."

Even if retributive punishment could be proportionate, it does not follow that it is ethical or ought to be imposed. No human *deserves* torture or punishment. Although retribution is untenable as an ethical basis of punishment, punishment itself may possibly be tenable to fulfill other functions such as deterrence or reform. We should, however, be wary of too readily approving restitution (through fines or imprisonment) as a substitute for retribution. Restitution is as much a chimera as calculating "exact" justice. No restitution can restore the *status quo ante* in the case of raping a child. Restitution, furthermore, encourages judges to be arbitrary in meting out "appropriate" penalties.

Free Market Justice

George H. Smith
Institute for Human Studies

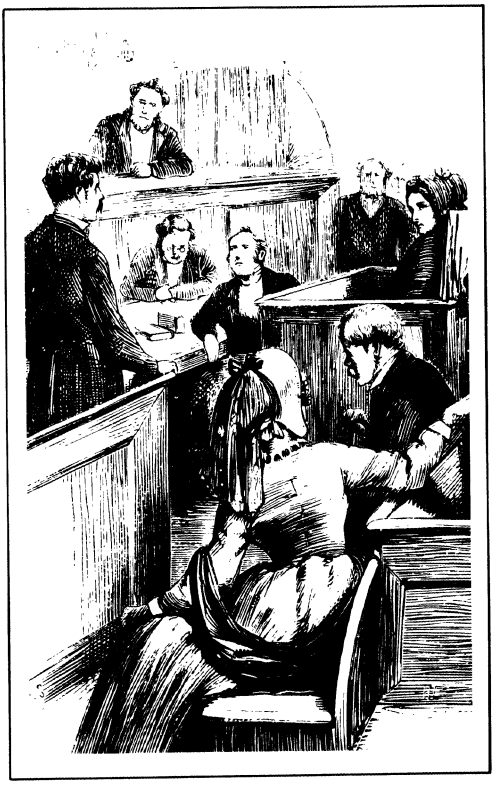
"Justice Entrepreneurship in a Free Market." Paper presented at the Libertarian Scholars Conference, Princeton University, October 1978.

Some critics of the idea of free market justice have argued that it is incompatible with the rule of law. Without government to impose a uniform system of procedures and standards, such critics envisage a chaotic patchwork of competing agencies, or perhaps even various criminal bands imposing their wills in the name of justice. But free market justice does not oppose the rule of law. Principles of justice are derived from natural law, and therefore fall within the province of human knowledge. Neither the specific content of the law (which can be deduced from a theory of property rights) nor the formal aspects of the law depend upon the existence of government.

"Where, then, is the weak link that opens the door for a monopolistic government?" One link is the concept of "procedural rights" upon which Robert Nozick, for example, in *Anarchy, State, and Utopia* bases his notion of the "ultraminimal state." Smith agrees with the idea of restitution as developed in Randy Barnett's "Whither Anarchy? Has Robert Nozick Justified the State?" But in contrast to Nozick, Smith suggests "The important social relation that generates the whole question of reliable procedures is not that between the Victim and the Invader, but the relationship between the Victim and impartial Third Parties." The crucial idea is that "It is for his own safety, to prevent violent Third Party intervention in his quest for restitution, that the Victim must concern himself with matters of legal procedure." The problem is explored, not around the "phantom" notion of "procedural rights," but rather around the concept of "justice entrepreneurship with its two essential ingredients: restitutive risk and the presumption of invasion."

Much of a Justice Agency's service is entrepreneurial in the sense that the Agency assumes the burden of risk that accompanies the use or threat of physical force in a free society. Thus, "A client contracts with a Justice Agency not only because the Agency is more efficient in obtaining restitution, but also because the Agency is more likely to overcome public suspicion that the force used to obtain restitution is of invasive rather than of restitutive nature. The degree to which an Agency can minimize this risk is a measure of its reliability and, ultimately, the source of its profit."

Analysis can unravel this problem in terms of Crusoe, Friday, and the introduction of a Third Party. Fundamentally, there is a lack of coordination (knowledge) between the Victim and Third Parties, and thus, the problem, "How can the Victim regain what is rightfully his, by force if



necessary, and avoid being branded in the public eye as a common Invader?" The transfer of this risk is the major function of a free market Justice Agency, and that which gives it its entrepreneurial quality. This alertness to opportunity is at the heart of entrepreneurship. This, in turn, leads to the conclusion that the Agency must offer a public verification of its work; the trial must be public with public access.

A number of procedures necessary for such proceedings are available. The major point is not procedural, however, but to bring the whole concept of justice into the "realm of deductive natural law," Smith concludes that "there are no serious gaps in the libertarian paradigm of natural law and noncoercion, such that a monopolistic government must step forward to fill these gaps." Any Agency, even Nozick's dominant one, ought to be "gauged by the entrepreneurial standard of public verification." Any Agency unwilling to do this should not be regarded as legitimate.

Justice in the Market

Carl Person
National Private Court

"Justice, Inc.: A Proposal for a Profit-Making Court." *Juris Doctor* (March 1978): 32–36.

The remedy for the interrelated problems of securing justice through governmental courts—congestion, delays, high costs, and unfairness—may well be a competitive "free-enterprise court system" operated by private judges on the principles of voluntarism and cost-effectiveness.

Statistics confirm that American federal and state court systems are not efficient institutions to mete out justice fairly and equally to all would-be litigants. In the United States there is only one federal judge for every 1,000 attorneys. At any one time, the average federal district court judge handles around 600 civil and criminal cases. Under this congestion, the courts must terminate without trial 91 percent of all federal civil cases. Under the government court system many deserving civil cases never get tried, thus depriving the plaintiff of his constitutional right to trial. The government monopoly in dispensing justice leads to rationing justice. The "uncertainty, delay, and excessive costs attributable to our inefficient system of justice" disrupt individual lives and prevent the economy from growing at its full potential.

To cure the many inconveniences of government courts, the author recommends a free market court system called the National Private Court (NPC), which would guarantee a three-month time limit for litigation; allow parties to select those judges best qualified to hear their suit; follow federal rules of evidence and civil procedure; and permit one appeal.

The NPC would have the advantage over binding arbitration of not running the risk of unwanted compromises; the NPC would surpass the quality of litigation in congested government courts because "the parties pay for and get the amount of skilled judicial services they need from judges experienced in the field." The profit motive would also insure fairness from the private judges since they can be expected to treat attorneys fairly if they wish to be rehired in other matters or suits. The NPC, by removing economic restrictions against justice, would allow hiring expert witnesses on a contingency-fee basis and selling shares in civil actions to permit indigent litigants to afford bringing suit.

IV

Equality and Social Justice

In the modern world, the protean ideal of equality—in our legal, social, political, and economic institutions—has inspired many heterogenous movements including the French Revolution, the American Revolution [see *Literature of Liberty* 1 (April/June 1978): 5–39], classical liberalism's reforms, and the contemporary, proliferating "liberation" movement. Robert M. Hutchins and Mortimer Adler in their analysis of "The Idea of Equality" (in *The Great Ideas Today/1968*. Chicago: Encyclopedia Britannica, Inc., 1968) have shown how elusive and debated are the political and social meanings of equality. The following summaries corroborate the elusiveness of equality. Important issues treated include: the relationship between freedom and equality, the contested notion of the "New Equality," the rival definitions of equality advanced by John Rawls and Robert Nozick, educational equality, and the understanding of social justice and equality in Adam Smith and Alexis de Tocqueville. Finally, with David Miller's concluding summary, we see one explanation of how classical liberalism's understanding of equality of opportunity shifted to the later more egalitarian interpretations of this crucial idea.

Liberty vs. Equality

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University of Reading, England

"The Procrustean Ideal, Libertarians v. Egalitarians." *Encounter* 50 (March 1978): 70–79.

Not all ideals of equality threaten liberty—"the most fundamental of these ideals is itself essentially connected with respecting every individual's right *to choose*, in as many respects as is practically consistent with the corresponding equal rights of everyone else."

Equality may undergo different interpretations, such as a factual and a normative; as when the Declaration of Independence speaks of equality as a normative ideal to be aspired to, not as some fact about human beings. There are three differing ideals of equality which we need to carefully distinguish because in egalitarian literature [e.g., D.M. Levine and M.J. Bane, *The "Inequality" Controversy* (1975)] the three distinct ideas—personal equality, equality of opportunity, and equality of results—are crudely equivocated upon. Furthermore, we need to discover whether any of the ideals of equality "are enemies to liberty."

(1) *Personal equality* requires liberty and a measure of democracy in the political realm. Analysis and historical data bring this out clearly. The problem begins with (2) *equality of opportunity,* for this

equality raises such issues as whether and what sort of equality of opportunity the state should maintain. Should the so-called "welfare floor" (advocated by Winston Churchill and present advocates of the welfare state) be required to secure equality of opportunity? But, "if you want to achieve ideal equality of opportunity from the very beginning, then you have to abolish the home and the family in favour of the universal compulsory comprehensive *crèche*." Even a "next best bet" requires "circumscribing, if not outright abolishing, the freedom of parents to make homes, and to bring up their children as they see fit."

Finally, (3) *equality of outcome or results* aims mainly at eradicating the social inequality that, in Rousseau's words, "depends on a kind of convention, and is established, or at least authorized, by the consent of men." But many egalitarians extend the matter to include biological inequalities. Despite their denials of aiming to eliminate all individuality and variety, egalitarians are notoriously imprecise on just what their principle means concretely so that we could tell which inequalities must go, which may stay, and why.

Numerous examples illustrate this imprecision. Utilitarianism, the prominent framework which defends the equality of results doctrine, needs critical analysis. In sum, this kind of equality requires violating equality in the attempt itself, by a "call for a highly authoritarian and widely repressive form of government."

Liberty and Equality

Tibor R. Machan
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"Equality's Dependence on Liberty." In *Equality and Freedom.* Edited by Gary Dorsey. Dobbs-Ferry, New York: Oceana Publishers, 1977.

Equality and liberty may seem to be political incompatibles; but in reality, human equality comes about only if we fully protect and preserve political liberty.

On the basis of human nature the only possible equality amounts to having full responsibility for one's own life (in adulthood). In all other respects, human beings could be equal only incidentally. Athletic ability, economic achievement, artistic talents—all these and related candidates for equality among human beings are both politically impossible and undesirable. Human equality is politically possible and desirable only when it seeks to maintain everyone's equal moral standing, that is, securing everyone's equal moral self-responsibility.

This equality is threatened in community life by one central possibility, namely, other people's coercion. For others to coerce an individual attacks the individual's status as a self-responsible moral agent. One adult's coercion of another reduces the coerced to a position of childlike dependency, denying this person his or her mature human dignity.

Political liberty exists when everyone refrains from coercing everyone else, in accordance with a theory of natural human rights. This conception of political liberty alone can secure the desirable form of human equality. When everyone refrains from coercing everyone else, rich and poor, beautiful and ugly, young and old—all are equal in having the responsibility to make the most of their own individual lives, i.e., in the task of choosing to become excellent human beings.

Thus, "liberty and equality, in the respect in which these are possible conditions and valuable features of a human community, are not only compatible but mutually dependent on each other for purposes of maintaining political justice."

Bureaucracy and the New Equality

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The New Despotism. Menlo Park, California: Institute for Humane Studies (1976) 34 pp.

The founders of the modern political community believed that republican or representative government tended to diminish the degree of political power intruding into individual lives. Yet, paradoxically, the power of governments over the lives of individuals has increasingly expanded in every Western country, particularly since the end of World War I. Twin forces, an institution and an idea, have accelerated the growth of governmental power in recent years.

The institution is the politically "invisible" infragovernment comprised by bureaucracy's commissions, agencies, and departments that have grown up in the last 50 to 100 years. During this period the bulk of governmental power, as it affects our intellectual, economic, social, and cultural lives, has passed from politically accountable executives and legislative bodies to a vast, anonymous, and politically insulated bureaucratic infragovernment. By pursuing power in the name of health, safety, welfare, environmental protection, and other laudable ends, the reach of the infragovernment has extended into innumerable, formerly private, recesses of the lives of citizens of the modern Western nation-state.

But most important among the ideas that have given birth to the centralized bureaucratic power is "equality." Nisbet surveys the ways in which various conceptions of equality have influenced Western forms of social organization beginning with the ancient Greek reforms of Cleisthenes at the end of the sixth century B.C. In modern times the infragovernment's crusading promulgation of the "New Equality" as a social objective has posed a serious threat to liberty and social initiative. Unlike other conceptions of equality which have promoted equality before the law or equality of opportunity, the "New Equality" aims at equality of condition or of result. The disturbing menace of the "New Equality" is its enormous increase and centralization of the power of government.

The recent lessening of restrictions on the press, theater, and television does not prove that freedom can flourish despite growing bureaucracy. While freedom of expression has been liberalized somewhat in this century, much more basic economic, local, and associative liberties have suffered massive erosion by the spread of military, police, and bureaucratic power.

Policy and the "New Equality"

Edward Erler
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"Public Policy and the 'New Equality.'" *The Political Science Reviewer* 8 (Fall 1978): 235-262.

Since the opening of the "New Frontier," public policy analysis has been a growth industry in academia. Not only have universities been adding professional schools and departments to study public policy, but the same study has proliferated in law schools, business schools, medical schools, and in economics, political science, and sociology departments. Traditionally, public policy "sciences" have bridged pure

or positive science and governmental decision making. Harold Laswell and other early public policy enthusiasts hoped that defining policy alernatives for solving a problem would enable politicians to make the most rational choices to maintain the values of liberal democracy. Policy science has typically served values, rather than provided them.

Three public philosophies, each with its own conception of "equality" and "public" policy, have provided values for policy decisions. The first, utilitarianism, has been closely linked to liberal democracy and has aimed at justifying individual rights and liberties and particularly the ideal of political equality. But this sort of equality allows natural talents to flourish, thereby permitting social inequality. Historically, government policy under utilitarianism and liberal democracy aimed to maintain a self-regulating system of individuals free to pursue their own ends.

The second public philosophy, the "therapeutic ethic," is now rapidly replacing utilitarianism with the concept of "frustration-aggression syndrome." This syndrome asserts that frustration *always* leads to aggression, sometimes to antisocial behavior. The therapeutic ethic also holds: (1) the inequalities born of utilitarianism are the chief source of social frustration, and (2) government must intervene in social interaction to ensure "social peace." This intervention, in its New Frontier and Great Society versions, went beyond equality of opportunity (to eliminate class or legal barriers to various fields) to "affirmative action" to help the "frustrated" enter the middle class.

The third public philosophy, "The New Equality," has Martin Rein as a champion and John Rawls as philosophical defender. According to the "New equalitarians," the "equal opportunity" and rehabilitation of the therapeutic ethic degrades the disadvantaged by suggesting that they are subhuman. Rein believes the key to "humanizing" the disadvantaged is a redistribution of both wealth and status that would treat them as fully human, autonomous, and of "equal dignity." Policy, then, would redistribute status and wealth to transform the least favored into the most favored and thereby "equalize" personal dignity. This would require a large nonelected and nonresponsive bureaucratic apparatus along with a danger of "class bias" in the functioning of the "New Class" bureaucracy. The "New Equality" explicitly rejects the political equality that permits unequal results in favor of political inequality designed to produce equality of result and condition.

The "New Equality" errs by ignoring that there are no natural rulers among equal human beings, whose natural equality allows each individual to be his own ruler. Government, to be just, must therefore rest on the consent of those who are to be ruled. So liberty, not the "New Equality," is the "dictate of human equality."

Rawls and the New Equality

Alan Gilbert

"Equality and Social Theory in Rawls's Theory of Justice." *The Occasional Review* 8 (Autumn 1978): 95-117.

For John Rawls a defensible justice means "justice as fairness." But Rawls's *Theory of Justice* presents equality of result or of condition as the benchmark of "fairness." Consequently, many have viewed Rawls's work as providing the intellectual underpinnings for the "New Equality." Rawls's theory, however, is undermined by his failure to seriously investigate social theory and history.

Rawls's principles of justice emerge from social contract deliberations conducted in an "original position." In the original position all parties have been stripped of any knowledge that might bias their choice of principles of justice. Rawls also imputes general knowledge about human nature and society to the parties to aid their deliberations. Rawls stipulates that in the original position the parties must choose principles of justice that will be *workable* in circumstances of moderate scarcity.

This requirement of practicability leads to Rawls's confusion. Rawls unwittingly uses two incompatible models of social structure, each with its own moral arguments against inequality.

The first model represents society as competitive and without class distinctions. In this model, equality results from the unequal distribution of natural talents in society. Here Rawls's argument against allowing such differences to generate inequality follows the arbitrariness of the "natural lottery." Given this model we might expect the (naturally) most advantaged to feel entitled to greater benefits from their efforts than they are allowed by Rawls's "difference principle" (which allows inequality only if it serves the greatest benefit of the least advantaged). Moreover, those of superior talent would seem to be in a strong bargaining position because they could impoverish the least advantaged by withholding their cooperation.

Rawls's second model depicts society as composed not of well or poorly circumstanced individuals, but of individuals that interact as classes. In this model, Rawls thinks that great social and economic inequalities will distort even a formally equal political structure in favor of the rich. In a class dominated society, inequality is a form of oppression rather than a manifestation of nature's arbitrariness. This model "drives his (Rawls's) principles, nationally, and internationally, in a radical or even Marxian direction. . . ." But Rawls's failure to explore this briefly sketched model theoretically and historically, obscures whether his principles of justice could function in such a society.

In sum, Rawls's criterion of practicability and his failure to examine social theory and actual history make it doubtful that the parties in the original position would choose his principles of justice.

Rawls vs. Nozick on Justice

Larry Biesenthal
York University, Toronto

"Natural Rights and Natural Assets." *Philosophy of the Social Sciences* 8 (1978): 153-171.

Harvard philosophers Robert Nozick and John Rawls share a great deal in their approaches to political philosophizing. Both are individualists who employ "a procedural model of justification: each specifies an initial *status quo* (state of nature in Nozick, original position in Rawls) and a procedure for altering that *status quo* while ensuring the justice of the result (via justice in holdings for Nozick and con-

straints on the choices of original contractors in Rawls)." Finally, both are similarly wedded to "a 'deep-theoretical' commitment" in regard to natural rights.

Nozick's theory in *Anarchy, State, and Utopia* (1974) would be closer to Rawls's in *A Theory of Justice* (1971) if their shared features equally influenced the two political theories. Biesenthal argues that "if Nozick applies his procedural account of distributive justice consistently and comprehensively, he cannot deflect the critique of his radical individualism that is erected by the liberal individualism of Rawls's contractarianism." The case runs as follows:

Nozick accounts for justice by his doctrine of "justice in holdings" subject to the qualification of the Lockean proviso—i.e., "A process normally giving rise to a permanent bequeathable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the thing is thereby worsened." History, Nozick admits, is replete with unjust acquisition of holdings and transfers of holdings. This alone, Nozick seems to admit, would apply the Lockean proviso to cases that are more than extreme (or logical) possibilities. Original holdings achieved by violating rights would morally invalidate subsequent voluntary exchanges. This implication of Nozick's theory suggests nonlibertarian consequences unwelcome to Nozick.

Nozick's position involves other elements that further mitigate his radical individualism in the direction of Rawls's "liberal individualism." Nozick accepts the view that "it seems morally objectionable that some . . . should suffer a miserable existence because of inherent weaknesses or handicaps that they neither are responsible for, nor, given the chance, would have chosen." Nozick wishes to deflect the Rawlsian overtones of this admission by reminding us that desert does not exhaust justice. However, Nozick's inadequate support for his view that one is entitled to one's natural assets (by appealing to the intuition that none would, for example, compel someone to give one good eye to a totally blind person) implies the superiority of the Rawlsian theory. Rawls's doctrine does not invite the drastic redistributivist consequences Nozick suggests to be counterintuitive.

Thus, it is argued, the Rawlsian approach is superior since Rawls's "justice as fairness" doctrine lacks the undesirable element of moral arbitrariness that Nozick's elevation of liberty to its eminent political position seems to involve.

Balancing Needs and Abilities

James P. Sterba
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"Distributive Justice." *American Journal of Jurisprudence* 22 (1977): 55-80.

John Rawls's *A Theory of Justice* (1971) argues that people choosing a fair and just social contract in an "original position" behind a "veil of ignorance" would follow a "maximin" strategy (i.e., "always choose that state of affairs in which the lowest class will have the best of a bad situation) rather than a maximum utility strategy (i.e., "always choose that state of affairs which has the highest average utility"). Contrary to Rawls, however, a just society and a just distribution requires transcending both strategies and calls for principles that (1) define the fair minimum economic and social position of everyone which lies intermediate between these two strategies; and (2) "allow private appropriation and voluntary exchange to govern the distribution of social goods once the minimum has been guaranteed."

Sterba agrees with Rawls that deliberators of a social contract in the "original position" would reject the maximum utility strategy since it would not guaran-

tee an acceptable minimum standard of living to everyone. But Sterba contends that this rejection does not entail accepting Rawls's maximin strategy. The original deliberators would also reject maximin (and its "difference principle") as a distributive strategy because it would provide a minimum social standard that they consider too high. A certain group of individuals, anticipating the added burdens they would have to incur by rising to superior or more advantaged social positions, would choose not to rise socially. Those in the "original position" would object to the "high" minimum guaranteed by the "difference principle" to such a group of "free riders" and thus would reject the maximin strategy.

Four principles would satisfy the desire of those in the "original position" both to guarantee an acceptable minimum distribution of goods to the needy, and to allow those contributing more to society to retain a greater share of what they create:

(1) The Principle of Need guarantees the primary social goods required to satisfy everyone's basic needs at little social cost.
(2) The Principle of Appropriation and Exchange would distribute social goods in excess of the primary social goods through private and voluntary agreement.
(3) The Principle of Minimal Contribution stipulates that those of ability be required to contribute to the guaranteed minimum social goods when necessary.
(4) The Principle of Savings states that the rate of savings for each generation should represent its fair contribution to maintaining a society whose members all fully enjoy its just institutions.

The acceptable social minimum is secured by the principles of need, savings, and minimal contribution. The principle of appropriation and exchange creates productive incentives by allowing individuals to retain a larger share of what they produce.

Nozick and the Lockean Proviso

Hillel Steiner
University of Manchester

"Nozick on Appropriation." *Mind* 87 (January 1978): 109–110.

In *Anarchy, State, and Utopia* (1974) Robert Nozick champions and reinterprets John Locke's proviso on the acquisition and appropriation of property (that there remain "enough and as good left in common for others") to ensure fairness. Employing an amended Lockean proviso as part of his entitlement theory, Nozick stipulates that it limits an individual's right to appropriate objects if the appropriation would worsen the situation of others who would no longer be free to use the good in question. The author subjects Nozick's Lockean proviso to a twofold critique and understands Nozick's "worsen" to mean the net loss of reasonably expected well-being that any non-appropriator incurs from no longer being at liberty to use the object.

Steiner first protests the unfairness of Nozick's proviso. Nozick demands that the person who worsens the situation of others must compensate *all* the others for this loss (otherwise he would not have just title to the good). This demand, however, burdens the compensator unfairly. For suppose that Ann appropriates some property and thereby "worsens" the situation of Bob, Carl, and Don. For Nozick, this would require Ann to compensate all three. Yet only *one* of the three—either Bob, Carl, or Don—would have appropriated the property if Ann had not appropriated it. To require Ann to compensate all three, Nozick thereby requires her to compensate two more people than necessary who

would have their situation dubiously "worsened" by Ann's appropriation of the property. Furthermore, we do not even know which two to compensate.

A second problem with Nozick's proviso is the impossibility of measuring or calculating how much compensation Ann owes to the other person. Suppose we overlook the first problem and in fact know that Bob would have been the one to appropriate the property if Ann had not appropriated it. In this case, Bob's net "worsening" because of his lack of liberty to use the property must exclude the alternative net "worsening" Ann would have suffered if Bob had appropriated the property. To calculate Bob's compensation thus leads us into a vicious circle:

(1) The compensation due Bob is equal to Bob's net loss or worsening;
(2) Bob's net loss is equal to the benefit Bob would have derived from using the good that Bob would have appropriated (in place of Ann) minus the compensation that would then be owed to Ann;
(3) The compensation owed to Ann is Ann's net loss;
(4) Ann's net loss equals the benefit Ann would have derived from using the good had she (and not Bob) appropriated it minus the compensation that would, thereby, have been owed to Bob.

Schooling and Subordination

Patricia Albjerg Graham

"Expansion and Exclusion: A History of Women in American Higher Education." *Signs: Journal of Women in Culture and Society* 3 (Summer 1978): 759–773.

Highly educated women in America had greater opportunities at the end of the nineteenth century than they now have in the mid-twentieth century. Between 1900 and 1950 higher education shifted from relative unimportance to the center of American values. While student populations grew significantly and higher education institutions changed organizationally as well as ideologically, these shifts actually diminished opportunities for educated women.

The late nineteenth-century woman teacher was a middle-aged unmarried woman, absorbed in study, and withdrawn from the 'real' world of commercial competition. Characterized by an innocence and unworldliness which rendered her unable to manage well in practical affairs, she was permitted to participate in higher education.

By the end of the nineteenth century, the educated person was one who had attended college. Between 1875 and 1925, diverse forms of higher education competed with one another, giving women a variety of educational pathways ranging from normal schools to land grant institutions, and Catholic colleges emphasizing a unified curriculum to Protestant colleges emphasizing character formation. Women seized the opportunities: by 1919–1920, 47 percent of American undergraduates were women; in 1930, 32.5 percent of college presidents, professors and instructors were women, and women constituted 45 percent of the professional work force.

However, by 1925 the Ivy League inspired a single conception of higher education in which the university as research center triumphed. An institution became one in which scholars conducted investigations that required extensive funding, elaborate laboratories, and expensive

equipment. 'Lesser' institutions copied the Ivy League's adoption of elective courses, and specializations multiplied everywhere. Of course Ivy League schools admitted and hired no women, and those who imitated them often sought to enhance their own prestige by also excluding women students (if they could afford it) or at least by excluding women faculty members.

When only a small proportion of the population was college educated, the few outstanding females within that tiny elite did not seem likely to undermine the natural order of things (i.e., the 'natural' subordination of women to men); nor, since teaching could be viewed as a nurturing activity, did the central concern of the nineteenth-century female faculty member seem inimical to her 'womanly' character. On the other hand, when many are educated and many women prove exceptional, the perceived threat to the order of things is much greater.

Concurrent changes in higher education and in the ideals of womanhood help to explain why women were relatively absent from academic and professional positions in the middle decades of the twentieth century. Recent changes in women's attitudes toward themselves and their careers, and the expansion of 'continuing' or 'lifelong' learning may point in a new direction. The monolith of the research university may be demolished, giving way to more diversity in higher education and more equal opportunity for women similar to that prevalent in the late twentieth century.

Educational Equality

Leonard Billet
University of California, Los Angeles

The Free Market Approach to Educational Reform. The Rand Paper Series. Santa Monica, California: The Rand Corporation (1978) 37 pp.

Can the present system of public schools provide *educational* equality or would a free market approach allow American education to realize more surely the goal of "equal interest and concern with the education of every child?"

The critique against public education has intensified in recent years for many reasons: rising costs, deteriorating academic performance, depersonalization of the educational experience for students and teachers alike, educational faddism, and bureaucratism. Free market education offers a moral basis and economically efficient system based on consumer choice and competition to counteract these ills of public education.

Would private or free market education preserve the cherished democratic value of educational equality of opportunity? Yes, once we carefully remove from educators the imposed responsibility of "social reform." Frederick Mosteller's and Daniel P. Moynihan's work, *On Equality of Educational Opportunity* (1972) has debunked the myth that public money and resources can create equality of a child's educational opportunity. Neither teacher-pupil ratios nor per-pupil expenditures correlate with academic achievement. American public schooling has failed to produce intergroup equality of socioeconomic status.

But should "our schools shoulder the primary burden for . . . decreasing disparities in incomes and opportunities associated with race and social class?" It makes more sense to question whether the purpose of education is to achieve an equality of income or social status. Even if it were true that "the quality of one's education correlates positively with socioeconomic occupational achievement," it

would seem likely that a flexible free market educational system would be superior to the public school system in equalizing opportunities of minorities in jobs, income, and status. But again, the more important question is not so much socioeconomic "social reform" as educational quality.

Private free market education contains the economic incentive system to make more available the truly educational ideal of guiding one's pupils, to help them "learn to think clearly and independently." To fulfill this ideal requires "an equal interest, concern, respect, and love for all children." Once freed from the responsibility of socioeconomic reform, education in the free market will be competent to pursue the ideal of encouraging true learning on a fairer, more equitable basis.

Adam Smith on Social Justice

Donald J. Devine
University of Maryland

"Adam Smith and the Problem of Justice in Capitalist Society." *The Journal of Legal Studies* 6 (June 1977): 399–409.

Adam Smith viewed justice as a natural sentiment of mankind which did not simply accept de facto property arrangements but inquired into their justness and demanded restitution for any past injustices. Smith's view is essential to the private property basis of capitalism. In contrast a utilitarian view that endorses governmentally dictated property distribution substitutes government property for private property. In Smith's capitalism, income from unjustly acquired property, even though sanctioned by government, would be expropriation of the just, but governmentally excluded, owners.

Smith considered Hugo Grotius's writings on justice, although imperfect, "at this day the most complete work that has yet been given upon this subject." The original acquisition of property was just if it did not involve injuring another person or obstruct their freedom of acquisition. The role of law is to leave room so that the "simple system of natural liberty establishes itself of its own accord." Smith held that the market should be the ordinary regulator of justice. Individuals, in the market, seeking their personal aims, will effect "by an invisible hand" unintended

social goods and ends. "By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it."

Smith anticipated that division of labor might discourage intellectual improvement and diminish the very spirit of individualism which gave rise to the success of division of labor. But he felt that the market would compensate for such dangers (if the law did not intrude) since people would naturally develop voluntary associations which would contribute to intellectual improvement and the individualist spirit.

De Tocqueville and Equality

William J. Murphy, Jr.
University of Missouri

"Alexis de Tocqueville in New York: The Formulation of the Egalitarian Thesis." *New York Historical Society Quarterly* 61 (January/April 1977): 69–79.

Alexis de Tocqueville's *Democracy in America,* written as a result of his visit in 1831, describes American society's headlong drive toward egalitarianism, or "democracy," as he labeled it. De Tocqueville saw this as an inevitable movement throughout the Western world with America taking the lead.

Questioning this egalitarian thesis, many contemporary historians have undertaken detailed research on wealth and social class (particularly during the Jacksonian period of de Tocqueville's visit) and have revealed little evidence of social equality of conditions or even social mobility. These findings compel us to reconsider de Tocqueville's thesis and its usefulness in the light of three factors: (1) the impact of de Tocqueville's own social and intellectual background; (2) who were the sources of his information; and (3) what was his method of investigation.

De Tocqueville did not come to the United States predisposed to find an egalitarian society. An artistocrat by birth and instinct, he expected to find American society tending toward aristocracy. His belief that civilization was characterized by the forward motion of some great driving force, however, made him open to the suggestion that egalitarianism was that engine of development. Who gave him the notion that egalitarianism was the driving force in American society? De Tocqueville's friends in New York seem to have transmitted to him this concept of egalitarianism. Themselves native Americans of the highest social class and among the top 500 wealthiest New Yorkers, de Tocqueville's friends impressed him with their easy manner, physical contact with the lower classes, rejection of primogeniture and entail, libertarian rhetoric, and their attitude of political equality for all classes. Also, the very fear of the lower classes expressed by such Whiggish friends as Philip Hone may have convinced de Tocqueville that American society was, in fact, hastening toward an egalitarian utopia of mass democracy. One of de Tocqueville's later friend's, Jared Sparks, cautioned him that wealth was not being dissipated by widely shared inheritance among sons of the rich. Despite this, de Tocqueville left New York assured of America's egalitarian penchant.

How did he block out all information contrary to his thesis? In methodology de

Tocqueville was not a historian or sociologist; he intellectualized, seeking by conceptual, rather than empirical, analysis an understanding of his experience. De Tocqueville's blinkered approach saw egalitarianism as the underlying force in American society, and his nonempirical vision has unfortunately captured an uncritical audience.

Liberal Justice: From Merit to Need

David Miller
University of East Anglia

"Democracy and Social Justice." *British Journal of Political Science* 8 (January 1978): 1–19.

How did liberalism evolve from the classical liberal's advocacy of laissez-faire individualism to the modern liberal's support of the welfare state? The answer lies in changing liberal theories of social justice and equality coupled with parallel changes in liberal attitudes toward egalitarian democracy as a form of government.

Centering itself around the principle of desert and merit, classical liberalism's conception of social justice displays a tension between egalitarian and inegalitarian elements. On the one hand, classical liberalism supported substantive inequality of result since it favored distributing social benefits (wealth and prestige) according to individual, and thus unequal, effort and desert. On the other hand, classical liberalism sought a formal equality of rights (to property, contract, and expression) to avoid undeserved advantages and rewards that did not derive from personal desert. These liberals contrasted true justice with both the feudal inequality of formal rights (based on legally enforced status and hierarchy) and the communistic equality of substantive rights which distributes benefits according to need. Such liberal social justice tends not towards democracy or equal political rights of suffrage but rather towards an unequal political meritocracy which allocates votes and power to those who display the appropriate "merit."

By contrast, modern liberalism has shifted to endorsing full political equality with universal suffrage. In place of distributing benefits on the basis of individual effort and desert, modern liberals seek to balance claims of desert with claims of need. Modern society seeks to satisfy needs up to a legal minimum and reward deserts with whatever wealth remains only after the earlier distribution to the needy. In modern societies "political equality has come to symbolize the basic human equality between the members of a given community in such a way that everyone who is excluded from, or treated unequally in, the political realm will suffer a loss of self-respect.

Those liberals who accept self-respect as the justification of political equality, will also tend, in social justice theory, to replace desert with need as the standard for distributing society's resources. "In so far as the size of inequalities weakens the self-respect of the worse-off members of society, it will be necessary to redistribute resources from the better-off to the worse-off. This new notion of egalitarian social justice used to protect "self-esteem" is incompatible with the earlier classical liberal view of justice as the reward of merit and desert. "To some extent the rewards of the able and hard-working have to be reduced to provide for the sick, the unemployed, and so on." Need thus replaces merit as the criterion of social justice.

INDEX

Authors

Research Fields

Economics

Education

History

Law

Philosophy

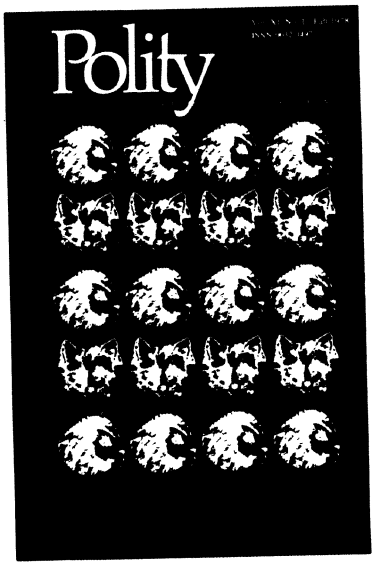
Philosophy of Science

Political Philosophy

Political Science

Psychology

Sociology



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