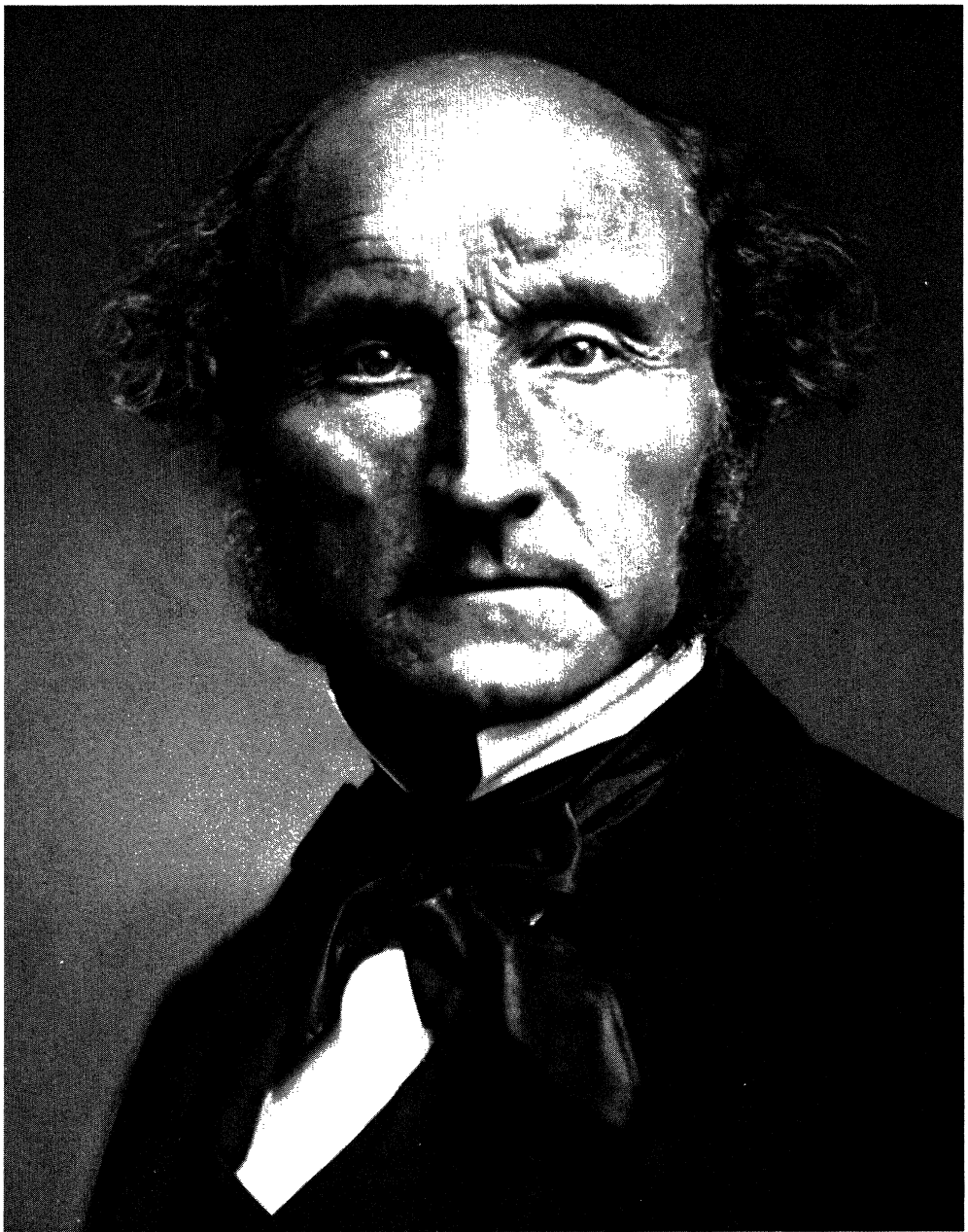


April/June 1979

LITERATURE *of* LIBERTY

A Review of Contemporary Liberal Thought

John Stuart Mill *by John N. Gray*

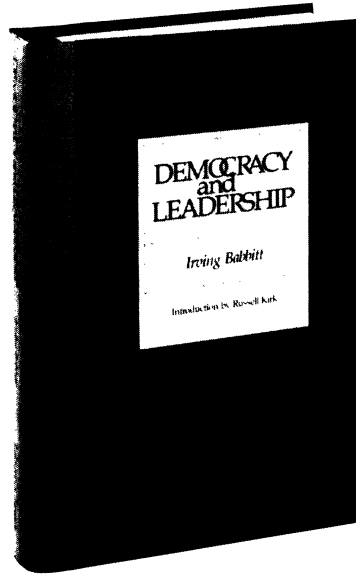


John Stuart Mill (1806–1873)

Now Available:

Democracy and Leadership By Irving Babbitt

A penetrating work of political and moral philosophy, first published in 1924, *Democracy and Leadership* is packed with wisdom. Irving Babbitt was a distinguished professor of French literature at Harvard and a leader of the intellectual movement called American Humanism. This was his only directly political book, and in it Babbitt applies the principles of humanism to the civil social order. He summarizes the principal political philosophies; contrasts Rousseau with Burke; describes true and false liberals; distinguishes between ethical individualism and destructive egoism; and stands up for work and duty. *Democracy and Leadership* joins the broken links between politics and morals—and that accomplishment marks it as a work of genius. With a foreword by Russell Kirk. Hardcover \$9.00, Softcover \$4.00.



LibertyPress LibertyClassics

We pay postage, but require prepayment, on orders from individuals. Please allow four to six weeks for delivery. To order this book, or for a copy of our catalog, write:
LibertyPress/LibertyClassics
7440 North Shadeland, Dept. W12
Indianapolis, Indiana 46250

LITERATURE of LIBERTY

A Review of Contemporary Liberal Thought

Volume II, No. 2 April-June 1979

Bibliographical Essay

<i>John N. Gray</i>	John Stuart Mill: Traditional and Revisionist Interpretations	7
---------------------	--	---

Summaries

Legal Philosophy	38
Republican Ideology	48
Self-Interest	62
Economic Schools	76

Index

Authors	89
Research Fields	90

Editorial Staff

Leonard P. Liggio
Editor

John V. Cody
Managing Editor

Ronald Hamowy
Senior Editor

Virginia Brown
Assistant Editor

Anne Stausboll
Production Manager

Edward H. Crane
President, Cato Institute

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.

Subscriptions and correspondence should be mailed to *Literature of Liberty*, 1177 University Drive, Menlo Park, California 94025. The annual subscription rate is \$16 (4 issues). Single issues are available for \$4 per copy. Overseas rates are \$20 for surface mail; \$34 for airmail. An annual cumulative index is published in the fourth number of each volume. Second-class postage paid at San Francisco, California, and at additional mailing offices.

© Cato Institute 1979

ISSN 0161-7303

Cover: John Stuart Mill in late maturity, reproduced courtesy of Radio Times Hulton Picture Library, London.

Associate Editors

John E. Bailey, III
Rome, Georgia

Randy Barnett
Chicago, Illinois

William Beach
University of Missouri

Donald Bogie
Georgetown University

Samuel Bostaph
Western Maryland College

M. E. Bradford
University of Dallas

Alfred Cuzan
New Mexico State University

Douglas Den Uyl
Marquette University

Edward C. Facey
Hillsdale College

John N. Gray
Jesus College, Oxford University

Malcolm Greenhill
Oxford University

M. E. Grenander
SUNY at Albany

Walter Grinder
University College, Cork, Ireland

John Hagel
Cambridge, Massachusetts

Jack High
University of California, Los Angeles

Tibor Machan
Reason Foundation, Santa Barbara

William Marina
Florida Atlantic University

Gerald O'Driscoll
New York University

Lyla O'Driscoll
New York Council for the Humanities

David O'Mahony
University College, Cork, Ireland

Ellen Paul
Miami University

Jeffrey Paul
University of Northern Kentucky

Joseph R. Peden
Baruch College, City University of New York

Tommy Rogers
Jackson, Mississippi

Timothy Rogus
Chicago, Illinois

John T. Sanders
Rochester Institute of Technology

Danny Shapiro
University of Minnesota

Sudha Shenoy
*University of Newcastle
New South Wales*

Bruce Shortt
Harvard Law School

Joseph Stromberg
University of Florida

David Suits
Rochester Institute of Technology

Karen Vaughn
George Mason University

Alan Waterman
Trenton State College

Marty Zupan
Santa Barbara, California

Editorial

The resurgence of interest in John Stuart Mill (1806-1873) began in the early 1940s stimulated by F. A. Hayek whose efforts and enthusiasm inspired new publications of collections of Mill's works, his letters, and biographies. Hayek's own study, *The Constitution of Liberty* (1960), commemorated the centenary of the publication of Mill's *On Liberty*.

Hayek was particularly fascinated by Mill's views of the influence of intellectuals on public policy. A statesman adopts a policy, not because of objective reality, but because of public opinion. The statesman takes public opinion for his objective reality, and he is successful to the degree that he operates within the accepted framework of thought. On a deeper level, however, the framework of thought which guides human action is derived from those intellectuals whose profession it is to apply abstract ideas. Hayek comments on "The Rule of Ideas," in chapter 7 (7) of *The Constitution of Liberty*:

The belief that in the long run it is ideas and therefore the men who give currency to new ideas that govern evolution, and the belief that individual steps in that process should be governed by a set of coherent conceptions, have long formed a fundamental part of the liberal creed. It is impossible to study history without becoming aware of 'the lesson given to mankind by every age, and always disregarded—that speculative philosophy, which to the superficial appears a thing so remote from the business of life and the outward interest of men, is in reality the thing on earth which most influences them, and in the long run overbears any influences save those it must itself obey.' Though this fact is perhaps even less understood today than it was when John Stuart Mill wrote, there can be little doubt that it is true at all times, whether men recognize it or not.

Mill keenly appreciated the indispensable and complex role of the intellectuals. Indeed, he understood the need both of developing abstract ideas and of disseminating these ideas to wider intellectual publics. The active intellectual's role as a disseminator of ideas—whether moral or economic views, political or scientific beliefs—complemented the contemplative intellectual role. John Mill was himself influenced by his father's role as scholar-activist in the radical politics of his day (cf. Joseph Hamburger, *James Mill and the Art of Revolution*, New Haven: Yale University Press, 1963; and

Hamburger, *Intellectuals in Politics: John Stuart Mill and the Philosophic Radicals*, New Haven: Yale University Press, 1965). Accordingly, Mill both edited and subsidized the *London and Westminster Review*, and wrote editorials or articles for the radical *Examiner* and *Morning Chronicle*. By financially supporting Herbert Spencer's periodical and his books, Mill intended such ideas might begin their process of influencing public opinion. Mill attributed his political education to assisting his father James, in the preparation of the *History of British India* (1817). What impressed Mill was his father's repeated expression of "opinions and modes of judgment of a democratic radicalism then regarded as extreme," and James Mill's severity in examining "the English Constitution, the English law, and all parties and classes who possessed any considerable influence in the country." Mill's economic education had begun in the period of his first visit to France where he stayed at the Paris home of Jean Baptiste Say. Mill went on to assist his father in writing the *Elements of Political Economy* (1821) which was modelled on Say's *Treatise on Political Economy* (1803, 1814).

Later, reflecting the influence of Say and Adam Smith, John Mill's *Principles of Political Economy* (1848) made an original contribution in his discussion of laissez-faire. Mill appreciated Smith's and Say's refusal to separate political economy from the philosophy of society. As a result of Smith's example, Mill sought to provide social applications as well as principles. This led to the charge that Mill changed from a young noninterventionist to a collectivist. The falsity of this charge has been argued by Pedro Schwartz in *The New Political Economy of J. S. Mill* (London: Weidenfeld and Nicolson, 1968; Durham, N.C.: Duke University Press, 1973). Along with other Utilitarians of the Bentham school, the young Mill did not oppose State intervention. As Élie Halévy points out (*The Growth of Philosophic Radicalism*, London, 1928) Utilitarianism was rife with nonliberal elements, and the utilitarian disciples of Jeremy Bentham were not supporters of individual rights or opponents of state intervention. Thus, it was a natural progression for John Mill as a young man to accept the tenets of early socialism which was rooted in some of the ideas of the Utilitarians.

The young Mill's movement toward collectivism was partly his response to Thomas Macaulay's critique of James Mill's "On Government." Mill's father had endorsed Bentham's recognition that the state was a fiction since it was merely a sum of individuals. However, Utilitarians reached the non-individualist conclusion that the sum of the most individual goods or wills created a basis for a majority's ability to rule. To Utilitarians the concept of individual rights was suspect as a potential sanctuary for the politically dominant classes. Macaulay's emphasis on the Whig view of 'rights' thus awakened Mill's doubts about Utilitarianism, but John Mill re-


jected the inconsistent position of the Whigs and turned to the more consistent expression of emerging socialism. Mill came under the influence of the socialist digression from the school of J. B. Say, represented by the followers of Henri de Saint-Simon (cf. Élie Halévy, "Saint-Simonian Economic Doctrine," *The Era of Tyrannies*, Garden City, N.Y.: Doubleday, 1965).

Mill's movement away from his youthful collectivism and toward an individualist position began by the challenging of his original interventionism by discussions with Alexis de Tocqueville. Mill, in fact, lent his efforts to popularize Tocqueville's *Democracy in America* (vol. I, 1835; vol. II, 1840) in England. Through Tocqueville, Mill discovered the importance of local self-government in America, including its role in the political education of ordinary people. The danger of majoritarianism, originally pointed out by Tocqueville, grew in clarity for Mill (cf. Leon Bramson, *The Political Context of Sociology*, Princeton: Princeton University Press, 1961). Mill saw the danger of government "trampling meanwhile with considerable recklessness, as often as convenient, upon the rights of individuals, in the name of society and the public good." Mill's individualism, inspired by Tocqueville, was reflected in his advocacy of laissez-faire as a general rule in his *Principles* and *On Liberty* (1859).

Liberty functioned as a cardinal moral virtue for Mill. A distinguishing trait of Mill's personality and style is his liberality of spirit or his elaborate fairness to all intellectual positions—a trait that informs his writings and was vital to his analysis of progress in human history. In *On Liberty*, he defends the concept of liberty as intellectual autonomy, the cultivated habit of being "intellectually active" and fearless when advancing "heterodox speculation." Those periods of human history brilliant for their "high scale of mental activity" were those that allowed free, untrammelled thought and discussion to break "the yoke of authority" and to throw off the "old mental despotism." Mental freedom alone could sustain such liberating impulses that led to progress and improvements in human personal character and social institutions. But mental freedom and truth-seeking are nurtured only by the clash of debate and continuous Socratic examination of rival ideas, however one-sided, or non-conforming, or heretical. Any intellectual position "however true it may be, if it is not fully, frequently, and fearlessly discussed . . . will be held as a dead dogma, not a living truth." Even partisan one-sided truths, "compel reluctant attention to the fragment of wisdom which they proclaim as if it were the whole."

Thus, in the judgment of Mill in *On Liberty*, Rousseau's one-sided ideas critical of modern science and civilization had the healthy effect of supplementing the defective, one-sided idea of the

eighteenth-century philosophes. "With what a salutary shock did the paradoxes of Rousseau explode like bombshells in the midst, dislocating the compact mass of one-sided opinion and forcing its elements to recombine in a better form and with additional ingredients." Posterity gained through such a dialectic a greater appreciation of "the superior worth of simplicity of life" and "the enervating and demoralizing effect of the trammels and hypocrisies of artificial society."

Mill's *On Liberty* is the most widely known defense of individualism in the English-speaking world. As the epigraph for *On Liberty* Mill chose a quotation from the recently published (1852) English translation of Wilhelm von Humboldt, *The Limits of State Action* (1791): "The grand, leading principle, towards which every argument unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity." Mill argued against state intervention because of the free market's efficiency when compared to political direction. However, Mill's major argument was founded on the evil effect of state intervention on the development of the individual, and thus, on the progress of society. Mill noted: "A people among whom there is no habit of spontaneous action for a collective interest . . . have their faculties only half developed; their education is defective in one of its most important branches. [Government] substitutes its own mode of accomplishing the work, for all the variety of modes which would be tried by a number of equally qualified persons aiming at the same end." 



Bibliographical Essay

John Stuart Mill: Traditional and Revisionist Interpretations

by John N. Gray

The Traditional View of an Incoherent Mill . . . A "Two Mills" Thesis?

The traditional interpretation pictures John Stuart Mill (1806–1873) as one of history's paradigmatic transitional thinkers. Situated uncertainly in a no-man's land between the rival intellectual traditions of nineteenth-century England, Mill in his writings displays no settled or coherent doctrine on social and political questions. In Mill's work, the received view contends, competing sympathies and commitments are the subject matter of an ultimately unsuccessful eclectic method. This alleged hodgepodge produces a brittle conceptual framework which quickly disintegrates under any sustained critical pressure. Thus, Mill's utilitarianism seems at odds with his values of self-development and individuality; his democratic loyalties are in a tug-of-war with his elitist dread of majority tyranny; and his allegiance to laissez-faire principles is compromised by his concessions toward the socialist currents of his day. Some exponents of this traditional view have gone so far as to claim to discern in Mill's writings an intellectual schizophrenia: the lineaments of "two Mills," each with a distinctive expression and a coherent message.

There is, unfortunately, little agreement in identifying and describing these "two Mills," so that the vast secondary literature on the younger Mill contains a bewildering variety of pictures of him as at once a radical libertarian and a cautious, conservative, Whig trimmer; a moral totalitarian and a questing, open-minded skeptic; an unreconstructed empiricist and a free-wheeling epistemological pluralist. Whether they detect two (or more) Mills in John Mill's

writings, or deny the presence of any integrated personality in his work, advocates of the received view all share the assumption that the promise of unity was not, and perhaps could never have been fulfilled in Mill's philosophy. A distinguished statement of the received view is that of John Plamenatz when he says of Mill's *Utilitarianism*, (1861, 1863), his *Liberty* (1859), and his *Considerations on Representative Government* (1861) that "These three essays written by a sick man in his premature old age, exhibit all his defects as a thinker, his lack of clarity, his inconsistency, and his inability either to accept whole-heartedly or to reject the principles inherited from his father and from Bentham."¹ Even Isaiah Berlin, one of Mill's more sympathetic interpreters, speaks of the "outdated psychology and lack of logical cogency" of *On Liberty*, and concludes that "Rigour in argument is not among Mill's accomplishments."²

The Revisionist View of Mill as a Consistent Thinker

It must be admitted at once that there is much in Mill's work and in his life that supports the standard interpretation. Mill's notorious ambivalence to the utilitarian intellectual tradition he inherited from his father and Jeremy Bentham; his receptive response to some aspects of a German Idealist conception of the mind which the conservative Coleridge transmitted to the English world; his many shifts of position and emphasis on the great issues of socialism, democracy, and private property; together with the still intensely controversial question of how important for the development of his thought was his relationship with Harriet Taylor—all these vacillations conspire to suggest the image of a man inwardly divided. Mill seems a man at once acutely sensitive to the limitations of the utilitarian world view (whose official exponent he remained) but yet unable to abandon it decisively.

In recent years, however, a wave of revisionist scholarship and interpretation has emerged, whose theme is that the judgment of J.S. Mill as a hopelessly muddled thinker may yet be ill-founded and certainly remains premature. This post-war revisionism argues that our assessment of Mill is distorted by an earlier generation of intellectual historians who caricatured the aims and doctrines of nineteenth-century English utilitarianism. Furthermore, our view of Mill has been badly obscured by the hasty and presumptuous judgment of Mill's substantive argument by the philosophers and social theorists of the late nineteenth and early twentieth centuries. If the revisionist scholars are on the right track, the work of the younger Mill may be a natural development of his utilitarian predecessors' achievements. Mill's writings may contain a subtle and complex body of doctrine which may not be internally inconsistent.

Let us look, then, at the dialogue between traditional and revisionist interpretations of Mill. How convincingly does each interpretation deal with Mill on liberty, utility and morality, on private property, socialism and democracy, and on the scope and prospects of a science of society?

The Traditional View of J.S. Mill on Liberty, Morality, and Utility

The traditional accounts of Mill's doctrine of the limits of state interference interpret his enterprise in *On Liberty* (1859) as the impossible but perennially attractive one of squaring the circle: that of grounding a theory of the priority of liberty (itself part of a more comprehensive theory of justice and moral rights) in a utilitarian ethic. Mill, indeed, is clearly aware that some of his readers will see his enterprise as wholly misconceived. Thus, in the essay on *Utilitarianism* (1861, 1863) discussing the utilitarian foundation of his theory of moral rights he concedes: "To have a right, then, is I conceive, to have something which society ought to defend me in the possession of. If the objector goes on to ask, why it ought? I can give him no other reason than general utility."³ But the traditional view insists that liberal utilitarianism is itself a weak, incoherent "reason," since it is an unstable compound of two incompatible elements: (1) a teleological or maximizing element, in which the only duty any man or any government ever has is to promote the greatest good, and (2) a deontological or "side-constraint" element in which individuals are recognized as possessing inviolable moral rights against unjust treatment by state or society. What if achieving the greatest social good seems to require sacrificing some individual? The incompatible elements in utilitarianism itself create this dilemma.

Stephen's Analysis of Utility as Antiliberty and Proauthority

By far the most formidable of Mill's nineteenth-century English critics, the jurist James Fitzjames Stephen, criticizes Mill precisely because in *On Liberty* he illegitimately attempts to derive liberal conclusions supporting individual rights and liberty from a utilitarian outlook. Stephen, himself an avowed utilitarian, saw utilitarianism as having a natural antiliberal, authoritarian implication. In his great book, *Liberty, Equality and Fraternity* (1873), surely one of the world's masterpieces of conservative political thought, Stephen argues against Mill: if the only thing that has intrinsic value for utilitarians is happiness, and we are bound to promote happiness by the most efficacious means, then a consistent utilitarian policy of social betterment will not be especially tender

toward individual liberty. In its political agenda utilitarianism will grant no priority to the protection of the classical liberal freedoms. Mill's utilitarian ancestors, such as Hume and Bentham, agree with Stephen in ranking liberty as, in fact, only one (and not always the most important) among the means necessary to security and good government in promoting happiness. Stephen's most forceful objection to Mill at this point of his critique is that, if Mill is truly a utilitarian, then liberty can have no intrinsic or inviolable value whatever: its value or disvalue will depend wholly on its contingent consequences which, given the variety of human circumstances, will be complex. As Stephen puts it:

if the word 'liberty' has any definite sense attached to it, and if it is consistently used in that sense, it is almost impossible to make any true general assertion whatever about it, and quite impossible to regard it either as a good thing or a bad one. If, on the other hand, the word is used merely in a general popular way without attaching any distinct signification to it, it is easy to make almost any general assertion you please about it; but these assertions will be incapable of either proof or disproof as they will have no definite meaning. Thus the word is either a misleading appeal to passion, or else it embodies or rather hints at an exceedingly complicated assertion, the truth of which can be proved only by elaborate historical investigations."⁴

*Traditional Critique of Mill's Utilitarianism:
Its Unwarranted Optimism About Human Nature
and Failure to Support the Priority of Liberty*

It is Stephen's charge that, given a less charitable historical view of human nature than the one Mill endorses, utilitarian principles in many circumstances might very well dictate supporting the stability of a traditional society of hierarchy and authority. In other circumstances they would sanction even more regimented schemes, such as Jeremy Bentham's Panopticon prison (or, a later objector might add, the Webb's admiration of Soviet Five-Year Plans and Stalin's collectivization program), which seek to promote aggregate social welfare by the morally monstrous expedient of inflicting great hardship on some or many members of a society. In modern terms, Stephen's argument might be reformulated in the following question: How can Mill as a utilitarian consistently object to the kind of authoritarian society depicted in Huxley's *Brave New World* or B.F. Skinner's *Walden Two*? Stephen's own intention was not, indeed, to give a utilitarian defense of the dystopian schemes of Bentham and his associates, but simply to affirm that nothing in the utilitarian tradition gave liberty any special importance, while much in human experience testified to the greater importance of security, order, and discipline as conditions of a happy life.

The traditional criticism of Mill's enterprise in *On Liberty* really

has two prongs: (1) On the one hand, how can Mill possibly hope to defend what he calls "one very simple principle"⁵ of giving liberty a privileged place among political values by invoking considerations of utility alone? Several of the critics discussed in J.C. Rees's classic study of *Mill and his Early Critics* (1956) highlight the incongruity in Mill's libertarian enterprise of defending this utilitarian principle "as entitled to govern absolutely" restrictions of liberty by society or state. However, as an avowed utilitarian, Mill is already committed to utility as yielding an absolute principle for determining the limits of state interference. (2) On the other hand, Mill's critics insist that, even supposing a successful utilitarian proof for liberty's priority over other political goods, its validity would hinge entirely on the accuracy of our conjectures about the effects on man and society of a regime of liberty. Such a utilitarian argument for liberty, in other words, is permanently defeasible and reversible. It yields antilibertarian results whenever particular predictions of the utility of liberty (or the picture of human nature on which such predictions depend) can be undermined by empirical investigation and argument.

Fitzjames Stephen, like many of Mill's Victorian critics, asserts vehemently that the utilitarian proof will work only on the basis of a wildly optimistic assessment of the prudence and virtue of the average sensual man and of his real moral psychology. Mill's account of human psychology, Mill's critics insist, is excessively and narrowly intellectualist, neglecting the central role of passion, prejudice, and sheer moral perversity in human life. As the writer in the *London Review* (1859) observes, "... the truth is, that intellectual independence, however theoretically desirable, is practically unattainable in the vast majority of cases."⁶ Given this more somber view of human psychology, can free men be trusted to promote social utility?

Mill was defended against Stephen by disciples such as John Morley, Viscount of Blackburn, Liberal statesman, and editor of the *Fortnightly Review* (1861–1882), and by writers such as the positivist Frederic Harrison. But the general reaction to *On Liberty* was by no means so generally favorable as much second hand intellectual history has led generations of students to suppose. Principled argumentative defense of the doctrine of *On Liberty* was, in fact, a minority position throughout most of nineteenth-century English thought and letters. Probably the best available study of the whole period, apart from Rees's book, is John Roach's essay, "Liberalism and the Victorian Intelligentsia." B.E. Lippincott's broader study of conservative and liberal thought in Victorian times, *Victorian Critics of Democracy* (1938), should also be consulted for its chapter on J.F. Stephen and its sensible treatment of

the antidemocratic liberal and conservative reaction. F.W. Knickerbocker's *Free Minds—John Morley and his Friends* (1943) is also useful as a source for information on such Liberals as Frederic Harrison.

The Revisionist View of Mill on Liberty, Morality, and Utility

Much of the best recent work on Mill's liberalism asserts that critics have misconstrued both of Mill's central principles of utility and of liberty. Mill's views on utility and liberty can be properly stated only with terms and distinctions taken from his own general theory of human nature and of practical reasoning.

As stated in the crucially important writings of Ryan⁷, Brown⁸, Dryer⁹, and Lyons¹⁰, the revisionist position begins by clarifying Mill's utility principle. It is neither a classical aggregative (i.e., average utility) principle, or a substantive moral principle. Whatever their differences in other areas of Mill scholarship, the revisionists agree that Mill saw the principle of utility as a very abstract principle, specifying that *happiness alone* was valuable for its own sake. Happiness governed not just morality but all the areas of practice identified in the theory of the "Art of Life" expounded in Mill's *System of Logic* (1843).

The Utility Principle, the Art of Life, and the Theory of Morality

In his *System of Logic*, Mill speaks of the three departments of the Art of Life as being "Morality, Prudence or Policy, and Aesthetics; the Right, the Expedient, and the Beautiful or Noble, in human conduct as works." The doctrine of the Art of Life (now widely seen as incorporating one of Mill's most valuable, original, and neglected insights) distinguishes between judgments of a properly moral character and judgments which appraise actions (or human characters) in terms of their prudence or of their nobility. As Alan Ryan intimates in his path-breaking explorations of these aspects of Mill's thought, the arguments of *Utilitarianism* and of *On Liberty* presuppose an understanding of the Art of Life defended in the *System of Logic* (1843). The plausibility of the substantive doctrines defended in these two essays thus depends in part upon the cogency of the conceptual analysis in Mill's *Logic*. It is the argument of *Utilitarianism* that the principle of utility does not allow judgments about men's moral obligation or rights to be derived in any very direct way. Indeed, the subject matter of utility is not the moral rightness or wrongness of actions at all. Rather as an axiological principle specifying *happiness* as the only desirable end, quite distinct from any substantive moral principle, Mill's utility principle is

conceived as "the test of all conduct." As the revisionists understand it, the utility principle does not impose on anyone a moral obligation to maximize utility, and it does not condemn as a moral wrong any failure to do so. It follows from this that a utilitarian is not necessarily inconsistent if he knowingly sacrifices some utility for the sake of an equitable distribution of the utility that remains.

If the utility principle does not condemn as a moral wrong any discussion to maximize utility, what claims *does* it make on action, and how *is* it related to morality?

First, in specifying happiness as the only intrinsic value, the utility principle entails that all reasons for or against any act, policy, or practice must relate to and weigh its contribution to happiness. The principle of utility actually entails another principle, invoked by Mill but not named by him, which (following Brown and Lyons) I shall call the "Principle of Expediency." An act (for example) is expedient if it brings about a net utility benefit, and it is maximally expedient if it brings about greater utility than any available alternative. An avowed utilitarian violates consistency if he knowingly acts inexpediently, but Mill's theory of morality and of moral obligation insists that the man who acts inexpediently need not thereby commit any moral wrong. As Mill puts it in *Utilitarianism*:

We do not call anything wrong, unless we mean to imply that a person ought to be punished in some way or other for doing it; if not by law, then by the opinion of his fellow-creatures; if not by opinion, by the reproaches of his own conscience. This seems the real turning point of the distinction between morality and simple expediency. It is part of the notion of Duty in every one of its forms, that a person may rightfully be compelled to fulfill it. Duty is a thing that may be *exacted* from a person, as one exacts a debt. Unless we think that it may be exacted from him, we do not call it his duty.¹¹

Mill's theory of morality and of moral obligation has here two levels—one conceptual, the other substantive. At the conceptual level, Mill proposes that we judge something morally right or wrong, only if its performance can be enforced, and its omission punished. There is a necessary conceptual connection, according to Mill, between the idea of a moral judgment and the legitimacy of its enforcement. Contrary to countless interpreters and historians, then, Mill believes in the Enforcement of Morality. But the morality in question is not necessarily the popular or positive morality of prejudice and tradition, but rather the utilitarianly-sanctioned "critical" morality which is the subject matter of *Utilitarianism* and *On Liberty*.

How, then, can we know the area of morality and of moral obligation? First of all, by applying the Principle of Expediency to the question of enforcement and punishability. An act is morally right, not if it is maximally expedient that it be done, but only if it is

maximally expedient that its performance be enforced by penalties for noncompliance. It is worth noting that this aspect of Mill's theory of morality shows that his theory is not a species of *act-utilitarianism*.¹² Mill cannot be an act-utilitarian, since his theory explicitly denies that an act's being maximally expedient generates any moral reason to do it. Nor, contrary to an influential current of interpretation begun by Urmson,¹³ can Mill be regarded as any sort of *rule-utilitarian*. Firstly, Mill's principle of utility, like the principle of expediency which it entails, does not mention either acts or rules, and, in fact, applies to things apart from acts and rules. Also, an act may be morally wrong, provided it is maximally expedient for the agent to suffer the penalties of conscience from it (regardless of whether any rule exists or might exist whose violation would be similarly wrong). Mill's moral theory, in short, is not accurately described in the traditional terms of act-and rule-utilitarianism. It remains recognizably utilitarian, nonetheless, in virtue of its clearly teleological orientation.

*What Constitutes Moral Wrong: Mill's Harm Principle or
Principle of Liberty*

We have seen that for Mill moral wrongs are to be distinguished from merely inexpedient actions, and that a necessary condition of something being morally wrong is that punishing it would be maximally expedient. We have yet to discover what, according to Mill, is *in fact* morally wrong, and we can do this only by looking at the relationship between liberty and morality developed in the essay *On Liberty*. For it is there that Mill states his famous *principle of liberty*, sometimes called the self-protection or noninterference principle. This principle of liberty stipulates

that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.

We need to clarify several important points about Mill's statement of this principle of liberty. Mill clearly means that unless "harm to others" can be prevented, there is *no reason at all* for any limitation of liberty. As Brown puts it, "By giving this necessary condition for the existence of a reason for restriction, it rules out as irrelevant absolutely everything but the prevention of harm to others. This sharp and unequivocal denial," as Brown rightly continues, "is the cutting edge of Mill's essay."¹⁴

Among the reasons which Mill's liberty principle rules out as irrelevant to justifying liberty-limiting acts, policies, and institutions are: (1) *paternalist* considerations, reasons having to do with

preventing a person from harming himself, or with forcing him to benefit himself, and (2) *moralist* reasons, reasons to do with the enforcement of the positive or popular moral sentiments of a person's community. Mill also dismisses as legitimate reasons for limiting liberty: (3) *welfarist* considerations, reasons that favor restricting a person's liberty for the benefit of others.

Mill's liberty principle is, at first sight at least, a very stringent test of the legitimacy of state interference, one which should appeal strongly to economic and civil libertarians. For it condemns as illegitimate any restriction of liberty by state or society which is not designed to prevent men from harming one another. And, further, taken together with Mill's principles about enforcing morality, it yields a substantive criterion or moral wrongness. An act (or whatever) is morally wrong, if and only if punishing it both would prevent harm to others and would be maximally expedient. (We must always remember here that "punishment," for Mill, includes the sanctions of public opinion and the goads of conscience as well as legal penalties.) Mill's doctrine of liberty claims that the requirements of morality will be maximally expedient if they are themselves minimalist: we maximize utility if we restrict morality to questions of harm-prevention.

Traditional Objections to Mill's Harm Principle

At this point in stating Mill's doctrine, however, we may profitably raise a number of traditional objections. What, after all, are we to understand by the expression "harm to others"? Judgments about harm are often controversial (think of recent debates about the harmful effects of hallucinogenic drugs): how can we resolve such controversies? Does "harm" designate damage only to a person or property, or is there a class of moral harms, or harms to character, which may legitimately affect the liberty principle? Again, does the liberty principle license us to restrict liberty only where the conduct affected causes or threatens harm to others? Or does the harm principle sanction restrictions of liberty in all cases where harm to others can *thereby be prevented*? Further, is there really a category of actions which harm only the agent himself but not others? Is there in fact a class of self-regarding acts, whose primary effects are on the agent himself? If not, if all acts affect others through their effects on the agent, then the class of acts protected by the liberty principle would seem to be empty. Finally, even supposing these difficulties are solvable, it is far from obvious that Mill's liberty principle in fact expands liberty in its operations. Making "harm to others" the only good reason for interference, far from curtailing the legitimate powers of the state, might (because we all harm each other all the time in so many ways) indefinitely augment them.

*The Revisionists' Clarification of Mill's Harm or
Liberty Principle.*

All these questions have much exercised Mill's traditional critics, and to deal with these difficulties the revisionists have advanced a range or more or less persuasive answers. By far the most common accusation against the doctrine of *On Liberty* has always been that Mill's principle of self-protection presupposes a distinction that we cannot intelligibly make between acts which are "self-regarding" (in that they affect only or primarily the agent himself), and acts which are "other-regarding." As Fitzjames Stephen puts it, with characteristic bluntness and clarity.

I think that the attempt to distinguish between self-regarding acts and acts which regard others, is like an attempt to distinguish between acts which happen in time and acts which happen in space. Every act happens at some time and in some place, and in like manner every act that we do either does or may affect both ourselves and others. I think, therefore, that the distinction (which, by the way, is not at all a common one) is altogether fallacious and unfounded.¹⁵

One of Mill's early critics, Joseph Parker, in his *John Stuart Mill on Liberty, A Critique* (1865) makes a similar point about determining the range of application of the self-protection principle, when he asks how far Mill is prepared to stretch the concept of harm. If, as Mill thought, the state is justified in imposing compulsory education, and this is warranted in that it prevents "harm to others," what policy could not similarly be justified? In the same vein, Leslie Stephen, James Fitzjames Stephen's brother and biographer, makes substantially the same objection, when in the third volume of his great work, *The English Utilitarians* (1900), he declares that "It is . . . the acceptance of this antithesis, put absolutely, the 'individual', as something natural on one side, and law, on the other side, as a bond imposed upon the society, which at every step hampers Mill's statement of any vital truths."¹⁶

Rees's Defense of Mill's Harm Principle: Interests and Rights

How do the revisionists try to rebut these objections? By far the most powerful and influential attempt to clarify self- and other-regarding acts is made by J.C. Rees in his well-known 1960 paper, "A Re-reading of Mill on Liberty."¹⁷ Rees distinguishes between actions that merely *affect* others and actions that affect others' *interests*, and gives massive textual support for the claim that Mill's working conception of harm in *On Liberty* is that of *harm to interests*. The crucial difficulty for this interpretation, however, is how Mill (or anyone else) is to know what are a man's interests. Might not a committed puritan claim that he had an 'interest' in the moral environment in which he and his children live, and hold the state

might restrict the liberty of those libertines and deviants who threaten to harm or damage the moral environment? Rees's interpretation is clearly open to such an objection, since he emphasizes that interests "depend for their existence on social recognition and are closely connected with prevailing standards about the sort of behavior a man can legitimately expect from others."¹⁸ It is, in fact, in order to distinguish human interests from "arbitrary wishes, fleeting fancies or capricious demands,"¹⁹ that Rees stresses their dependence on norms and values which enjoy social recognition.

But, as Professor Richard Wollheim recognized, in Rees's interpretation Mill's liberty or self-protection principle becomes relativistic and conservative in character, and this cannot possibly accord with Mill's intentions. For on Rees's interpretation the boundaries of the self-regarding area will be relativistically determined by the currently dominant conception of interests, and the liberty principle will expand freedom only insofar as legal and social limitations on liberty lag behind changing, more restrictive conceptions of human interests.

D.G. Brown has argued persuasively²⁰ that we can avoid this relativization of Mill's liberty principle only if we construe Mill as understanding "interests" in a strictly naturalistic and prudential fashion. Rees himself considers this question further in a subsequent "Postscript"²¹ to his paper, where he emphasizes the relevance to *On Liberty* of certain passages in *Utilitarianism*. Brown's interpretation is further supported by the independent work of D.G. Long. In his highly relevant book *Bentham on Liberty* (1977), Long emphasizes that several of the crucial distinctions at work in *On Liberty* are variants of distinctions made by Bentham. And this is most obviously the case with Mill's distinction between self-regarding and other-regarding actions.

What complicates Brown's revisionist interpretation is that in *On Liberty*, as in *Utilitarianism*, Mill recognizes that some, but not all, interests are crucially relevant in determining the self-regarding area and thus in applying principles about liberty of action. When Mill in *On Liberty* demarcates the area of life in which we may be held accountable to society, he speaks not of determining what are a man's interests but of ascertaining his *rights*. "This conduct," he says, "consists in not injuring the interests of one another; or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights."²² Here the test is not whether a man's interests have been damaged by other men, but whether his interests ought to be protected as rights. Mill does not think, then, that if a man has an interest, he thereby has any kind of right. His reference to "certain interests" suggests that only *some* interests can be grounds for rights, but which ones?

Utility and the Permanent Interests of Man as A Progressive Being

In the introductory chapter of *On Liberty* Mill relinquishes any support for his argument derivable from ideas of abstract right. Furthermore, he insists that he regards utility "as the ultimate appeal on all ethical questions; but" he goes on at once, "it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being."²³ The difficulty here is pushed one stage further back, in that we now need a criterion for distinguishing between those interests of man that are transitory and those that are permanently his in virtue of his character *as a progressive being*. What is there in Mill's doctrine of liberty that answers this need for a criterion?

Much of the secondary literature surrounding *On Liberty* might lead a student of Mill's thought to suppose that his use of terms like "harm" and "interests" is hopelessly vague. Given the apparent deficiency in Mill's argument, his principle of self-protection might also seem practically useless. As I have already observed, the force of that principle disqualifies anything but harm-prevention as a test for restricting liberty. Paternalist, welfarist, and moralistic interventions, therefore, all fall under the general ban.

Human Interests, Moralism, and Paternalism

But are we always able to differentiate paternalistic reasons for interference from moralistic ones? Is there, indeed, any determinate area in which paternalism is at all an issue? The controversies surrounding "moral offenses" suggest that judgments both about what is in a man's interests and about the general interest, have an inescapably controversial aspect. Professor Basil Mitchell shows this inherently debatable meaning of "interest" (while accurately reporting on the famous controversy between Lord Devlin and Professor H.L.A. Hart).²⁴ The ambiguity of "interest" is evident in Hart's argument that much existing legislation that restricts liberty may be justified as protecting men's own interests by paternalistic, rather than moralistic reasonings. This argument, in other words, assumes that we can assess a man's interest without presupposing any evaluation of the worthiness or excellence of his way of life.

To put this logical situation in a later terminology,²⁵ Hart (like Mill before him) can resist Devlin's and Fitzjames Stephen's argument that individual immorality is itself harmful to others by contending that "interests" designate a purely *want-regarding* concept, and by claiming that state interference can never rightly be *ideal-regarding*. Then the central claim of liberalism in Hart, as in Mill, is that the state in its liberty-restricting activities should be

neutral between necessarily controversial competing ideals of human excellence. Mill's argument, indeed, is that since assessments of a man's excellence or nobility are not authentically *moral* evaluations at all, the liberal thesis that the state may properly enforce the requirements of critical or rational morality, and those alone, itself *entails* that the state may never coercively support one ideal of human excellence against its competitors. Mill differs from Hart, and lines up with later libertarians like Thomas Szasz,²⁶ in his uncompromising opposition, not only to legal moralism, but also to state paternalism.

*Man as a Progressive Being: Choice, Liberty,
and the Psychology of Self-Realization*

What is the nub of the revisionist interpretation? We can concede that these may well be "hard cases for the harm principle,"²⁷ that is to say, cases where Mill's self-protection principle gives, at best, ambiguous guidance to action. But revisionists hold that Mill's theory of happiness and human nature is rich and dense enough to clarify how to apply the principle of liberty across a very wide area. The crucial point to recognize is that Mill's Aristotelian and Humboldtian conception of happiness had moved far enough away from old-fashioned psychological hedonism to allow considerations of individuality and self-realization to enter as *constitutive ingredients* into the idea of human happiness. It is the theory of the higher pleasures, as elaborated in Utilitarianism, that the exercise of the human capacities of choice, reflective thought, and active imagination is not just a means to human happiness, but a vital ingredient of it.

Mill further embeds this abstract and open-ended view of happiness in his characteristic theory of human nature as permanently capable of self-alteration and unpredictable self-transformation. Mill embraces this view in *On Liberty* following such German writers as Schiller and Novalis (who were in close touch with Wilhelm von Humboldt when he was writing his libertarian classic *Limits of State Action*). This is the same view which Mill elaborates more explicitly in the seminal articles on *Bentham* (1838) and *Coleridge* (1840): it is a mistake to regard man as a natural object with fixed qualities and predetermined possibilities. Rather, man is to be conceived as a reflective and self-critical agent, actively engaged in the open-ended venture of exploring his own powers and the world that he has created for himself. What distinguishes man from the inhabitants of the animal kingdom, and gives him a special relationship with nature, is only his capacity for reflective thought and deliberate choice; but this is of capital importance. For, unlike that of an animal, the shape of a man's life is not ordained in advance by a

repertoire of unalterable instincts, but is never less than the permanently revisable product of his own past thought and action. Man, unlike the animals, is a progressive being. But Mill never unreservedly took this to mean that moral improvement or social progress are inevitable features of the human prospect. Being a progressive being means that man's life is not bound by any fixed, unalterable natural endowment, but is rather the unforeseeable product of men's choices and experiments upon themselves.

*The Interests of a Progressive Being:
Autonomy, Security, and Liberty*

We are now in a better position to understand what Mill means, when he speaks of "the permanent interests of man as a progressive being." The permanent interests of any person are those that concern him or her as a chooser, a creature who fashions his or her life by provisionally endorsing but forever criticizing principles and policies. We can turn to the essay on *Utilitarianism* for further illumination on Mill's notion of interests. We find there that Mill regards security as man's least dispensable interest, the precondition of any valuable form of life. We may suppose that Mill understands by security, security of person and property. The theory of the higher pleasures,²⁸ in turn, assures us that Mill believed that what was in a person's interests was a choice-environment undistorted by invasive social and legal controls. This freedom of choice is an indispensable condition of the kind of happy life that is distinctive of a person. It is clear that we can secure free choice only by the social and legal protection of an area of *individual liberty*.

The permanent or vital interests of persons, accordingly, are the interests they have in security and in liberty. These interests thus ground their moral rights. Damaging these interests constitutes, not just harm, but injustice. Mill's doctrine of liberty and utility, we may repeat, judges that morality is maximally expedient (and utility is itself maximized) when we maximize personal choice or liberty and minimize moral requirements. As a general rule, these moral requirements should be restricted to a prohibition of aggression and of injury to individual security and liberty. Mill believes we have no *moral duty* to benefit others, except in special circumstances as when a person freely chooses contractual obligations. This is surely a conclusion which should be welcome to all radical libertarians. One objection may be that the conclusion is somehow suspect because it depends on contingent assumptions about man and society. But this objection surely begs the questions whether any social philosophy can avoid such assumptions.

Mill on the Priority of Liberty as Autonomy: Laissez-faire, Private Property, and Socialism

I have argued, from the revisionist viewpoint, that Mill could consistently attach a priority to individual liberty in political and social life. Allowing liberty to be preeminent whenever background conditions of security and an acceptable level of culture were established,²⁴ Mill could yet remain faithful to his overriding utilitarian commitment.

But what does Mill's commitment to liberty's priority mean in the intensely controversial areas of his view on laissez-faire, socialism, and private property? As a start to answering this difficult tangle of questions, we need to challenge the traditional view that Mill's working conception of liberty was a negative one.³⁰ For, first, several of the fairly explicit definitions he gives of liberty commit him to a strongly positive libertarian standpoint.³¹ Secondly, although *On Liberty* indeed discusses the classical-liberal grounds and limits of justified coercion, that essay makes clear that Mill would regard any society which lacks conflicting modes of thought and life as failing to fit the ideal type of a society of free persons. Central to the argument of *On Liberty*, then, is the notion of the free person as having available to him a wide range of alternative lifestyles and modes of thought. Mill sees the free person as liberated from the yoke of custom and convention, from the conformist pressures of peer-groups as well as the legal penalties of law, in areas where harm to others is not an issue. This positive notion of *freedom as autonomy* informs all of Mill's writings on socialism and private property: It is related to the idea of the autonomous man defined in David Riesman's well-known sociological study of the nonautonomous or "other directed" person in modern society, *The Lonely Crowd*. The intellectual pedigree of freedom as autonomy extends back at least as far as de Tocqueville's writings on American democracy.

Mill on the Role of Government: Neither Laissez-faire nor Socialism

It is evident that the argument of *On Liberty* (1859) is a natural development of Mill's discussion of the proper province of government in his immensely influential *Principles of Political Economy* (1848). Mill never unreservedly endorsed the standard slogans of laissez-faire, and much of the time, indeed, he has engaged in criticizing them, sometimes misguidedly. We would, however, fundamentally misconceive of Mill's intellectual development imagining (as is sometimes still done) that Mill was intellectually seduced by Harriet Taylor from an orthodox laissez-faire position to some-

thing more akin to Fabian socialism. Mill's criticisms of the capitalist political economy of his day, though often misconceived, fundamentally differ from those of the socialists of his time and ours.

Before we can demarcate Mill's critique of capitalism from that of the socialist orthodoxies, we need to be clear about Mill's relations to the doctrine of laissez-faire by making a number of distinctions. In the *Principles of Political Economy* (1848), Mill distinguished between 'necessary' and 'optional' state functions, and divides 'optional' into two types: 'authoritative' and 'nonauthoritative'. Mill differed from stringent laissez-faire noninterventionists, and argued that it was completely inadequate to restrict state activity merely to the prevention of force and fraud. He concluded pragmatically that the range of necessary government functions, though certainly broader than supposed by many exponents of laissez-faire, could not be identified by any universal rule, save the simple and vague one: that we should permit governmental intervention only when the case of expediency is strong.³²

Against interventionists, however, Mill makes a crucial distinction between the two mentioned types of 'optional' government interference, the 'authoritative' and the 'nonauthoritative'. Since the 'authoritative' comprehends interventions by sanction and legal prohibition, there is a strong presumption against it deriving from utility in the larger sense. There is, however, no such presumption against the 'nonauthoritative' interference which merely supplements and does not replace successful private initiative. Unlike nonauthoritative interference, which avoids all coercion beyond that involved in the exercise of the state's taxing power, authoritative interference involves the state as order-giver and tends to stultify the spirit of independence.

Thus Mill believed that the larger utilitarian considerations on the one hand supported noninterference, but on the other hand allowed the state a wide range of functions, when it is clear that private institutions cannot adequately supply certain desirable things (public goods, as we should call them today). In this way, the state might properly assume a share of responsibility for such items as poor relief, colonization, scientific research, and the financing of education. Mill's overall view, in fact, was that the preservation of individuality in the modern world could not be achieved by sticking to any very fixed rule, but demanded great centralization of information in the state, together with great diffusion of power and initiative throughout society.

Mill's Conception of Distributive Justice vs. Orthodox Socialism

If Mill's criticism of orthodox laissez-faire went so far, how did his "new political economy" differ from contemporary and later socialist orthodoxy? Pedro Schwartz shows in his important book, *The New Political Economy of J.S. Mill* (1972) that the major targets of Mill's critique are the maldistribution of property and an oppressive system of industrial organization. One of the main causes of the maldistribution of property, according to Mill, was the concentrations of fortunes facilitated by uninterrupted accumulation of wealth across the generations. Mill's remedy for this maldistribution, which he proposed in the first edition (1848) of the *Principles*, was the institution, not of an estates duty, but of what we would nowadays call an accessions or inheritance tax, to be levied on the recipient and not on the donor of capital. For Mill, the merit of such a tax was that, unlike other arrangements, it need not transfer wealth from private individuals to the state, since it was easily avoidable by the desirable expedient of dispersing one's wealth widely. Importantly, Mill favored a steeply progressive inheritance tax. This tax, though it would allow the transfer of a "modest competence," would destroy all great fortunes in a couple of generations.

Mill's support of progression in *inheritance* taxation contrasts sharply with his opposition to it in the taxation of *income*. A progressive income tax, he argued, was tantamount to "hanging a weight upon the swift to diminish the distance between them and the slow"; it was to impose a penalty on people for having worked harder and saved more than their neighbors, which is the same as "relieving the prodigal at the expense of the prudent." One explanation for this disparity in kinds of taxes lies in Mill's constant preoccupation with saving and his lifelong distaste for conspicuous consumption. These motives led him to express his support in principle for an expenditure tax before the Select Committee on Income and Property Tax of 1861.

Mill's Lockean Distributive Theory vs. Egalitarianism

Another deeper reason for his contrasting attitudes to income and inheritance taxes, one which I shall need to expand upon, is that Mill's conception of distributive justice was by origin a Lockean one. Although this Lockean position tended to make him favor a redistribution of property and of incomes, it had no specifically egalitarian complexion. Mill clearly avows the Lockean pedigree of his

doctrine of property and distributive justice, when he gives a quasi-canonical statement of the grounds and limits of property rights:

The institution of property, when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she have produced by their own exertions or received either by gift or fair agreement, without force or fraud, from those who produced it. The foundation of the whole is, the right of producers to what they themselves have produced.³³

Statements such as this (which could easily be multiplied) open up a gulf between Mill's doctrine of property and that elaborated in the tradition of Hume, Bentham, and the elder Mill. The gap develops because Mill absorbed a Lockean, Ricardian labor theory of value, which he used to ground a theory of justice in property titles based on notions of desert. This labor theory of the acquisition of property rights explains why Mill always treated the ownership of land as a special case, in which the existence of permanent bequeathable property rights is least justifiable. Similarly, the labor theory of property accounts for his sustained interest in schemes for peasant proprietorship and his unremitting hostility to landlords. Again, it is a Lockean conviction that the marginal productivity of a man's labor is one good measure of his worth and one that should be encouraged. This conviction accounts for Mill's uncompromising defense of labor competition and his unrepentent support for the incentives of piece-work in increasing individual productivity. Mill's redistributionist proposals about inheritance also owe their rationale to another Lockean belief. In the market economy of his day, Mill lamented that "reward instead of being proportioned to labour and the abstinence of individuals, is almost in inverse ratio to it." The Lockean background for Mill's conception of distributive justice is recognized in Lawrence C. Becker's recent study, *Property Rights* (1977), which expands and criticizes Locke's own theory.

However, Mill's distributionism, that is to say his desire to distribute property on the basis of individual desert, has another source. This is the ill-judged and fatal methodological dichotomy he sought to make between laws of production and laws of distribution. As he famously puts it:

The laws and conditions of the production of wealth, partake of the character of physical truths. There is nothing optional, or arbitrary in them . . . this is not so with the distribution of wealth. That is a matter of human institution solely. The things once there, mankind, individually or collectively, can do with them as they like.³⁴

This split between *production* versus *distribution* may be restated as follows: Somehow persons produce wealth through rather mechanical procedures without any options or choices on their part, and we need not examine their motivations or incentives in doing

so. The only question that seems relevant to this approach is how society should choose to distribute the wealth that mysteriously appears. However, this approach gives little thought to the effects on producers of social schemes to redistribute the wealth they create. In fact such redistribution may discourage producers from producing their product.

In this disastrous dissociation of production and distribution, with its implicit "manna from heaven" view of how goods and commodities are produced and with its failure to treat capitalism as a unified system of both production *and* distribution, Mill propounds the central heresy of modern Social Democracy. For this misleading dichotomy of production and distribution sanctions the belief that productive and distributive arrangements of different sorts may promiscuously be mixed so as to realize some ideal or preferred pattern of distribution. This is a delusion that is justly assaulted both by Marxians and by such neo-Austrian economists as F.A. Hayek and Murray Rothbard. In this belief, Mill fostered a harmful tradition of social criticism of capitalism. We are only lately recovering from this belief's ill-effects in social theory and political practice. At the same time, all who are not exponents of natural rights theory will commend Mill for arguing that property rights are not things settled once and for all, deducible from some supposed axioms of ethics. Mill viewed property rights, no less than political institutions, as creatures of "time, place and circumstance," to be assessed and altered to harmonize with "the permanent interests of man as a progressive being."

Mill's Syndicalism vs. Authoritarian Socialism

Mill thus advanced contemporary Social Democracy with his erroneous notions about what constituted justice in distribution. But we should not suppose that his form of anticapitalism had much in common with that of the Fabian socialists who came after him. (Nor is there any strong evidence to support the received view that Mill's approach to socialism and private property, or to any other major issue, was substantially modified by the influence of Harriet Taylor.³⁵) It is true, however, that Mill was a lifelong opponent of one mode of capitalist industrial organization. He opposed those enterprises which are owned and managed by owners of capital who stand in an authoritarian relationship with wage-earners. He thought this became worse rather than better with the growth of joint-stock companies. He opposed it because, in the first place, he thought it institutionalized a permanent conflict of interests between capital-owners and wage-earners, and he doubted if any productive system which rested on such a basis could be either stable or efficient. Again, he supposed that the separations between

wage-earners and owner-managers deprived workers of any real opportunity for personal initiative and precluded their becoming anything like the self-reliant individuals celebrated in *On Liberty*. Such objections to the capitalist system of his day led Mill to take a continuing interest in schemes for profit sharing, industrial partnership, and producer's cooperation. But his utopian views went far beyond such proposals and (as Lionel Robbins has suggested³⁶) can best be characterized as a form of nonrevolutionary competitive syndicalism. As Mill put it himself in his *Principles*:

The form of association . . . which if mankind continue to improve must be expected in the end to predominate is not that which can exist between a capitalist as Chief, and work people without a voice in the management, but the association of labourers themselves on forms of equality, collectively owning the capital with which they carry on their operations and working under managers elected and removable by themselves.³⁷

It is worth emphasizing that, while there are many objectionable aspects of Mill's syndicalist or non-state socialist utopias, it has no affinities whatever with the paternalist State celebrated in the Fabian socialist tradition. In Mill's posthumous *Autobiography* (1873), he certainly envisaged an economic order which was no longer recognizably that of nineteenth-century England, but it differs at least as much from our own interventionist economy. If Mill is in any sense a socialist then his was decidedly a "market socialism." He nowhere fatally compromises the core capitalist institutions of private property in the instruments of production and commodity production for competitive markets. Further, in considering the relations between Mill's position and the various socialist orthodoxies, we should note that, despite his iconoclastic sympathies with trade unionism, he envisaged no place for trade unions in the society of the future. He looked forward to a time when the harmony of interests between all partners in production, facilitated by workers' ownership and self-management, would allow "the true euthanasia of trades unionism."³⁸

*Mill on the Limits of Economic Growth:
Its Harm to Individual Character and Social Values*

Finally, Mill's thought significantly contrasts with his socialist posterity in his opposition to productivist conceptions of the good life. Like the other classical economists, Mill accepted that economic growth could only be temporary in a world of scarce natural resources in which population constantly pressed on land and food reserves. In contrast with all other economists in the classical tradition and in its socialist aftermath, however, Mill did not fear the arrival of a stationary economy, but rather welcomed it as an oppor-

tunity for a large-scale transformation in social values. Doubtless, a part of Mill's concern that society be re-ordered to allow for a peaceful transition to a no-growth economy derives from his neo-Malthusian insistence on the finitude of the world's resources and the ever-present danger of overpopulation. Yet Mill's advocacy of a stationary-state economy is largely concerned, not with considerations of resource-depletion, but with the damaging effects on human character of the unremitting pursuit of possessions and with the alleged destructive consequences for the natural environment of open-ended economic growth. In Mill's own emphatic words, in the chapter on "The Stationary State" in the *Principles*:

"I confess I am not charmed with the ideal of life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing and treading on each other's heels, which form the existing type of social life, are the most desirable lot of mankind, or anything but the disagreeable symptoms of one of the phases of industrial progress."³⁹

In words which show him to have moved altogether outside the Benthamite utilitarian tradition, Mill goes on to illustrate the harmful consequences for human character and development of an overcrowded world: "It is not good for man to be kept perforce at all times in the presence of his species. A world from which solitude is extirpated is a very poor ideal . . . Nor is there much satisfaction in contemplating the world with nothing left to the spontaneous activity of nature." Concluding the chapter in his *Principles* with the search that "a stationary condition of capital and population implies no stationary state of human improvement," Mill effectively confirms his distance from the productivist central stream of classical economic thought and of its socialist aftermath. Clearly John Stuart Mill, at least among the great liberals, owed little—too little perhaps—to any culture of possessive individualism.⁴⁰

We may well question the practical cogency of Mill's vision of a society of fraternal but competitive workers' cooperatives. No one who now reads the *Principles* can help reflecting that it became the standard economics textbook at a time when Britain was still only semi-industrialized. At this time the statification of the economy by interventionism was minimal and the joint-stock revolution had only recently got under way. It was an era when it was unthinkable that multinational corporations should arise possessing a discretionary authority often exceeding that of sovereign states. Further, we now know something of the problems of labor-managed economies (such as postwar Yugoslavia) resembling Mill's syndicalist utopia. What we know suggests their liability to debilitating influences, including especially an ineradicable disposition to an irrational allocation of labor. And, as both F.A. Hayek and Milton Friedman have had occasion to observe,⁴¹ Mill's distributionism,

combined with his belittling of the achievements of technology, caused him to support the bizarre view that no further economic growth was needed in mid-nineteenth century England, but only a radical redistribution of its products. As Hayek has put it,⁴² Mill "appears to have been unaware that an attempt to cure even extensive poverty by redistribution would in his time have led to the destruction of what he regarded as cultured life without achieving its object."

Mill and Socialism

These defects in Mill's positive doctrine of a post-capitalist society are widely admitted in the relevant secondary literatures.⁴³ It remains unquestionably the case, however, that a deep gulf separates Mill's idiosyncratic synthesis of laissez-faire with socialism from any subsequent socialist orthodoxy. If today, we have little to learn from Mill's political economy, still we ought, in intellectual honesty, to distinguish his errors from the even worse ones of his socialist rivals and heirs. Indeed, many socialists today might still benefit from reading Mill's posthumously published *Chapters on Socialism*, in which he prophetically exposed the dangers to individuality posed by a socialist economy.

John Stuart Mill's Idea of a Science of Society: One or Two Mills?

We now move on to one of the oldest, and most persuasive, traditionalist objections to the unity and coherence of Mill's social philosophy, and one which has furthered a number of "two Mills" theses. This objection focuses on a tension between Mill's view of mind and action, the tension between his theory of human nature (presupposed by Mill's liberalism) and that to which he explicitly commits himself in his "official" philosophical canon. Broadly speaking, traditional critics point to a tension between the empirical, more deterministic, and passive conception of human nature (defended, with several changes of emphasis, in Mill's 1843 *System of Logic* and in his 1865 *Examination of Hamilton's Philosophy*), and the view of the mind as free, active, and creatively ordering the raw data of experience. This second view seems presupposed by the argument of *On Liberty*, and Mill gestures towards it in such occasional pieces as his essay on "Two Varieties of Poetry." This traditional criticism of Mill is powerfully made by a nineteenth-century writer, Charles Douglas, in his *John Stuart Mill* (1895):

Because all improvement depends upon ideas, it must come from individuals; and the most real and secure improvement—that of men themselves—consists in their adoption of new and better ways of thinking.

Personality is thus, for Mill, at the very centre of human affairs. Human progress depends, not only upon rational conditions, but still more upon choice, and thought, and character and qualities of personal life. If Mill is committed by his presuppositions to another way of conceiving men's relation to the world, yet his assertion of the fundamental importance of personality forces itself through his empiricism, and modifies the strictness of the theory (pp. 177–178).

A very similar argument, contending that Mill's ideal of a free man commits him to a view of the mind as creative and ungoverned by causal laws, has been elaborated much more recently by J.W.N. Watkins in a lecture to the Royal Institute of Philosophy.⁴⁴ Mill's views of the sovereign autonomous individual thus seems to impute to man a contracausal freedom of action which Mill's official empiricist philosophy denies.

*Mill as a Transitional Thinker on Human Nature:
Between Mechanism and Idealism*

This, however, is only one aspect of the claim that two views of human nature compete and conflict in Mill's thought. At the most general level, such arguments raise the question of how Mill's moral and political philosophy is related to his theory of knowledge, and especially to his account of the scope and methods of a science of society.

The traditional interpreters are on firm ground when they claim that Mill's theory of human nature is a halfway house between the avowedly mechanistic account that Bentham and Mill's father developed, and the Idealist view defended by such later liberal thinkers as Bernard Bosanquet and T.H. Green. Several recent writers acknowledge that Mill strongly inclined to endorse the view (intimated in *On Liberty* and expounded in the writings of Wilhelm von Humboldt and Coleridge) that emphatically denied the constancy of human nature and constantly emphasized its liability to unpredictable metamorphosis. Richard Wollheim has declared that "Mill denied the uniformity of human nature. In doing so he rejected a belief that, implicitly or explicitly, has been central to the thought of the European Enlightenment, and thus by descent to classical Utilitarianism." R.J. Halliday, in his recent important book on Mill, sympathetically airs many revisionist claims and states: "Mill felt himself emancipated from simple psychological beliefs. Psychological hedonism, in particular, implied too neat and too narrow an account of motivation, there was no permanent human nature, to be explained by universal and invariant laws. . . . Mankind were not alike in all times and places."⁴⁵ Given Mill's methodological eclecti-

cism, we must regard such claims as only a little less extravagant than Karl Popper's account of Mill which castigates him as an exponent of psychologism⁴⁶ The real situation is more complex, and suggests that the traditionalists are right in affirming that Mill never enunciated a coherent philosophy of human nature.

Mill's Science of Human Nature: Uniform Laws vs. Constancy

The key point to make here is twofold: (1) Mill largely did free himself from any belief in the *constancy* of human nature as always and everywhere moved by a small, tight-knit family of motives; but (2) he never decisively relinquished the empiricist project of a science of society, which must presuppose that human conduct is sufficiently *uniform* to be brought under law-like statements having both explanatory and predictive value. Thus, though Mill did indeed respond to Macaulay's famous attack on his father's *Essay on Government* by repudiating the apriorism of the classical utilitarian approach, he never gave up the empiricist assumption that the way to render human conduct intelligible was to subsume its episodes under laws akin to those we formulate in the natural sciences. Some evidence may suggest that Mill believed the methods of inquiry appropriate to the study of human social life may qualitatively differ from those appropriate to the study of nature. But in his official philosophical corpus, Mill always adhered to a doctrine of methodological monism, to a thoroughly reductionist account of man and society. Though at times Mill's intellectual integrity and open-minded candor admitted bewilderment at the difficulties arising from the empiricist projects of a science of society, he never abandoned that project.

In order to critically evaluate the various traditional and revisionist accounts of Mill's project of a science of human nature and society, it is necessary to consider just how far Mill endorsed the classic empiricist aspiration to formulate a theory of human nature using principles and methods no different from those employed by natural scientists. To succeed, such aspiration presupposes that human behavior is subject to universal regularities which are culturally and historically invariant. This aspiration also assumes that in the human or moral sciences, as in the physical sciences, explanation and understanding consist in fitting observed behavior under a general formula or natural law. It was, after all, that most skeptical of British empiricists, David Hume, who wrote that "mankind is much the same in all times and places."⁴⁸ Before Hume, Machiavelli had expressed in the *Discourses* a similar conviction of the constancy of human nature: "In all cities and in all peoples there are the same desires and the same passions as there always were. . . . Everything that happens in the world at any time has a genuine

resemblance to what happened in ancient times. This is because the agents who bring such things about are men, and men have, and always have had, the same passions from which it necessarily comes about that the same effects are produced."⁴⁹

Now it is true that, in his philosophical writings, such as the *System of Logic*, Mill did occasionally insist that there are such things as laws of human nature, determinate and ascertainable: "the laws of the phenomena of society are, and can be, nothing but the actions and passion of human beings," he says, namely "the laws of individual human nature." Mill goes on to insist that men are not "when brought together converted into another kind of substance, with different properties." Similarly, he declares that "Human beings in society have no properties but those which are derived from, and may be resolved into, the laws of nature of the individual." Thus far, Mill does indeed seem to be endorsing a historical, psychologistic empiricism about the study of human conduct.

*Human Nature: the Laws of Individual Psychology
and the Cultural, Historical Context*

Such an impression of Mill's "official" theory of human nature is seriously misleading, however, unless we severely qualify it. For Mill himself qualifies his assertion of the primacy of psychology among the social sciences with a reminder that it is necessary to grasp the historical context of human behavior if one is to understand it adequately: "as society proceeds in its development" he says "its phenomena are determined more and more, not by the simple tendencies of human nature, but by the accumulated influence of past generations over the present."⁵⁰ Mill's effort in his *System of Logic* to develop an account of the nature and scope of social explanation can be seen to embody an unresolved (and, very probably, insoluble) contradiction between the psychologistic methodological individualism (or "science of human nature") he had inherited from the empiricist tradition, and the Comtean, historicist belief that "the fundamental problem of the social sciences [is to discover] the laws according to which any state of society produces the state which succeeds it and which takes its place."⁵¹ It is widely recognized, even by the most sympathetic among Mill's interpreters, that his attempt to synthesize a form of methodological individualism which was no longer narrowly psychologistic with an emphasis on the cultural and historical contexts in which human behavior occurs was not, and could never have been successful.

Perhaps the most powerful statement of the philosophical inadequacy of Mill's conception of explanation and understanding in human studies has been given by the Wittgensteinian philosopher, Peter Winch, in his extremely influential and controversial book,

The Idea of a Social Science. Winch identifies the main weakness in Mill's philosophy not as its psychologistic tendencies, but more fundamentally, as its commitment to methodological individualism. This commitment is to a version of the "resolutive-compositive method" for which Newtonian mechanics (rather than the "geometrical" and "classical" methods he ascribed to his father and Macaulay respectively) was in Mill's view the appropriate model. Winch's argument against Mill is no doubt, part of a polemical argument against empiricism and against methodological individualism in the social sciences generally. As such, it is very powerful. However, the inadequacy of Mill's "official" philosophy of human nature is not sufficient to establish his philosophy as *inconsistent*.

Mill's Compatibilism: Free Will and Determinism

Traditionally, the latter objection of internal inconsistency chiefly addresses Mill's reflections on the questions of free will and determinism. Mill's account, which renews an ancient compatibilist tradition, seeks to reconcile freedom and determinism, to show that any threat to the reality of choice posed by causal determinism of human actions is fraudulent. Mill contends that the consistency of determinism with freedom is, in the last resort, a pseudo-problem generated by a conflation of causal necessity with coercion.

Mill directs the main force of his argument against the Owenite, necessitarian or modified fatalist view (which he had found so oppressive during the period of his mental collapse). This modified fatalism asserts human actions are the unavoidable results of human character. The very features of human character are themselves necessitated by circumstances which each man inherits from nature, history, and society. Mill's rebuttal of the Owenite view is straightforward enough, consisting of the assertion (unexceptionable so far as it goes) that a man can alter his own character if only he wishes to do so by (for example) placing himself under the influence of circumstances other than those which gave it its current attributes. The objection to this argument is equally straightforward, namely, that the impulse to change one's character must itself in any coherent determinism be determined by one's constitution, history, and circumstances.

Such objections are, however, far from conclusive. Any attempt to show that Mill's philosophy, and his moral and political theory, flounders on the problem of free will, involves a program of substantive philosophical argument against compatibilism. This is an area of philosophy in which nothing like a consensus has yet been reached (and in which one is not yet visible on the philosophical horizon). On this issue, at any rate, the charge that Mill's philoso-

phy lacks internal consistency must be given the Scottish verdict of "not proven."

A more problematic issue is that of the compatibility of the strongly fallibilistic theory of knowledge intimated in *On Liberty* with the inductivism defended in the *System of Logic* and throughout Mill's writings on epistemological writings. Paul Feyerabend has gone so far as to base one version of a "two Mills" thesis⁵² on this tension, claiming that in *On Liberty* Mill embraces a form of epistemological pluralism, stronger than Popper's falsificationism, in which human knowledge grows simply by the proliferation of conjectures and world views. Such a theory of knowledge would certainly conflict with the more straight-forwardly accumulationist, inductive account offered elsewhere in Mill's writings. But it is also contradicted by much of what Mill says in *On Liberty*.

*Mill as a Transitional Thinker: Between the Objectivist
and Skeptical Traditions of Liberalism*

Quite apart from the question of Feyerabend's fidelity to evidence about Mill's intentions in *On Liberty*—a question treated authoritatively by J.C. Rees⁵³—there is an overwhelming plausibility about the claim, recently advanced by Professor Basil Mitchell, that Mill stood between two traditions in liberal thought. According to Mitchell,⁵⁴ the two kinds of liberalism are distinguished chiefly by their account of the value of freedom. The "old" liberalism valued freedom because only in a free society could men have the chance to discover the truth about basic questions in morality and metaphysics. The new liberalism valued freedom precisely because there are no objective truths (at any rate in respect of evaluative and metaphysical questions). Again, according to Mitchell, the new liberalism is represented by Strawson, who in a well-known paper⁵⁵ justifies the freedom of individuals to realize a diversity of competing ideals of life within a framework of shared morality and law by arguing that no one of these ideals can be shown to be uniquely rational or even to be rationally preferable to other, well-formulated ideals.

Interestingly, though Mitchell follows most interpreters in claiming that Mill belongs to the tradition of "old liberalism" he goes on to acknowledge that "the seeds of the new liberalism" are to be found in Mill's defense of individuality. In this respect, at any rate, the traditional interpretation seems irresistible: throughout his adult life, Mill was poised in unstable equilibrium between a dogmatic, objectivist posture towards truth and validity in the areas of morality, metaphysics, and science—a posture he inherited from his father—and a skeptical outlook in all of these areas. Part of the

fascination of Mill's liberalism derives from the spectacle of his agonizingly self-conscious attempts to reconcile these irresolvably antagonistic outlooks.

Traditional and Revisionist Interpretations— A Provisional Evaluation

Speaking of his period of mental crisis, and of the change in his opinions which it wrought, Mill declared: "If I am asked what system of political philosophy I substituted for that which, as a philosophy, I had abandoned, I answer, no system; only a conviction that the true system was something much more comprehensive than I had previously had any idea of."⁵⁶ There can be little doubt that it is this self-critical and open-minded eclecticism of Mill's thought which has led many commentators, exasperated by the systematic elusiveness of his standpoint on the great philosophical and social issues of his time, to despair of finding any coherent view in his writings. Certainly, these are good grounds for the traditional interpretation in Mill's own many-sided intellectual development. It must even be conceded that, in all probability, the traditionalists are right in their contention that Mill never succeeded in welding the diverse intellectual traditions by which he was influenced into an integrated system. To this extent, the traditional interpretation must be upheld.

Several considerations emerge from the preceding discussion, however, which should cause us to moderate the severity of tone with which the traditional interpretation has often been accompanied.

(1) In the first place, while Mill's eclectic aspiration to synthesize the claims of utility and justice, laissez-faire and socialism, empiricism and a creative view of the mind may ultimately fail, his argument has been shown by the recent revisionist wave of Mill scholarship to be far more complex and subtle, far more acutely aware of obvious counterarguments, than exponents of the traditional view habitually allow. In some areas, indeed, it would be hasty and premature to suppose that Mill's reconciling purpose had been decisively defeated by progress in philosophical inquiry.

(2) Secondly, though we must not suppose that Mill is always clear-headed and consistent in argument, the power of his argument about the relations of utility, liberty, and moral rights should at least give pause to those who think intellectual traditions can be identified schematically by reference to some small group of dominating principles. Even if Mill's attempt to make peace between utilitarianism and justice does not in the end come off (and the issue must be regarded as still an open one) it does not do so because the

idea of a utilitarian theory of moral rights is self-evidently absurd. Indeed, this is one area where Mill's eclectic method produces hopeful results.

(3) Finally, it should be recognized that the construction of an integrated and comprehensive philosophy was not one of Mill's major aspirations. The revisionist literature on Mill will have done us all a service if, in encouraging us to look with respect on Mill's work, it encourages us also to emulate that tolerance of uncertainty, and reverence for diversity, which is the distinctive feature of Mill's intellectual personality. □

FOOTNOTES

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

1. J.P. Plamenatz, *The English Utilitarians*, p. 123.
2. Isaiah Berlin, "John Stuart Mill and the Ends of Life," in *Four Essays on Liberty*, pp. 174 and 189.
3. J.S. Mill, "Utilitarianism," in *Utilitarianism, On Liberty and Considerations on Representative Government*, p. 50.
4. James Fitzjames Stephen, *Liberty, Equality, Fraternity*, p. 176.
5. *On Liberty* (Everyman edition) p. 72.
6. I owe this quotation to John C. Rees's admirable book, *Mill and his Early Critics*, p. 31. The most comprehensive and reliable general bibliography of writings on John Stuart Mill is that published in the *Mill News Letter*. One of the best nineteenth-century criticisms of Mill on liberty is to be found in the Norton Critical Edition of *On Liberty*, edited by David Spitz, pp. 123-142, reproduced from an anonymous paper in the *National Review* 8 (1859).
7. Alan Ryan's main contributions are to be found in "Mr. McCloskey on Mill's Liberalism," *Philosophical Quarterly* 14 (1964); "John Stuart Mill's Art of Living," *The Listener*, October 21, 1965; *The Philosophy of John Stuart Mill*; *John Stuart Mill*; "John Stuart Mill and the Open Society," *The Listener*, May 17, 1973.
8. Donald G. Brown, "Mill on Liberty and Morality," *Philosophical Review* 81 (1972): 133-158. I am indebted also to Brown's papers on "What is Mill's Principle of Utility?" *Canadian Journal of Philosophy* 3 (1973): 1-12; "Mill's Act-Utilitarianism," *Philosophical Quarterly* 24 (1974): 67-68; "John Mill: John Rawls," *Dialogue* 12, 3 (1973): 1-3.
9. J.P. Dryer's contribution, on which Brown draws in part, entitled "Mill's Utilitarianism" may be found in *Essays on Ethics, Religion and Society*, J.M. Robson, ed., *Collected Works of John Stuart Mill*, 1969.
10. Lyon's principal contributions are: "J.S. Mill's Theory of Morality," *Nous* 10 (May 1976); "Human Rights and the General Welfare," *Philosophy and Public Affairs* 6 (Winter 1977); his books, *Forms and Limits of Utilitarianism* and especially his *In the Interest of the Governed*, a revisionist interpretation of Bentham's legal and political thought, are relevant to the interpretation of *On Liberty*.
11. *Utilitarianism* (Everyman edition) p. 45.
12. This point is made in a perceptive paper by Professor David Copp of Simon Fraser University, entitled "The Iterated-Utilitarianism of John Stuart Mill," and delivered to the Canadian Philosophical Association Congress, June 1978.
13. For the argument that Mill is a rule-utilitarian, see J.O. Urmson, "The Interpretation of the Moral Philosophy of J.S. Mill," *Philosophical Quarterly* 3 (1953).
14. Brown, "Mill on Liberty and Morality," p. 136.
15. Fitzjames Stephen, *Liberty, Equality, Fraternity*, p. 28.
16. Leslie Stephen, *The English Utilitarians*, Vol. III, p. 296.
17. John C. Rees, "A Re-reading of Mill on Liberty," *Political Studies* 8 (1960), reprinted with an important "Postscript" (1966) in *Limits of Liberty*, Peter Radcliff, ed. Rees's papers "A Phase in the Development of Mill's Ideas on Liberty," *Political Studies* 6 (1958); "Was Mill for Liberty?" *Political Studies* 14 (1966); and, "The Thesis of the 'Two Mills,'" *Political Studies* 25 (1977), should also be consulted.
18. Rees, in Radcliff, ed. *Limits of Liberty*, pp. 101-102.
19. Rees, in Radcliff, pp. 101-102.
20. See Brown, "Mill on Harm to Others' Interests," *Political Studies*.
21. See Radcliffe, *Limits*, pp. 106-107.
22. *On Liberty* (Everyman edition) p. 132.
23. *On Liberty*, p. 74.
24. See Herbert L.A. Hart, *Law, Liberty and Morality* and Patrick Devlin, *The Enforcement of Morals*.
25. The terminology of 'want-regarding' and 'ideal-regarding' principles derives from Brian Barry's book *Political Argument*.
26. See Szasz's many publications on involuntary hospitalization as an infringement of human rights.

27. I owe the expression, "hard cases for the harm principle," to Joel Feinberg, who uses it as the title for Chapter 3 of his excellent *Social Philosophy* where these matters are discussed.
28. The theory of the higher pleasures is expounded by Mill in *Utilitarianism*, Chapter 2.
29. Mill makes his qualifications to the range of application of his principles on p. 73 of *On Liberty* (Everyman edition.)
30. The terminology of 'positive' and 'negative' liberty is owed to Isaiah Berlin, who develops its sense in his "Two Concepts of Liberty," in *Four Essays on Liberty*.
31. Thus, Mill observes in the *System of Logic* (London, 1974 edition, p. 841) "it is said with truth, that none but a person of confirmed truth is completely free." In *An Examination of Sir William Hamilton's Philosophy* (London: Longman's, 1865, p. 510) he speaks of "that normal preponderance of love of right, which the best moralists and theologians consider to constitute the true definition of freedom."
32. See Vol. III *Principles of Political Economy* in the *Collected Works of John Stuart Mill*, edited by J.M. Robson and V.W. Bladen, Toronto, 1965, p. 804.
33. See Mill's *Principles* (Toronto edition) pp. 754-755.
34. See *Principles*, Bk. II, Chapter I: "Of Property," first paragraph, in *Collected Works of John Stuart Mill*.
35. The claim that Harriet Taylor's influence decisively affected the development of Mill's thought is still alive in much recent work. It is discussed critically by H.O. Pappe in his valuable monograph *John Stuart Mill and the Harriet Taylor Myth*, which is reviewed by John C. Rees in *Political Studies* 10 (1962): pp. 198-202.
36. See Lord Robbin's Introduction to Vol. IV *Essays on Economics and Society* in the *Collected Works of John Stuart Mill*, edited by J.M. Robson and Lord Robbins, Toronto, 1967, p. xi.
37. See *Principles*, (Penguin edition) p. 133.
38. This point is discussed in Pedro Schwartz's *The New Political Economy of J.S. Mill*, p. 103.
39. See *Principles* (Penguin edition), p. 113 ff.
40. My reference to possessive individualism is, of course, intended to designate C.B. Macpherson's ambitious ideological interpretation of liberalism in his *The Political Theory of Possessive Individualism*. He gives a more balanced view of liberalism, and an occasionally perceptive account of Mill, in his *The Life and Times of Liberal Democracy*.
41. See Friedman's *Capitalism and Freedom*, p. 170; and Friedrich A. Hayek's *The Constitution of Liberty*, p. 430.
42. Hayek, *The Constitution of Liberty*, p. 430.
43. See for example, Alan Ryan, *John Stuart Mill*, Chapter 6, for a critical discussion of some of the difficulties in Mill's account of property and distribution.
44. See J.W.N. Watkins, "Three Views Concerning Human Freedom," in *Nature and Conduct*, Royal Institute of Philosophy Lectures Vol. 8, London, 1974.
45. The preceding quotation from Wollheim occurs in his Introduction to the World's Classics Edition of *On Liberty, Representative Government and the Subjection of Women*, London, 1975, p. xi. The quotation from Halliday comes from his *John Stuart Mill*, pp. 55-56.
46. Popper's attack on Mill's "psychologism" occurs in Vol. 2 of his *The Open Society and Its Enemies*, Chapter 14.
47. The controversy surrounding Macaulay's attack on James Mill's *Essay on Government* has been marvelously presented in *Utilitarian Logic and Politics* by Jack Lively and John C. Rees.
48. See Hume's *Treatise of Human Nature*, Bk. I, Part 4, Section 6, for a development of this claim.
49. This passage from Machiavelli is quoted by Stuart Hampshire in a paper relevant to Mill Studies, "Uncertainty in Politics," *Encounter* (January 1957).
50. See *System of Logic*, Bk. VI, Chapter VIII, p. 583 (new edition, London, 1930) for this and the preceding quotation.
51. See Mill's *Against Comte and Positivism* for a development of this claim.
52. See especially the original version of P.K. Feyerabend, "Against Method" in Vol. 4 of *Minnesota Studies in Philosophy of Science: Analyses of Theories and Methods of Physics and Psychology*, p. 112.
53. See Rees, "The Thesis of the 'Two Mills,'" *Political Studies* (1977).
54. Mitchell, *Law Morality, and Religion*.
55. P.F. Strawson, "Social Morality and Individual Ideal," *Philosophy* (1961).
56. J.S. Mill's *Autobiography*, p. 97.

BIBLIOGRAPHY

- August, Eugene. *John Stuart Mill: A Mind at Large*. New York: Charles Scribner's Sons, 1975.
- Barry, Brian. *Political Argument*. London: Routledge, Kegan, and Paul, 1965.
- Becker, Lawrence C. *Property Rights: Philosophical Foundations*. London: Routledge, Kegan, and Paul, 1977.
- Berlin, Isaiah. *Four Essays on Liberty*. Oxford: Oxford University Press, 1969.
- Brown, Donald G. "John Mill: John Rawls." *Dialogue* 12 (1973): 1-3.
- . "Mill on Harm to Others' Interests." *Political Studies* 26 (1978): 395-399.
- . "Mill on Liberty and Morality." *Philosophical Review* 81 (1972): 133-158.
- . "Mill's Act-Utilitarianism." *Philosophical Quarterly* 24 (1974): 67-68.
- . "What is Mill's Principle of Utility?" *Canadian Journal of Philosophy* 3 (1973): 1-12.
- Devlin, Patrick. *The Enforcement of Morals*. Oxford: Oxford University Press, 1965.
- Douglas, Charles. *John Stuart Mill: A Study of his Philosophy*. Edinburgh: Blackwood, 1895.
- Dryer, J.P. "Mill's Utilitarianism." In *Essays on Ethics, Religion and Society*. Edited by J.M. Robson. Vol. X of *Collected Works*. Toronto: University of Toronto Press, 1969.

- Feinberg, Joel. *Social Philosophy*. Englewood Cliffs, N.J.: Prentice-Hall, 1973.
- Feyerabend, Paul K. *Against Method*. London: New Left Books, 1975.
- Friedman, Milton. *Capitalism and Freedom*. Chicago: University of Chicago Press, 1974.
- Halliday, R.J. *John Stuart Mill*. London: Allen & Unwin, Ltd., 1976.
- Hampshire, Stuart. "Uncertainty in Politics." *Encounter* 8 (January 1957): 34-37.
- Hart, Herbert L.A. *Law, Liberty and Morality*. Stanford, Calif: Stanford University Press, 1963.
- Hascall, Dudley L., and Robson, John M. "Bibliography of Writings on Mill." *The Mill News Letter* I (Fall 1965) through V (Spring 1970). Toronto: University of Toronto Press.
- Hayek, Friedrich A. *The Constitution of Liberty*. Chicago: Henry Regnery Company, Gateway Edition, 1970.
- Knickerbocker, F.W. *Free Minds: John Morley and His Friends*. Cambridge, Massachusetts: Harvard University Press, 1943.
- Lippincott, B.E. *Victorian Critics of Democracy*. Minneapolis: University of Minnesota Press, 1938.
- Lively, J. and Rees, J.C. *Utilitarian Logic and Politics*. Oxford: Oxford University Press, 1978.
- Long, D.G. *Bentham on Liberty*. Toronto: University of Toronto Press, 1977.
- Lyons, David. *Forms and Limits of Utilitarianism*. Oxford: Oxford University Press, 1965.
- . "Human Rights and the General Welfare." *Philosophy and Public Affairs* 6 (Winter 1977): 113-129.
- . *In the Interest of the Governed*. Oxford: Oxford University Press, 1973.
- . "J.S. Mill's Theory of Morality." *Nous* 10 (May 1976): 101-119.
- MacMinn, Ney; Hainds, J.R.; and McCrimmon, James McNab, eds. *Bibliography of the Published Writings of John Stuart Mill*. 1945; Reprint. New York: AMS Press, 1970.
- Macpherson, C.B. *The Life and Times of Liberal Democracy*. Oxford: Oxford University Press, 1977.
- . *The Political Theory of Possessive Individualism*. Oxford: Oxford University Press, 1962.
- Mazlish, Bruce. *James and John Stuart Mill*. New York: Basic Books, 1975.
- Mill, John Stuart. *Autobiography*. Oxford: Oxford University Press, 1971.
- . *An Examination of Sir William Hamilton's Philosophy*. London: Longman's, 1865.
- . *On Liberty*. Edited by H.B. Acton. London: Everyman edition, 1972.
- . *Principles of Political Economy, Collected Works*. Vol III. Edited by J.M. Robson and V.W. Bladen. Toronto: University of Toronto Press, 1965.
- . *Principles of Political Economy*. London: Penguin, 1970.
- . *System of Logic*. London: Longman's, 1874.
- . *Utilitarianism, On Liberty and Considerations on Representative Government*. London: Everyman edition, 1972.
- Mitchell, Basil. *Law, Morality, and Religion*. Oxford: Oxford University Press, 1967.
- Parker, Joseph. *John Stuart Mill on Liberty, A Critique*. London, 1865.
- Pappe, H.O. *John Stuart Mill and the Harriet Taylor Myth*. Melbourne: Melbourne University Press, 1962.
- Plamenatz, John Petrov. *The English Utilitarians*. Oxford: Basil Blackwell, 1958.
- Popper, Karl R. *The Open Society and Its Enemies*. London: Routledge, Kegan, and Paul, 1978.
- Radcliff, Peter, ed. *Limits of Liberty*. Belmont, Calif.: Wadsworth, 1966.
- Rees, John C. "A Phase in the Development of Mill's Ideas on Liberty." *Political Studies* 6 (1958): 33-44.
- . "A Re-Reading of Mill on Liberty." *Political Studies* 8 (1960): 113-129.
- . "H.O. Pappe's *John Stuart Mill and the Harriet Taylor Myth*." *Political Studies* 10 (1962): 198-202.
- . *Mill and His Early Critics*. Leicester: Leicester University College, 1966.
- . "The Thesis of the 'Two Mills'." *Political Studies* 25 (1977): 369-382.
- . "Was Mill for Liberty?" *Political Studies* 14 (1966): 72-77.
- Roach, John. "Liberalism and the Victorian Intelligentsia." *The Cambridge Historical Journal* 13 (1957): 58-81.
- Robson, John M. "John Stuart Mill." *Victorian Prose: A Guide to Research*. Edited by David J. DeLaura. New York: The Modern Language Association of America, 1973.
- . *The Improvement of Mankind: The Social and Political Thought of John Stuart Mill*. Toronto: University of Toronto Press, 1968.
- Robson, John M., gen. ed. *Collected Works of John Stuart Mill*. Toronto: University of Toronto Press, 1963-.
- Authoritative critical editions of all of J.S. Mill's writings, still in the process of being published.
- Robson, John M. and Laine, Michael, eds. *The Mill News Letter*. (Department of English, Victoria College, University of Toronto, Toronto, Canada.) Updated bibliographies of Mill published twice yearly since the fall of 1965.
- Ryan, Alan. *John Stuart Mill*. London: Routledge, Kegan, and Paul, 1974.
- . "John Stuart Mill and the Open Society." *The Listener* (May 17, 1973): 633-635.
- . "John Stuart Mill's Art of Living." *The Listener* (Oct. 21, 1965): 60-62.
- . "Mr. McCloskey on Mill's Liberalism." *Philosophical Quarterly* 14 (1964): 253-260.
- . *The Philosophy of John Stuart Mill*. London: Macmillan & Co., 1970.
- Schwartz, Pedro. *The New Political Economy of J.S. Mill*. Translated by B. Leblanc. Durham, N.C.: Duke University Press, 1972.
- Spitz, David, ed. *On Liberty*. Norton Critical Edition. New York: W.W. Norton, and Co., 1975.
- Stephen, James Fitzjames. *Liberty, Equality, Fraternity*. Edited by R.J. White. Cambridge: Cambridge University Press, 1967.
- Stephen, Leslie. *The English Utilitarians*. London: Duckworth, 1900.
- Strawson, P.F. "Social Morality and Individual Ideal." *Philosophy: The Journal of the Royal Institute of Philosophy* 36 (Jan. 1968): 1-17.
- Urmson, J.O. "The Interpretation of the Moral Philosophy of J.S. Mill." *Philosophical Quarterly* 3 (1953): 33-39.
- Watkins, J.W.N. "Three Views Concerning Human Freedom." In *Nature and Conduct*. London: Royal Institute of Philosophy Lectures Vol. 8, 1974.
- Wollheim, Richard. "Mill on the Limits of State Interference." *Social Research* 40 (1973): 1-30.

I

Legal Philosophy

F. A. Hayek characterizes a free society as the “rule of law.” Since a “government of men” can easily subject persons to arbitrariness, social order seems to require definite social rules, a “government of laws.” Yet legal history demonstrates how varied are opinions on the nature, origins, scope, and purposes of law. Hence the critical importance of legal philosophy, whose purpose is to define and evaluate various notions, standards and systems of law.

Legal philosophy seeks to ground law in reason and nature. Thus in 1608, “the oracle of the common law,” the English jurist, Sir Edward Coke, rebuked James I’s monarchical claims, by declaring: “Reason is the life of the law, nay the common law itself is nothing but reason.” Also, one legal tradition, that of natural law, measures positive or man-made law against the more objective standard of a “higher law.” But the endeavor to rationally define a substantive law that best fits human nature quickly leads to an investigation of which legal systems best fit the nature of law itself. Should legal systems be themselves subject to higher moral standards? Should legal systems be competitive or monopolies of the state? Should law seek to overcome social uncertainty by “social rules” or should we add the stipulation that these social rules must be such as to guarantee human rights?

The following set of summaries examine many issues of legal philosophy and diverse systems of law: the rule of law, legal authority, reason and natural law, legal naturalism, legal realism, law and freedom of inquiry, and finally the debated effects of economic interests on law and society.

Hayek and the Rule of Law

William Baumgarth
Fordham University

“Hayek and Political Order: The Rule of Law.” *Journal of Libertarian Studies* 2 (Winter 1978): 11–28.

This critical essay examines Hayek’s views on the superiority of evolved rather than designed social order, on the function of rules in society, and on the nature of coercion.

Hayek believes that the rules governing human conduct are not and cannot be fully comprehended by a single mind; nor can the agent calculate all the consequences of any particular action. One chooses not be-

tween actions having different sets of consequences but between actions whose consequences are relatively more or less certain. Social rules function to reduce avoidable uncertainty and to permit 'harmonious interchange' between agents; they make possible relatively accurate predictions of consequences. Social rules therefore differ from commands; they do not subject the agent to the will of another.

According to Hayek, if someone is coerced, then his mind has become the tool of another's will. Moreover, withholding the good is coercive only if the other has a monopoly over some good or service "crucial to my existence or the preservation of what I most value." The state, therefore, need not be coercive: its manipulation of the facts and circumstances of my action is not a substitution of another's will for my own; that the impersonal social forces bring me to take a job I do not like or to pay a dollar for a gallon of gasoline does not entail that I am coerced. The situation results from impersonal social forces rather

than an individual's action aimed at making me do his will; and the social forces are neither just nor unjust: only the actions of individuals can be so categorized.

The criticisms in this paper concern Hayek's defense of the state, and his view that the rules which reduce avoidable uncertainty define rather than derive from rights. Baumgarth argues that Hayek's conception of coercion is both too narrow and too wide in application: the clause 'preserving what I most value' brings into the concept instances most would regard as *not* coercive; the exclusion of the state's limitations of individual choice eliminates instances most regard as coercive. Baumgarth suggests that Hayek may have overstated his case in claiming that evolved rather than designed orders or rules are neither just nor unjust. He further points out that the concept of substantive rights (deemed morally and conceptually prior to law) might more effectively function as a check on uncertainty as well as a brake on the power of the state.

Law, Telos, and Authority

David N. Weisstub

Osgoode Hall Law School, York University

"Law and Telos: Some Historical Reflections on the Nature of Authority." *University of British Columbia Law Review* 12 (1978): 225-247.

Weisstub's concern is the doctrine of *telos* in jurisprudence, and not the relatively superficial version that calls attention to "the purposes of legal decisions according to the recognizable values upon which we found our rule-governed system of justice." He seeks to set out the primary roots of a more profound version of *telos*, the doctrine that identifies "the source to which all beings and all laws aim." His purpose is, in part, to draw attention to the dark side of *telos*, its alliance with assaults on human dignity, and its association with regressive moral legislation.

The ancient Greek pre-Socratics' conception of law and authority identifies

laws with dispensing or distributing. Law as distribution is then linked to a cosmology where the ordering of the universe is dynamic—a process rather than an accomplished state—where the principles of order may be many rather than one, and also where authority may reside in many purposeful intelligences.

Some pre-Socratics combined speculative cosmology with more empirical and scientific modes of inquiry, and gave science and logic a role in the foundation of a theory of law. Plato and Aristotle relied on a conception of predetermined and organic purposive order. Platonic legal doctrine, because of its reliance on conceptions of

geometric certainty, moved the theory of law closer to the abstract sciences. Plato's emphasis on universals, including rigid and abstract conceptions of human nature, generated an unchanging cosmology and a theory of authority that was "unscientific, anti-empirical and anti-democratic."

Aristotle's mixture of the empirical and the speculative generated a hierarchical metaphysics as inimical to democracy as Plato's doctrines.

The Thomistic synthesis of Aristotelianism and Christianity is introduced by discussion of the Hebraic conceptions of

authority and covenant. Like Aristotle, Aquinas held that in the universe there is a hierarchy of order; according to Aquinas, this order culminates "in the motionless and unchanging source of all authority in the personal Deity." His conception of law is inseparable from Christianity and from the medievalist's teleological conception of science.

Weisstub does not describe explicitly what he takes to be the most important remnants or influences of *telos* on Western jurisprudence. Nor does he discuss Roman traditions of natural law.

Aquinas and Natural Law

William E. May

Catholic University of America

"The Meaning and Nature of the Natural Law in Thomas Aquinas." *American Journal of Jurisprudence* 22 (1977): 168-189.

St. Thomas Aquinas characterized the natural law as the work of human intelligence. Yet Aquinas also makes use of Ulpian's definition of natural law as that which nature has taught all animals. May argues that Aquinas's general teaching concerning the natural law can be reconciled with Ulpian's definition.

Aquinas describes law as "a rule and measure of actions whereby one is induced to act or is restrained from acting," brought into being by reason. Consequently, law as such, both pertains to reason and consists of a set of true propositions articulated by reason. Since the universe is under the governance of God and His reason, Aquinas speaks of the eternal law as the intelligent grasp "of the governance of things that exist in God as the ruler of the universe." The eternal law not only governs the entire created universe, but has as its object the common good of the universe.

Every created reality in the universe, says Aquinas, participates in the eternal law in accordance with its nature. Nonra-



tional entities participate in the eternal law passively: "they have inclinations toward their proper acts and ends." In contrast, rational beings actively participate in the eternal law through reason, and this constitutes the natural law. The natural law is thus a body of precepts or propositions articulated by the human mind. What is 'innate' in natural law is the capacity of creatures to discern the body of true propositions concerning the meaning of human actions.

If natural law as law is necessarily related to rational cognition, how can Aquinas make use of Ulpian's definition of natural law as that which nature has taught to all animals? May's answer is that Aquinas "accepts Ulpian's definition of the natural law only in the sense that it refers to the subject matter" of the natural law. "The tendencies that human beings share with animals are the fitting objects of the natural law taken in its proper sense as an achievement of reason."

Why Aquinas incorporated Ulpian's definition into his writing concerns Aquinas's conception of man. For Aquinas, humans are animals, albeit very special animals. In virtue of his animality, man shares those tendencies and goods common to all animals. Man also possesses certain natural inclinations in virtue of his rationality. Through his reason, man can come to an explicit consciousness of his natural tendencies and thus can express them as law.

Legal Naturalism and Just Legal Systems

Randy E. Barnett

"Toward a Theory of Legal Naturalism." *Journal of Libertarian Studies* 2 (1978): 97-107.

Although positivist and natural law theories are ancient adversaries, both positions address genuine aspects of law. All natural law theories agree that "there is some objective standard or 'higher law' against which positive (man-made) law can and should be measured."

Legal positivism, which is more complex, may be broken into three versions: *Imperativism*, which stresses that law is sovereign or autonomous in issuing commands (e.g., John Austin); *Normativism*, which stresses that law is based on some ultimate norm, namely, "the rule of recognition" (H. L. A. Hart); and *Legal realism*, which stresses the processes by which positive law comes into force, e.g., via the actions of legal authorities (Karl Llewellyn and Alf Ross). The last is the positivist thesis considered in this paper. The main dispute is between natural law and legal realist advocates (see Edward A. Purcell, Jr., *Crisis of Democratic Theory*).

What is the "legal process"? It is the system by which positive law is determined and it has "a purpose or function" (Lon Fuller, F. A. Hayek). The prime purpose of law is simply to discern and enforce legal duties. Thus far this is consistent with natural rights and natural law theory. Legal naturalism, the view advanced

here, "adds to the search for the substantive law which best suits the nature of man, a search for the legal system or systems which best 'fits' the nature of law." Whereas positivism takes law as fact, legal naturalism considers law "an enterprise, an activity with a purpose." So we can ask of a legal system whether it "is successful or unsuccessful." Following Lon Fuller, Barnett argues "that a law-maker should itself obey the rules it sets up to govern its citizenry." Thus "the State is a source of law inconsistent with this (Lon Fuller's) principle."

If Fuller carried his analysis far enough he would see "that a State legal system doesn't conform to the principle of official congruence with its own rules." On the other hand, the legal positivist/realist sees that this is so and concludes, "that State-made law is *sui generis*." This is why the legal positivist/realist associates "'coercion' with the definition of law." The insight of legal positivism/realism is its recognition of "the *essential* nature of the State, the predominant source of law." Being, as Max Weber recognized, "a continuous organization . . . if and insofar as its administrative staff successfully upholds a claim to the *monopoly* of the *legitimate* use of physical force in the enforcement of

its order," a State must violate the principles of the natural law system that consist in natural rights, since its monopoly requires the use of coercion. Its power to tax, which Barnett claims is one of the State's "central characteristics," also violates human rights, and is inconsistent with the natural law principles of a legal system. Therefore, State cannot be based on natural law, and this is what legal positivists/

realists, who stress the study of the process of legal development, confused with the claim that a legal system as such cannot be based on natural law.

Legal naturalism advances natural rights as constraints upon the process by which law *should* evolve and uses the various legal activities under this constraint to produce a legitimate system of law.

Lon Fuller and Natural Law

K. E. Dawkins

University of Otago Law School, New Zealand

"The Legal Philosophy of Lon L. Fuller: A Natural Law Perspective." *Otago Law Review* 4 (1977): 67-86.

Within the tradition of natural law philosophy, Professor Lon Fuller turns away from the predictive, imperative, or hierarchic conception of law and rejects coercion and formal hierarchies of command as the identifying characteristics of law. Fuller approaches law "not in terms of definitions and authoritative sources, but in terms of problems and functions." In Fuller's model, law is interactional, a purposive and collaborative endeavor, rather than a one-way projection of authority.

For Fuller, law is terrestrial in origin and application, a purposive "enterprise" or "activity" rather than a "higher" or transcendent human endeavor against which positive law must be measured and to which it must conform. He rejects the notion that there exists something fixed called "the natural law" which offers an eternal, immutable "code of conduct." Nevertheless, Fuller approves of "the kind of legal thinking" exemplified by the natural law tradition because of its aspirational and purposive conception of man and the role it has accorded human reason as opposed to arbitrariness in governing man. He interprets natural law as an active process of inquiry rather than as a general ethical theorem.

Fuller emphasizes both the idea of pur-

pose in law and the importance of reason in the development and administration of legal institutions. The relationship between Fuller's concept of law and the intellectual tradition of natural law may be observed along several dimensions: (1) *Teleological conception of law and man*: the central aim of human endeavor is "communication"—reaching an understanding with and coordinating efforts with others motivates human aspiration—rather than the Hobbesian notion of self-preservation; (2) *Natural reason and human fiat*: rejecting the extremes of natural law and legal positivism, recognizing that the reality of the legal order is the creature of both human reason and human artifice; (3) *Coalescence of fact and value*: refusing to recognize a distinction between the law as is and the law as ought to be; and (4) *Economics and natural laws of social order*: "eunomics" or "the science, theory or study of good order and workable arrangements."

In Fuller's perspective, a legal system which merely "clothes itself with a tinsel of legal form" and wholly fails to observe his eight principles of procedural law is not properly regarded as a legal system. These desiderata, which constitute the "internal morality of law," are: (1) Generality

—legal system should achieve general rules; (2) Promulgation—laws should be published; (3) Prospectivity—laws should be prospective; (4) Clarity—laws should be clearly stated and understandable; (5) Compatibility—laws should be compatible with one another; (6) Possibility—laws should not command the impossible; (7) Constancy—laws should not be subject to constant change; (8) Congruence—consistency between the law as declared and as administered. The formulation of procedural natural law is accomplished not by reference to external standards of

morality or to the substantive aims of law but by postulating moral desiderata inherent in the law itself.

Fuller's concept of law may be characterized as a natural law position in studying the human condition's basic qualities; in adopting a purposive and aspirational conception of man; and, lastly, in building procedural rather than substantive ideas of "goodness" into the notion of law as good order which may then be evaluated by an internal morality contemplating the standard of a free, voluntaristic, and responsible agent.

Legal Realism vs. Morality

Anthony D'Amato

Northwestern University School of Law

"The Limits of Legal Realism." *The Yale Law Journal*
87 (Jan. 1978): 468–513.

Legal realism is generally agreed to be that which officials do in fact. The author suggests that one shortcoming of legal realism is its neglect of the normative dimension of the law. For example, in Nazi Germany some persons procured the imprisonment or execution of others for offenses against the regime. After World War II, some informers were prosecuted for such crimes as murder, false imprisonment, and deprivation of another's liberty. The informers' defense was that their actions were legal. A problem is raised when a subsequent law given retroactive application destroys the lawfulness of a statute.

... If an entire new set of officials can be imagined in any given legal system, then all conduct is potentially questionable. Is buying a house in the United States slightly illegal to a legal realist aware of the remote possibility that a communist regime might take over the country and prosecute the home buyer as a bourgeois capitalist? Surely the Nazi regime must have seemed very stable in the 1930s ... For legal realists, the legality of any conduct can be questioned on the basis of imaginable future sets of officials.

Consequently, the author contends, legal realism fails to resolve the "grudge informer" case. Legal realism is tied to the prediction of actions of people who are either in power or who may come into power in a given territory. The dilemma is: "law" has to operate in the present and not retroactively, but new officials may arise and negate the enactments of present officials. The answer, the author feels, must be found in moral, not legal philosophy. Public perception of what is right appears to be the ultimate limit on the authoritativeness of "official" action.

The formal validity of an "immoral" statute may not compel the public to recognize its status as "law," or the status of enacting officials as authoritative. A prime example might be the reaction of many Southern statesmen to the legislative decree without constitutional amendment by the U. S. Supreme Court in *Brown v. Topeka Board of Education* (1954). The Court's school desegregation decision was not necessarily recognized as valid since the Supreme Court was not, theoretically and "legally," regarded as a

law-making body. The public's perception of what is right may sometimes limit the authoritativeness of "official" action. "Official" and "authority" conveys a normative dimension rather than naked power and suggests a necessary relation between law and morality.

The notion that popular acceptance of the legitimacy of officials' entitlement to make authoritative decisions is grounded on morality (and not on purely legal construct) might reverse the "might makes right" world view of both positivism and legal realism.

Legal Philosophy and the Founding Fathers

Alfons Beitzinger

Notre Dame University

"The Philosophy of Law of Four American Founding Fathers." *American Journal of Jurisprudence* 21 (1976): 1-19.

The Founding Fathers John Adams, Jefferson, Hamilton, and James Wilson were generally united in a common purpose; however, their conceptions of the philosophical foundations of law and government differed.

All four men believed that moral principles are self-evident. But only Adams and Hamilton believed that such principles were ultimately derived from rational intuition. The end of law, thought Adams, is public happiness achieved through justice and respect for rights and consent. Lawgivers should be concerned with utilizing reason as well as those passions which support the dictates of natural law as a psychological base upon which to build law and government.

Hamilton claimed that natural justice was based on a divinely ordained eternal law which "reason, unwarped by particular dogmas" could discover. Hamilton believed that the natural law required that "origin of all civil government, justly established, must be a voluntary compact" that respects "absolute rights." Hamilton also distinguished between the majority of men, who are "entirely biased by motives of self-interest," and the few who dispassionately discern the "dictates of reason and justice."

In contrast to Adams and Hamilton, Jef-

erson denied that moral principles are rationally intuited and that there could be a demonstrative science of morals. For Jefferson, the foundation of morality is the individual pursuit of happiness or pleasure, which is made social through the pleasure-attending acts of benevolence. By giving morality a hedonistic underpinning, Jefferson was led by his hedonistic morality to view systems of laws as utilitarian superstructures. Natural rights are grounded in natural wants and needs. Jefferson did agree with Hamilton and Adams, however, that "nature provides every society with an aristocracy of the virtuous and the wise." Since Jefferson saw the law and Constitution as an instrument for promoting the pursuit of happiness, he argued that each generation might restructure society as it chose.

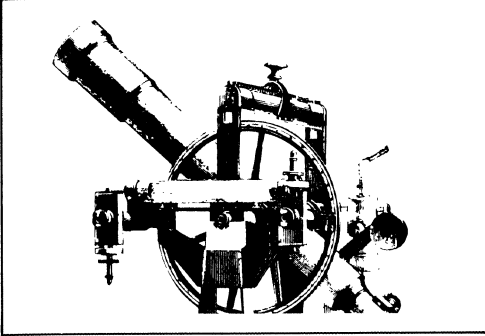
James Wilson seems most strongly in the Thomistic tradition. For Wilson, every human mind can directly intuit the first principles of metaphysics and moral excellence. Man's political life is to be governed by applying the divine natural law to particular circumstances through human positive law. But the power of the state to implement the natural law is limited to those powers ceded to the state in the social compact.

Law and Scientific Inquiry

Richard Delgado and David R. Millen

University of Washington Law School

"God, Galileo, and Government: Toward Constitutional Protection for Scientific Inquiry." *Washington Law Review* 53 (May 1978): 349-404.



ous that scientific ideas and "the scientific spirit" were central to the thinking of some influential colonial leaders. From this, the authors conclude that anything which might be labelled as "scientific" to be clothed in first amendment constitutional protection.

Next, the authors review the "scientist's right to conduct basic research" in case law. Their discussion of thinking, experimentation, and the rights to speak and publish, and to know and to teach lead them to conclude that the government has no proper interest in interfering with scientific activity simply because it may produce inconvenient results. The authors equate state repression or refusal to promote dissemination of unpopular ideas with the kinds of research involving the life of beings—such as the creation of chimeras for spare parts—and the nature of life itself. The authors make a case for including so-called "scientific inquiry" into the field for first amendment protection.

The frontiers which modern scientific research is opening up (such as recombinant DNA research) has aroused fears that could lead to prohibiting certain types of research. The authors examine how existing constitutional doctrine applies to state action which prohibits, burdens, or declines to fund scientific research promotions because the state considers the promotion, the likely results, or the inquiry itself as inappropriate. The private writings of Jefferson, Franklin, Madison, and other colonial notables make it obvi-

Freedom of Inquiry vs. Critical Theory

Robert Neville

State University of New York at Stony Brook

"Philosophical Perspectives on Freedom of Inquiry." *Southern California Law Review* 51 (September 1978): 1115-1129.

As interpreted by Neville, liberalism (by which he means the Western liberal democratic outlook as found in Hobbes, Locke, Hume, Mill, Rawls, Nozick) evaluates scientific inquiry (e.g., recombinant DNA research) by stressing legal protection of persons and property as well as

government's responsibility to disseminate information required for self-protection. Moreover, liberalism is technocratic in its singular focus on what means are efficient. It regards human reason as incapable of identifying what is and is not worthwhile, and what we should and

should not do; it considers only what are efficient means, not ultimate ends. For example, it regards medical research as something that "enhances our social powers of reaching our goals," but, the author argues, liberalism can say nothing as to the ultimate goals.

An alternative to liberalism is *critical theory* as advocated by members of the Frankfurt School, especially Jurgen Habermas. Critical theory owes its intellectual origins to Karl Marx, but the Frankfurt School, rejects the materialistic emphasis of Marx's philosophy, adding a crucial psychological dimension. The stress is on the "emancipatory interest" in human existence, namely, the promulgation of social, institutional, and political means to the full realization of human nature. "In light of the emancipatory interest, the problem of freedom for recombinant DNA research is essentially a political one. Given our present system of research, advances in scientific knowledge serve to strengthen the hands of the professionals who dominate the lay community both by defining the goals of health (and other professional services) and by controlling the distribution system. For this reason, although on the one hand it seems absurd to oppose an advance in knowledge that might bring great benefits to health, the interest in emancipation might very well determine that the overall power of the professional scientific community ought to be weakened nevertheless by restricting

recombinant DNA research."

A related problem is that our trust in experts erodes our democratic institutions and "an important area where democratic society has already achieved significant emancipation, namely, community control of what goes on in the community." On the one hand, liberalism has its deficiencies: it denies something evident enough, namely, that some things are objectively more valuable than others; thus it limits morals and politics to subjective wants and wishes. To make sense of politics, this type of liberalism assumes the authority of these wishes and wants entitles one to what one wants, within appropriate coordinating limits.

Critical theory, on the other hand, is also troubled by difficulties: it advances an empirical view as to the objective values and yet denies the input of those who do not seek emancipation as critical theory understands this; thus it declares some people as less than human; thus critical theory denies its own insistence on universal dialogue.

What is needed is a "hypothetically objective" perspective on social values, one that is "subject to education, and that views authority as resident in the persons who are the authors of their own acts, and resident in the political process only in the ways and degrees people participate" For example, in the DNA case this might require giving up the value of freedom of inquiry.

Horwitz: Law and Economic Interests

James Charles Smith

Law Clerk for Judge Walter Ely, United States Court of Appeals for the Ninth Circuit

Book Review of Morton J. Horwitz's *The Transformation of American Law, 1780-1860*. *Wisconsin Law Review* 4 (1977): 1253-1276.

Although interest groups shape the law to achieve their parochial goals, law itself helps shape the contours of society. The "Wisconsin School" of American legal his-

toriography contends that the evolution of private law in America was related to the efforts of middle-class capitalists to utilize law to accelerate economic development.

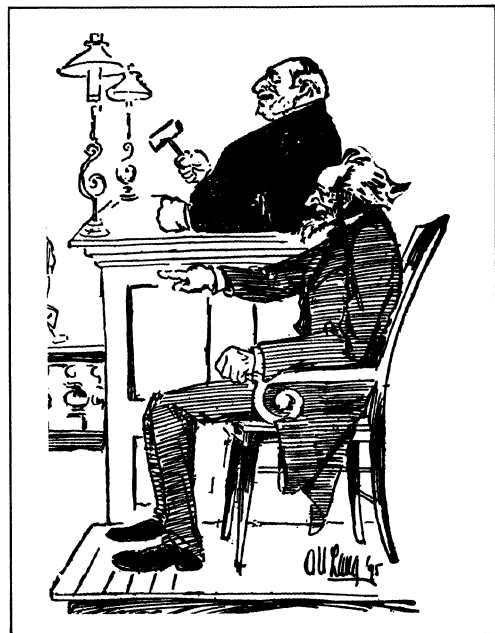
The Wisconsin School has emphasized economic issues and their relationship to legal doctrines and institutions, and has minimized jurisprudential, societal, political, and ideological themes in American legal history. Horwitz, who embraces the approach of the Wisconsin School to legal history, presents a basic theme: at the close of the American Revolution, the common law reflected precommercial, antidevelopmental values; during the next eighty years, a major transformation of the legal system took place which "enabled emergent entrepreneurial and commercial groups to win a disproportionate share of the wealth and power in American society . . . at the expense of farmers, workers, consumers, and other less powerful groups . . ."

Horwitz carefully details the process by which nineteenth-century judges revamped property law doctrines to eliminate the agrarian, antidevelopmental bias which characterized the older common law. In general, a new theory of property gained acceptance, with similar results across the board: ". . . the idea of property underwent a fundamental transformation—from a static agrarian conception entitling an owner to undisturbed enjoyment, to a dynamic, instrumental, and more abstract view of property that emphasized the newly paramount virtues of productive use and development."

The author feels that, contrary to Horwitz's assumption that economic motivations explain judicial behavior, history is not that neat. Rigid use of an economic model ignores the complexities of the real world such as the autonomy of ideas, the influences of institutional structures, and historical accident. In effect, Horwitz pursues a conspiracy theory of history, maintaining that the transformed character of the legal system did not result from a social consensus for development. Smith points out that there was no necessary causal relationship between the profiting of entrepreneurs from economic development and an alleged "worse off" status of other groups. Furthermore, there is some evidence that those burdened by the transformation of the legal system—"farmers, workers, con-

sumers, poor whites"—enjoyed corresponding benefits from the new economic prosperity with the rising standard of living in the interim between the Revolution and the Civil War.

According to Horwitz, the emerging capitalist class had largely completed reorienting American law to serve its interests by around 1850. Once the legal system had adopted rules favorable to business and commerce, business groups sought to disguise the recent origins and biases of the new system and prevent further judicial innovations which might be redistributive. Consequently, the application of laissez-faire decision making came to dominate post-Civil War law. A basic theme was that judges were not considered law-makers, but supposedly only applied uniform legislatively-decreed rules, policy was for the legislatures and not the courts. Smith questions the premise that the successful entrepreneurial groups somehow persuaded judges to swap an instrumental for a formal conception of law, having earlier adopted an instrumental view for the benefit of these groups. To Smith, the primary cause of the shift toward legal formalism in the later part of the nineteenth century was the emergence of the ideal of law as a science. [4]



II

Republican Ideology

Republican ideology—the complex intellectual seedbed of much of the political, legal, economic, social, cultural, religious, and moral controversies during the upheavals of the seventeenth and eighteenth century revolutions—addressed the pressing question of social and political stability: why do republics rise or fall? In their analyses of the waxing and waning of various forms of government, Plato and Aristotle had discerned a cycle of corruption: kingship—or the rule of one—devolves into its corrupt variant of tyranny; next, aristocracy—the rule of the noble few—ousts tyranny but in turn becomes morally corrupted into a base oligarchy; next, democracy (or polity)—the rule of the many—replaces oligarchy, only to be corrupted and degenerate into mob rule and so inevitably lead to a renewal of this vicious cycle.

Polybius, a Greek historian of the second century B.C. assimilated and transformed this rather pessimistic cyclical analysis to his own purposes in explaining the spectacular rise of the Roman Republic to imperial power and apparent stability. In Book 6 of his *Histories*, Polybius attributes Rome's republican stability to its constitution, an ideal mixed or balanced constitution, which combined the right proportions of regal, aristocratic, and democratic principles to create harmony and escape the cycle of growth and decay. Later the Roman writer Cicero took over the Polybian notions of political cycles and the mixed constitution in his *De Re Publica* and passed on these influential ideas to later European republicans.

Recently, the works of J. G. A. Pocock (most notably *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition*, Princeton: Princeton University Press, 1975; and the essay "Civic Humanism and Its Role in Anglo-American Thought," in *Politics, Language and Time*, New York: Atheneum, 1973) has made a strong case for the role of such Florentine Renaissance historians as Machiavelli and Guicciardini in resurrecting and reinterpreting the ideals of the classical republic. Central to this Florentine interpretation was the view that republics seeking to overcome the problems of time, corruption, and instability needed recourse to "virtue" and "civic humanism." Civic humanism refers to a style of thought that contends that an individual's moral development and self-fulfillment "is possible only when the individual acts as a citizen, that is as a conscious and autonomous participant of an autonomous decision-taking political community, the polis or republic." Civic humanist interpretations of republican ideology stressed virtue and the avoidance of corruption as the moral and material basis of social and individual life. Such republican virtue and independence from corruption (by government

or other factions) required that each citizen be economically independent of others by possessing nonalienable free-holding property in a basically agrarian society. This ideal harks back to the economically independent and virtuous Roman citizen-farmer, who in time of crisis would join the citizen militia in defense of the Common Wealth.

Pocock sees this civic humanist interpretation of republican ideology as powerfully influential in Puritan England and Revolutionary America. He pits the civic humanist conception of property and political power or agrarian virtue against the emergent values of Lockean individualism and commercial society. In effect, an ongoing tension or clash develops between two paradigms of power and property relationships: the more conservative and stabilizing attitude of the classical civic humanist tradition and the more liberal, destabilizing attitude of the commercial, bourgeois, or market orientation. Other issues, strands, and interpretations of republican ideology will be found in the following summaries together with the two Joyce Appleby summaries in the "Economic Schools and Analysis" section.

Civic Virtue, Mercantilism, and Liberalism

Joyce Appleby

San Diego State University

"The Social Origins of American Revolutionary Ideology." *Journal of American History* 64 (March 1978): 935–958.

Neo-Whig historians of the last decade have largely dispelled the characterization of eighteenth-century American thought as unphilosophical, simple, and merely derivative of John Locke. Rather than emphasize the revolutionaries' political pragmatism as had the consensus historians of the 1950s, historians such as Bernard Bailyn, Richard Buel, Jack Green, and Gordon Wood have argued that American intellectuals of the revolutionary generation produced a sophisticated analysis of their complex social, economic, and political structure. This wave of revisionism viewed the revolutionaries as acutely sensitive moralists and intensely interested in designing governments which lent themselves to civic virtue rather than political corruption.

These revisionists have thus produced a more believable colonial past by elucidating the philosophical, moralizing, and social dimensions of revolutionary constitutionalism. However, this colonial past ill-suits the needs of historians working with later periods. Where do scholars find in this moralizing emphasis on civic virtue, fear of tyranny, and frenzy over corruption, the foundations of the later individualism, optimistic materialism, and pragmatic interest-group politics which emerged early in the nineteenth century?

The weakness in revisionists' interpretation is its emphasis on one intellectual tradition that was itself born in reaction to the liberal tradition with its economic and political writers who asserted that governments should step aside

in the marketplace and allow enterprising individuals the economic freedom to fulfill themselves. This liberal position opposed the reactionary stance of many prominent British and colonial leaders who saw in the mercantile system of market organization a mechanism for balancing the desires of individuals for personal growth with the needs of the political system for social stability.

It is with these early English, so-called mercantilists, that the idea emerges of a natural order supporting economic relationships. Such a paradigm characterized all subsequent liberal writing in economics. This thinking was particularly prevalent at the end of the seventeenth century, and, after passing into eclipse during the early part of the eighteenth century, it re-emerged in the 1750s as a powerful force in both British and American politics. Not surprisingly, the liberal position strongly appealed to the youthful,

upwardly mobile, American colonists. Its appeal was so strong, moreover, that the titanic clash between Crown and colony over the imperial economic system can be successfully viewed as a clash between liberal and reactionary ideas of economic freedom.

The Neo-Whig interpretation cogently interprets the Revolutionary period, but works from a perspective which rarely views its liberal past. Civic virtue was the rallying cry of the court party, the reactionaries, who politically dreaded confronting the demands of upwardly mobile entrepreneurs to withdraw the government from the marketplace. The liberal stance, so largely in evidence in the nineteenth century, had firmly established itself by the time of the American Revolution. Its slighting at the hands of Neo-Whig historians may be accounted as either an oversight or as unvirtuous indifference.

Republican People's Militias

Lawrence Delbert Cress

Texas A & M University

"Radical Whiggery on the Role of the Military: Ideological Roots of the American Revolutionary Militia." *Journal of the History of Ideas* 40 (January/March 1979): 43-60.

The ideas of radical English Whigs influenced Americans of the revolutionary generation, not only politically and philosophically (in terms of their understanding of the rights of Englishmen and the good society) but also in the very military structure and organizational methods by which the Americans fought to win their independence. The fundamental core of this outlook was a fear of standing armies and a reliance on republican militia.

A central figure in the development of this view was James Harrington (1611-1677). In his *Commonwealth of Oceana* (1656), it was the militia of freeholders

which sustained the balanced constitution. These ideas were, in turn, based upon radical Whig perceptions of the history of the Middle Ages and the ancient Gothic constitution. The corruption of society was directly related to the rise of professional standing armies financed by the monarch.

In the late seventeenth century other leaders such as the Earl of Shaftesbury and Opposition spokesmen such as Algernon Sidney reiterated this popular militia tradition, and it was carried into the next century by other radical Whigs such as Robert Viscount Molesworth, John Trenchard, John Toland, Walter Moyle, and

Andrew Fletcher.

Militia encampments were seen as educational places to instill republican virtues such as frugality, military discipline, and to encourage personal sacrifice for the public good. Food and dress would be simple and the same for all. In addition to training in the public virtues, Christian doctrine, and the arts of war; schooling would include the study of mathematics, geography, history, and astronomy.

Not only Opposition leaders but other thinkers, such as the philosopher Francis Hutcheson and the jurist William Blackstone, also commented favorably upon the concept of the citizen-soldier.

As is now widely known, all of these Opposition works were favorite reading by Americans on the eve of the Revolution. When the British military occupied Boston during the late 1760s, a number of Americans, including Samuel Adams, contributed newspaper articles to "Journal of the Times" that were widely reprinted and second in circulation only to John Dickinson's *Letters of a Pennsylvania Farmer*. One selection argued that enforcement of the law by professional soldiers rather than the citizens' *posse com-*

mitatus could only be part of a plot to rob the citizens of their rights and property. If this continued, the militia as the embodiment of the *posse*, would be the only means by which Americans could "protect personal security, personal liberty, and private property."

After the Boston Massacre, this theme was repeated in numerous sermons. After the Tea Party and the closing of the port of Boston, the most elaborate statement of this view was developed by Josiah Quincy, Jr., in a little tract *Observations on the Boston Port Bill; With Thoughts on Civil Society and Standing Armies*.

The establishment of various colonial militias late in 1774 is thus best understood in the light of a long republican Whig dedication to that idea. The whole notion was best summarized perhaps, and certainly as a prelude to the later Second Amendment to the American Constitution, by the Massachusetts Provincial Congress's resolution in 1774 "that a well-regulated Militia, composed of the gentlemen, freeholders, and other freemen, is the natural strength and only stable security of a free government."

Gibbon on Virtue, Property, and Militias

J. G. Pocock

Johns Hopkins University

"Between Machiavelli and Hume: Gibbon as Civic Humanist and Philosophical Historian." In *Edward Gibbon and The Decline and Fall of the Roman Empire*. Edited by G. W. Bowersock, John Clive, and Stephen R. Grampon. Cambridge, Mass.: Harvard University Press, 1977, pp. 103–118.

J. G. A. Pocock lays bare the elements of philosophic history latent in Gibbon's work and considers their role in *The Decline and Fall*. Eighteenth-century philosophic history debated such questions as the relationship of man to society and the causes of the rise and decline of societies, especially republics. Gibbon's debt to the "legacy of civic humanism as mediated by

Machiavelli and his successors" is of particular interest to anyone concerned with the development of republican ideology in the eighteenth century.

At the heart of Machiavelli's Florentine "civic humanism" were two beliefs: man's highest fulfillment was in republican political association, and the political forms that would allow for this fulfillment

were fragile because republics seemed susceptible to corruption. For Machiavelli, citizens in a true republic will bear their *own* arms since this forces the public authorities to admit them to a share in government. The Roman Republic expanded into empire and destroyed the independence and virtue of other societies. The corruption of empire led to professional armies and the decline of Rome as outlined by Harrington and Montesquieu.

Harrington elaborated on this theme by arguing that an armed citizen's independence ultimately depended on the independence of his property. Independent property thus guaranteed the virtue and equality of citizens. Rome declined when the leaders acquired the tax-ridden lands of the citizen-soldiers and those of conquered peoples. Inherited land is taken by Harrington to be the paradigm case of property that guarantees the independence, virtue, and personality of the individual [cf. J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975)].

To Republican writers, the revival of commerce that had emancipated the freeholder from feudalism was a mixed blessing. Such excellent things as trade, enlightenment, and leisure encouraged the development of taxes to pay for standing armies in place of the self-defense of a property-owning militia [cf. Lois G. Schworer, "No Standing Armies!" *The Anti-Army Ideology in Seventeenth-Century England* (Baltimore, 1974)].

This is one reason why the Captain of the Hampshire Militia [Gibbon himself] was not useless to the historian of the Roman Empire; why—in the equally subtle thought of Adam Ferguson—the chaplain of a Highland regiment was not useless to the historian of the Roman Republic and of civil society; and why the Second Amendment to the Constitution of the United States maintains the old language of the militia ideal with such paradoxical results to this day.

Montesquieu, and to a lesser extent Hume, argued that a commercial society that held to its original institutions could contain and even overcome corruptive and degenerative tendencies. Gibbon, whose

outlook was that of an investor of government bonds rather than of a property owner or entrepreneur, tended to ignore capitalism's ethic of production so that his commercial society is a non-market social system. Gibbon viewed the function of labor as supplying the income of a civilized ruling class.

In his sociological history of the Roman Empire, Gibbon joins a tradition, stemming in a number of ways from Locke, but developed by the Scottish school to a point where it is hard to tell whether Hume, or Ferguson, or Smith is chiefly in Gibbon's mind at this moment; it was a tradition that found the key to history in the growth of social intercourse, exchange, and interdependence, the objects before the human mind and its powers of perception, the passions which focused themselves upon these objects, and the powers of rational understanding which grew through reflection upon the objects and passions alike.

For Gibbon "virtue is pursued by the terrible paradox that property simultaneously gives government power over us, and corrupts while it confers the independence of mind which alone enables us to resist government." Some solution to the paradox might have been found in Smith's *Wealth of Nations* published the same year as the first volume of *The Decline and Fall*.

The American revolutionaries saw themselves as engaged in a last-ditch stand against the neo-mercantilist revival sweeping England. England's war debts, monopolies, and restrictions on the free trade of salutary neglect seemed a triumph of 'commercial' corruption over freedom-based virtue.

P H I L A D E L P H I A .

In CONGRESS, *Thursday*, September 22, 1774.

RESOLVED,

THAT the Congress request the Merchants and Others, in the several Colonies, not to send to Great Britain any Orders for Goods, and to direct the execution of all Orders already sent, to be delayed or suspended, until the sense of the Congress, on the means to be taken for the preservation of the Liberties of America, is made public.

An Extract from the Minutes,
CHARLES THOMSON, Sec.

Printed by W. and T. BRADFORD.

The Unwritten Common Law

Thomas C. Grey
Stanford University

"Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought." *Stanford Law Review* 30 (May 1978): 843-893.

Aristotle distinguished between the written law (the rules governing a particular community) and the unwritten law (those equitable principles "supposed to be acknowledged everywhere"). Grey observes that "this Aristotelian dialogue permeates American constitutional law." This dialogue "is played out around the issue of whether the formal enacted Constitution, conceded to be legally supreme, is the *exclusive* legitimate source of judicially enforceable constitutional law." It is an unarguable historical fact that our judges have over time developed a body of unwritten constitutional law, which Grey calls "noninterpretive," and a major issue now swirls around the legitimacy of this kind of judicial review. The bulk of the article is an effort to examine American constitutional theories in the years prior to 1776 as a way of establishing the historical legitimacy of noninterpretive judicial review.

The medieval view of law recognized no unlimited political sovereignty. Parliamentarians like Coke and Pym argued that the King's as well as Parliament's authority was limited by fundamental law. For the American Whigs "the origins of these fundamental unwritten laws themselves were buried beyond recovery in the Saxon past." And, "as Christopher St. Germain had noted in the sixteenth century, the common lawyers' resort to what was considered 'reasonable' as a source of law was the English equivalent of the natural law arguments of the scholastics and the Roman and canon lawyers." At the same time, reason with respect to the idea of law was a special "artificial" type, infused with the dictates of custom, experience, and the professional training of lawyers.

While modern concepts of the separation

of legislative, executive, and judicial power were not fully developed in the seventeenth century, there are a number of cases of judicial review which can be cited, the most famous of which is *Dr. Bonham's Case* in 1610 in which Coke made his celebrated declaration that "when an act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such act to be void."

It was in the seventeenth century, during and after the English Revolution, that these limitations began to change in favor of the supremacy of Parliament. Yet, into the era of the American Revolution some leading lawyers continued to assert the old common law limitations. Blackstone was a leading figure in this triumph of the positive law view. Americans were also influenced by such thinkers as Grotius, Pufendorf, Burlamaqui, Vattel, and Rutherford. Like Locke and Blackstone, they stressed the importance of natural law, but went far beyond in viewing it as a *legally binding* force, while asserting the idea of a fixed constitution placing limitations on the legislative power.

Americans were generally unpersuaded by the new notions that Parliament had the power to do as it liked. This is evident in writings such as those of John Wise or James Otis. Using the research of Lawrence Leder, Grey questions Bernard Bailyn's views about the supposed inconsistency of the early American arguments, for instance, those of Otis. Daniel Dulany also questioned the supremacy of Parliament in his protest against the Stamp Act, and some Americans, in essence, raised the question of judicial review.

John Dickinson's *Letters of a Pennsylvania Farmer*, written in protest against the

Townshend Acts, were also an appeal to fundamental law. Stemming from these specific cases, by 1774 the Americans found themselves involved in a challenge to all parliamentary authority. Among the English, Edmund Burke understood best the American view about the illegality of British policies, "and the law to which the colonists appealed was the unwritten fundamental law of reasonable custom and customary reason that made up the

British constitution."

Given this outlook, the justification of independence had "to be based entirely upon extra-legal considerations of utility and political philosophy." That kind of majoritarian democracy argument differed from the fundamental law and the two together form the contrasting views which have been a part of the American legal tradition.

Republicanism and Inheritance

Stanley N. Katz
University of Chicago

"Republicanism and the Law of Inheritance in the American Revolutionary Era." *Michigan Law Review* 76 (November 1977): 1-29.

A heated debate among historians concerns just how "revolutionary" was the American Revolution. One way of approaching this problem involves an "inquiry into the manner by which the institution of law affected the progress of the Revolution and was affected by it." What happens to the laws of property is central to the study of any revolution, and, likewise, "the question of inheritance is central to the conception of property. Moreover, the law of inheritance represents a major intersection of public and private law." Though not completely carried out, the rhetoric of the American revolutionaries "often seemed to call for thorough reform of the laws of inheritance."

"Broadly speaking, two sorts of justification for the law of inheritance have been advanced: one is derived from the Romano-medieval natural rights tradition, the other emerged out of modern—that is, eighteenth-century—conceptions of popular sovereignty and legal positivism." Hugo Grotius and John Locke stand as advocates of the natural law view, while William Blackstone is representative of the positivist outlook, both of which influenced events in the American colonies.

English inheritance laws as passed on to

the Americans were still largely products of the feudal past. A man "could dispose more or less freely of his wherewithal by will, while at the same time the provision for intestate succession operated clearly in favor of his immediate family." During the Revolution, the direction of inheritance reform was exemplified by the work of Thomas Jefferson in Virginia in striking down the vestiges of primogeniture and entail. "In fact, however, this legal and constitutional change was largely formal and symbolic, and it is not clear that either had restricted the distribution of property."

Although largely formal in content, the rhetoric about inheritance was deeply embedded in republican ideology and the promotion of ideals of equality. Early in his career Jefferson, for example, believed "that the creation and maintenance of a republic required not just barriers to aristocratic accumulation of property, but also a scheme to distribute at least small parcels of land to all members of the society."

A more radical thinker on the subject was Thomas Paine, whose writing on property in *Rights of Man* and *Agrarian Justice* form a link between both the American and French Revolutions. Paine argued for a progressive tax on property as

a means of fragmenting large estates and promoting a wider distribution of ownership. Although in favor of such ideas in the 1790s, by the end of his life Jefferson had repudiated them. Even the French revolutionists did not, on the whole, attack the idea of private property, but they did try more extensive legislation to facilitate wider equality of ownership.

Thus the efforts of the Americans to reform inheritance laws to promote equality fell far short of the French experience. In America, "the fundamental notion was that, in a republic, careers should be based upon talent rather than status." Most Americans apparently rejected the more extreme ideas of inheritance as once accepted by Jefferson and Paine.

Abraham Clark's Radical Republicanism

Ruth Bogin
Pace University

"New Jersey's True Policy: The Radical Republican Vision of Abraham Clark." *William and Mary Quarterly* 35 (January 1978): 100-109.

Abraham Clark, a signer of the Declaration of Independence, was probably one of the more radical republicans of the Revolutionary era. In many ways Clark presaged the Shaysites, the radical Jacksonians, and even the Knights of Labor and the Grangers. He was four-square behind debtors, farmers, and mechanics, and dead-set against speculators, ministers, physicians, tavernkeepers, lawyers, and merchants. He hoped that issuing paper currency as legal tender in New Jersey might erase the imbalance.

Toward this end, Clark possessed an attitude toward both the legislature and the people that would have made Federalists tremble. On the principles of justice and equity, he argued that the legislature had

the obligation to "interfere" in situations "where combination is formed against the general good." He informed his colleagues: "Your business is to help the feeble against the mighty, and deliver the oppressed out of the hands of the oppressor." Legislatures ought to design policies that would "avoid that inequality of property which is detrimental in a republican government."

To the people of New Jersey, Clark exhorted them to "stand no longer idle" but to mobilize against the "moneyed men, merchants and lawyers," who were very industrious in seeking their goals. However, he warned against further than humble petition, arguing that in the next election, they could throw the rascals out.

Herman Husband's Republican Vision

Roger A. Ekirch
Virginia Polytechnic Institute and State University

"'A New Government of Liberty': Herman Husband's Vision of Backcountry North Carolina, 1755." *William and Mary Quarterly* 34 (October 1977): 632-645.

Herman Husband, a westerner whose causes included the Regulator movement and the Whiskey Rebellion, shows his

feelings for what the backcountry of North Carolina should be like in this 1755 series of epistles. Husband opposed the estab-

lishment of the Anglican Church, slavery's growth, and speculation (although he himself had engaged in speculation). His opposition to the church was because "such a maintenance of the clergy by law opens a door to for wiked designing men" [*sic*]. His opposition to slavery seems to be rooted in a racial desire to keep Africans out. Nonetheless, his writings and life seem to evince a better picture of what western Americans thought during the days just

before the Revolution.

One of the 1755 documents expresses Husband's republican conviction that western North Carolina would become a "new government of liberty" when settled by industrious farmers. This republican vision was an idealization shared by other backcountrymen who cherished freedom of religion and economic liberty which allowed each man to prosper.

John Taylor and Republicanism

Melvin E. Bradford

University of Dallas, Texas

"A Virginia Cato: John Taylor of Caroline and the Agrarian Republic." Introduction to John Taylor, *Arator*. Indianapolis, Indiana: Liberty Classics, 1978, pp. 11–46.

Following the Revolution, the Virginia lawyer John Taylor became famous as a political and agrarian philosopher and "became the classic figure of 'old republican' theory: the exemplar of an almost Roman *virtus*, the Virginia Cato."

Taylor's interpretation of the Revolution and of republican political theory was that the colonies had cast off oppressive centralized control and replaced that with a Union which he feared could become a usurping authority of "energetic government" controlled by factions. He also opposed an activist judiciary. He was dedicated to the sovereignty of the states and local communities vis à vis the Union into which they had entered in a strictly limited compact.

For Taylor, the federal Constitution was political law as opposed to local or civil law designed to restrain the citizen in his own community. The Constitution was basically a law to restrict the conduct of legislators and other public servants—a law to limit law—and to prevent those abuses that had made Americans revolt.

Taylor's understanding of republican political theory interpreted law and gov-

ernment as protecting human right and liberty in self-governing communities. Through a political law to limit government and a strictly federal separation of powers, America created a stability never experienced in the Rome of Cato or in Britain.

Taylor was an arch-opponent of: a national bank; the federal government assuming state debts; federal public works; and Hamilton's mercantilist schemes for financing the new government. Taylor opposed a large standing army on the grounds that it provided a patronage system; was a basis for an artificial aristocracy; was contrary to the best republican precedent; and was a threat to self-government.

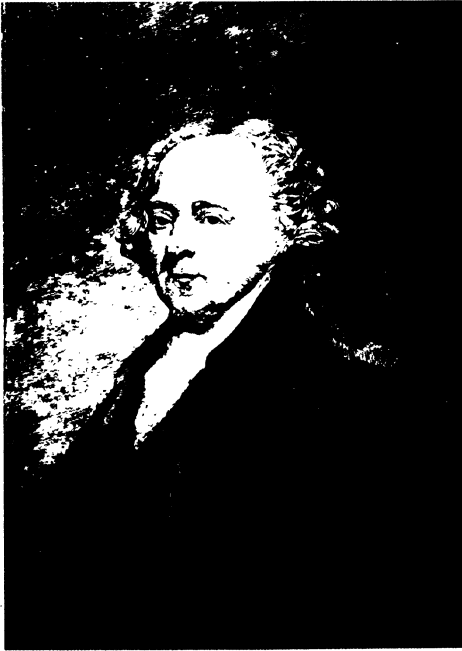
Taylor feared the damage of war to republican institutions, a basic contention of the old-Whig doctrine. War would profit contractors; certain "kept" industries and business firms; those desiring military appointments; and the friends of arbitrary "emergency" power. Liberty would become exceptional; the cities would be filled; families broken; and inflation promoted to undermine the basically rural Republic.

Adams, Factions, and a Balanced Constitution

R. S. Farnell and J. M. Porter

University of Saskatchewan

"John Adams and American Constitutionalism."
American Journal of Jurisprudence 21 (1976): 20-33.



Of the major founding fathers, John Adams is the least well known. But Adams's contribution to the Constitution was significant and reflected his attachment to free, republican government for the United States. According to Adams, constitutional balance is the heart of an enduring free government. He sought to support the idea of balance with three strands of argument.

The first is philosophical and relates the idea of balance to the nature of both man and politics. Adams believed ambition or "this passion for superiority" to be the central feature of man's psychology when acting in the political realm. Adams saw the key task of the constitution designer as

that of allowing ambition to serve the public interest by creating constitutional channels to both satisfy and press this ambition into the service of the public good. A balanced constitution would allow men to distinguish themselves, but would also obstruct self-serving schemes. Compromise would be a prerequisite to political achievement, and compromise would be accomplished only through appeal to the public good.

Secondly, Adams argued for constitutional balance that socioeconomic reasons supported. He felt that each part of the constitutional structure could reflect various socioeconomic features of society, and that this would create in the populace the necessary feeling of attachment and legitimacy to sustain a free government.

Finally, Adams argued from a mechanical model of social conflict depicting how without a balanced constitution there would be no way of controlling factions short of despotism. In particular, Adams saw the cleavage between rich and poor as a primary source of faction which a constitution must control. In Adams's view, the poor are too readily attracted to material gain and lawlessness, while the well-to-do too often are attracted to power. Both groups, Adams believed, are apt to plunder each other.

These considerations convinced Adams that the United States should have a balanced constitution which would establish an autonomous executive, a bicameral legislature, and an independent judiciary, rather than a "unified" government of the sort urged by the French *philosophes* and intended to express the "will" of the people. In this issue Adams saw a deeper question: In a republican form of government, what is to be represented? Adams's answer was clear—diversity, rather than the homogeneity of the general will.

Republican Farmer-Citizens and Free Trade

Drew R. McCoy
University of Texas, Austin

"Benjamin Franklin's Vision of a Republican Political Economy for America." *William and Mary Quarterly* 35 (October 1978): 605-628.

At the base of eighteenth-century republican political theory in America lay a deep appreciation of the critical interdependence between polity, economy, and society. Republican revolutionaries argued that the success of a fundamental change in the structure of governance depended on the underlying moral quality of economic and social relationships among the citizens. This conviction led republican theorists to speculate on the compatibility between the ancient, civic values they celebrated in criticizing British politics and the economic realities of expanding commerce and emergent industrialism. What issued from their speculation was a rejection of the British political economy that supported and furthered their rejection of British monarchical government.

Benjamin Franklin stood in the forefront among those who criticized British commercial life. Convinced that manufacturing was founded on a base of laboring poor, Franklin concluded that republican virtue could not be secured in a commonwealth that promoted industry to the detriment of agrarian life. Franklin shared the common republican view that civic virtue was based on a citizenry whose economic interests were tied to real property, preferably land. Thus, landless citizens, particularly if they were also poor, raised one of the major threats to any republican experiment in governance.

Franklin's view of England confirmed his analysis. British land policy had reared a generation whose economic interests were ever more closely allied with manufacturing. The growing, urban populations empowered the leaders of manufacturing with political leverage that they used at Court to secure special privileges. The virtuous state was the in-

evitable victim of these new lobbyists. England was dangerously corrupt largely because it was: bereft of virgin land; slowly undermining the political status of the landowning farmer; and dedicated to mercantilist policies of economic development.

Franklin's criticisms of English commercial life led to his formulation of a truly republican vision of the virtuous economy. At the heart of the economy stood the enfranchised farmer, but the ideal economic commonwealth was far from hermetic. Franklin embraced the concept of free trade and openly promoted commercial life. Growth in commerce, however, took place within the fundamentally agrarian society. Franklin proposed that western lands be made available for poor immigrants, and he urged governments to use western lands to empty their cities of the poor. He believed that the landowning farmers would produce far more goods than they could consume, and the surplus would provide a basis for trade with foreign markets. Free trade, in turn, would assure the annual clearing of American surpluses, and the resulting growth in commerce would rebound to the benefit of the true basis of republican polity, the farmer-citizen.

The twin pillars of Franklin's vision—western expansion and free trade—stood as the guarantors of a virtuous political economy, a necessary element to success in republican governance. This approach to the relationship between polity, economy, and society became central to the Jeffersonians, and laid the foundation for the republicans' efforts to accommodate nineteenth-century industrialization with the political theory of the revolutionary generation.

Madison and Scotland

Roy Branson

Kennedy Institute of Ethics,
Georgetown University

"James Madison and the Scottish Enlightenment."
Journal of the History of Ideas 40 (April/June 1979):
235–250.

James Madison's thought reflects in significant ways the teachings of the leading figures of the Scottish Enlightenment, particularly David Hume, Adam Smith, Adam Ferguson, and John Millar. Salient features of Madison's political thought parallel these Scottish teachings while differing markedly from the revolutionary thought of Madison's contemporary revolutionary allies. As examples we can cite: Madison's dissent from Jefferson's radical call for a cleansing revolution every nineteen years; his appreciation for society's achievements; and the indebtedness of future generations for the improvements completed by their predecessors.

Similarly, Madison's evolutionism appears most vividly in his adoption of the four-stage argument employed by Smith and Millar. While society naturally progressed through hunting, pasturage, farming, and commercial stages, Madison agreed with Ferguson in fearing the possibility of regression.

While Madison's contemporaries, Jef-

ferson and Adams, conceptualized American politics in the traditional European terms of an on-going antagonism between aristocratic and democratic interests, Madison propounded a more sophisticated analysis of the role of groups. This analysis of factions mirrored descriptions given by David Hume and Adam Ferguson. Often overlooked is the fact that Madison, as did the Scots, evaluated factions positively as well as negatively. In fact, Madison's famous dictum in *Federalist 10* of the advantages for liberty from factions counteracting factions was the original contribution of Adam Ferguson.

Madison emerges as a great synthesizer of Lockean rationalism, contract theory, and majority rule, with the Scottish School's embodiment of a historical-developmental view of society. In this last regard, Madison emulated the Scottish emphasis upon the reformist and moderating contributions of occupational, political, and commercial groups to the progress of society.

Non-Lockean Thought and the Declaration

Walter Nicgorski

"The Significance of the Non-Lockean Heritage of the Declaration of Independence." *American Journal of Jurisprudence* 21 (1976): 156–177.

For many the Declaration of Independence is the central document of the American political tradition. And although it was authored by Thomas Jefferson, portions of the Declaration seem almost as if they were "cribbed" from John Locke's

Second Treatise. The echoes of Lockean political philosophy within the Declaration have lead a great many Americans to view the Declaration as simply providing an American expression of Locke's principles. Without denying a strong Lockean

element in the Declaration, Professor Nicgorski does argue that the conventional understanding of the Declaration ignores its non-Lockean side and the non-Lockean aspects of Jefferson's thinking. Moreover, Nicgorski claims that "the Declaration's creed is but a partial statement, often no doubt a misleading statement, of the vital moral-political convictions of the founding period."

Nicgorski devotes the bulk of his article to an examination of the important non-

Lockean influences on the Declaration and on the "moral-political convictions of the founding period." He concludes that a renewal of the American political order—i.e., its salvation from the "corrosive" influence of the nearly unbridled play of private interests and desires—will require a broader conception of the moral foundation of the American political order than the political philosophy of John Locke.

Republicanism: Virtue or Lockean Individualism?

Dorothy Ross

"The Liberal Tradition Revisited and the Republican Tradition Addressed." In *New Directions in American Intellectual History*. Edited by John Higham. Baltimore, Maryland: Johns Hopkins Press, 1979, pp. 116–131.

The 1975 publication of J. G. A. Pocock's *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* compels historians to re-examine the liberal foundations of American politics. Unlike Louis Hartz who, in *The Liberal Tradition in America* (1955), interpreted American political history as the flowering of liberal ideas traceable to Lockean individualism, Pocock views American politics as the expression of ancient and renaissance concepts about republican governance and the moral quality of society. Pocock's history gives little weight to the Lockean influences in producing the dominant ideological positions in eighteenth-century political history. Pocock finds typical republicans intensely concerned with the moral well-being of society—a concern expressed in political discourse by the eighteenth-century fixation on corruption and the socio-political processes leading to tyranny, the ultimate stage of moral decay. This interpretation reads the history of American politics as one of changing content in the republican concept of governance.

This interpretation is extremely important in explaining the rise of the new liberalism during the late nineteenth century. If Pocock is correct about the basis of political debate in the eighteenth century, then political discourse in the late nineteenth century revives republican concerns about the moral integrity of government, the corrupting influences of monopoly, and the future of political freedoms. Nineteenth-century intellectuals, no less than eighteenth, believed that material and demographic progress resulted in the corruption of civic virtue if left unchecked or unregulated by government. This revival of republicanism appears strongest in the writing of Josiah Strong, Henry George, and Edward Bellamy, but it was also present in a wide range of work spanning the intellectual spectrum from academic debates to the protest literature of agrarian radicalism.

Viewing the intellectual history of the late nineteenth century as a revival of the republican tradition enriches our understanding of the age of reform. An intellectual kinship can be seen between the

reform and revolution of the eighteenth century and the pervasive search for order that Robert Wiebe identified as the animating principle of reform movements between 1870 and 1920. Moreover, a suggestive tension appears between reformers in the republican tradition and the new process-oriented, bureaucratic reform mentality that ultimately dominated political activism in the twentieth century. Bureaucratic reformers embraced

the idea of progress and worked to create a political and economic system that advanced the special interests of particular economic and social groups. The bureaucratic departure from the republican fear of such governmental activity leading to political and social corruption highlights the emergence of a new tradition, one that assumes the moral integrity of the citizenry and the ability of state action to create a better society.

Jefferson's Declaration: Lockean or Scottish?

Ronald Hamowy
University of Alberta

"Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's *Jefferson's Declaration of Independence*." *William and Mary Quarterly* 36 (October 1979).

Garry Wills's study misinterprets Jefferson's *Declaration of Independence* "as a product of Scottish moral philosophy devoid of Lockean influence." Wills dismisses the political philosophical influence of John Locke's *Two Treatises of Government* on Jefferson and reads the Declaration as primarily a product of the moral philosophy of the Scottish Enlightenment (Thomas Reid, David Hume, Adam Smith, Lord Kames, Adam Ferguson, and especially Francis Hutcheson). Wills's contention ignores Bernard Bailyn's scholarship that identifies the ideological origins of the American Revolution with the writings of Locke and Lockean-inspired pamphlet literature of the Whig revolutionary tradition (which advocated the radical interpretation of natural rights, political liberty, and social and governmental contract theory).

Contrary to Wills, the Declaration closely echoes Locke's *Second Treatise* in both wording and ideas. Such similarities as may exist between the Declaration and the Scottish Hutcheson, derive from Hutcheson's familiarity with Locke and the political writings of the Whig revolutionary tradition of Locke, Algernon Sidney, and James Harrington. The other Scottish Enlightenment thinkers differed

significantly from the rather Lockean Hutcheson in their political views concerning liberty and rights, particularly the right of political resistance.

The evidence—Jefferson's writings and the books in his libraries—clearly points to the influence of Locke, rather than of Hutcheson, on Jefferson. "Indeed, Hutcheson, who among the Scots comes closest in his views to those expressed in the Declaration, is not once quoted, cited, referred to, or recommended, in any connection, in any of Jefferson's writings!" The other Scots' writings were either unavailable for Jefferson or irrelevant to his radicalism.

Wills also misreads the Declaration as a discourse on Scottish moral philosophy rather than as a radical document of Whig political principles. Jefferson's phrase "the pursuit of happiness" indicates that men have a right to pursue happiness free from government meddling and prescinds from the moral question of whether this happiness is material or spiritual. Further, Jefferson in an early draft wrote that "all men were created equal and independent." This "denial of man's innate sociability and sense of benevolence" is out of keeping with the Scottish moralists but is consistent with Locke and the Whig revolutionary tradition. □

III

Self-Interest, Social Harmony, and Aggression

Does the pursuit of private self-interest lead to social order or to human aggression and a war of all against all? The following summaries pose this ancient question under many guises in such diverse fields as ethics, political philosophy, economics, anthropology, psychology, sociology, and sociobiology. Should self-regarding behavior (egoism) be pitted against other-regarding behavior (altruism), or can we reconcile these human actions through harmonizing “invisible hand” processes that, without human intention, achieve economic order or sociobiological evolution?

These questions, in turn, are closely related to the problematic origins of human belligerence, aggression, war, and militarism. Social scientist, Philip Slater in *Footholds* (1977) discerns three major theories of human belligerence: (1) humans are naturally belligerent due to an innate “surliness” that is biologically inherited but no longer functional as a survival instinct; (2) humans are naturally peaceful but are corrupted by aggression-instilling political or social institutions; and (3) humans are naturally peaceful but are corrupted by child rearing practices that socially reward belligerence but frustrate and repress peaceful pleasure-seeking. Arthur Koestler’s recent study *Janus* 1978, offers a stimulating theory of “holarchies,” to resolve the problem of dependence, autonomy, and aggression in forming stable systems.

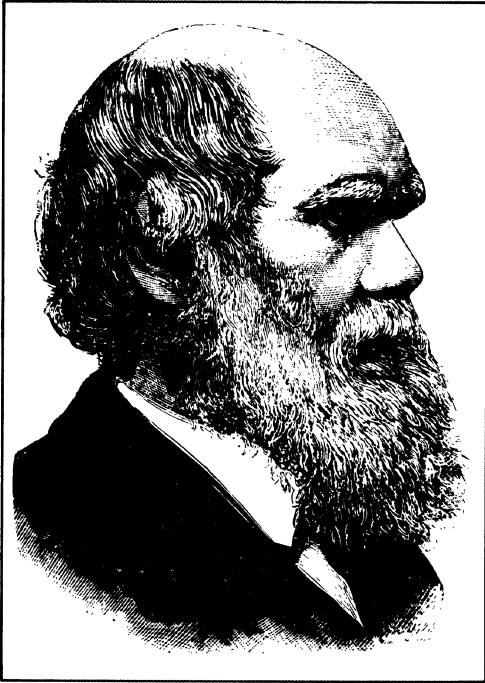
Of course, many other explanations for belligerence, social disharmony, and the relation of self-interest to the common good are possible, as witness the present set of summaries. These analyze such themes as spontaneous social order, invisible hand explanations, sociobiology (in relation to human selfishness, altruism, and evolutionary ethics), the self-regulating market and its social responsibility, egoism, the psychological distinctions between aggression and self-assertion, and the socio-political dimensions of individualism and the common good.

Cultural Evolution as Spontaneous Order

F. A. Hayek

Freiburg im Breisgau

"The Three Sources of Human Values: A Postscript to *Law, Legislation, and Liberty*." The Hobhouse Lecture given at the London School of Economics, May 17, 1978.



G. E. Pugh's *The Biological Origin of Human Values* has received high praise from sociobiologists such as Professor Edward O. Wilson of Harvard University. Much of the argument is based on the idea of primary and secondary values, "meaning by the first term those which are genetically determined and therefore innate, while he defines the secondary ones as 'products of rational thought.'"

But there is a third kind of value—cultural evolution—which is older than the biological notion of evolution, and goes back through Charles Darwin to his grandfather, Erasmus, and derived most likely from thinkers such as Bernard Mandeville and David Hume. The notion of cultural evolution, quite familiar to anthropologists and some geneticists, is a

much more rapid selective process than the biological one. "What has yet to be more widely recognized is that the present order of society has largely arisen, not by design but by the prevailing of the more effective institutions in a process of competition."

In short, "Culture is neither natural or artificial, neither genetically transmitted nor rationally designed. It is a tradition of learned rules the conduct of which have never been 'invented' and whose functions the acting individuals usually do not understand." What is good need not be either innate or rationally chosen, and culture is not merely the result of whim or caprice. In fact, "civilization has largely been made possible by subjugating the innate animal instincts to the non-rational customs which had made possible the formation of larger orderly groups of gradually-increasing size."

"Mind and culture developed concurrently and not successively." To attempt to recreate this process we must resort to the kind of conjectural history advocated by the Scottish moral philosophers of the late eighteenth century. What distinguished man was not only his capacity for reason but his "capacity to imitate and to pass on what he had learned." The brain enables us to absorb, but not to design culture.

It is this process which sociobiology has neglected. It entails evolution and spontaneous order, a complex interaction of patterns which Professor Donald Campbell has called "downward causation," which far exceeds any quantitative search for two or three variables. Most of the steps in the evolution of culture occurred when some persons broke away and developed new rules and forms of conduct, not because they were better understood, but because the innovative persons prospered. Property, competition, and other aspects of the market economy developed

in this way, and made specialization possible. Man did not deliberately invent his most important institutions, from language to law. Freedom demands a certain discipline in maintaining this market order.

The modern age has witnessed a re-emergence of the primordial instincts.

Marx and Freud were two of the leaders in this assault. Egalitarianism and the advocacy of liberating the instincts are steps backward. The process of civilization depends on the reassertion of this concept of cultural evolution and the spontaneous order of the market.

Spontaneous Order in Human Action

Edna Ullmann-Margalit

The Hebrew University of Jerusalem

"Invisible-Hand Explanations." *Synthese* 39 (1978): 263-291.

Both *natural* and *artificial* phenomena invite explanation, but a middle realm, "the result of human action but not of human design," needs a distinctive kind of explanation. Some phenomena of human (social) life are "*structured* in some interesting sense," which suggests that they may have been designed. But invisible-hand explanations (IHE) dispel this idea by the contention that an "invisible-hand process"—that is, "the aggregate mechanism which takes as 'input' the dispersed actions of the participating individuals and produces as 'output' the overall social pattern"—accounts for the patterned structure.

First of all, such an explanation requires "the description of the initial stage from which the process is supposed to take off" [and] "is to consist of nothing but the private intentions, beliefs, goals, and actions of the participating individuals, in a specified setup of circumstances," and, "that these individuals do not have the overall pattern that is ultimately produced in mind, neither on the level of intentions nor even on the level of foresight or awareness." Secondly, an invisible-hand explanation requires "that, given the circumstances specified at the outset, the story by means of which the invisible-hand process is conveyed has got to sound like a description of the ordinary and normal

course of events."

IHEs may be *true* and *cogent* or simply cogent, which alone could make them good. A cogent IHE alone could suffice to indicate "how [something] is *maintained*." Moreover, the "even though its own probability cannot be determined a priori, the mere availability of a cogent invisible-hand explanation does indeed undercut the probability of the intentional-design account it purports to displace."

Now, it is argued, that IHEs are the counterpart (in the social domain) of the biological-evolution explanations found in the realm of living organisms, namely, of functional-evolutionary explanations. But caution is warranted. Confusion has been created by some, (e.g., F. A. Hayek and Malinowski) since "for both of them to explain the manner of functioning of a social institution is at the same time to answer the question of its origin or formation." But there are two *molds* of IHE: one concerned with "*how did it—or how could it have—come about?*"; the other with "given that a certain social pattern or institution exists, *why is it in existence?*" or "Why is the social item under study existent rather than non-existent, or, again, why does it exist rather than some alternative?" If some social pattern needs explaining, we might employ the first mold and thus may obtain "an invisible-hand account of how it

(could have) emerged" but once it is pointed out that the item in question is functional, the second mold of IHE comes in handy, "yielding an invisible-hand account of its durability and prevalence."

It is important, the author argues, to keep these two molds of IHE "distinct and to conceptually isolate them from each other."

Aggression: A Sociobiological View

Edward O. Wilson
Harvard University

"Aggression." Chapter 5 in *On Human Nature*. Cambridge, Massachusetts: Harvard University Press, 1978.

Yes, human beings are innately aggressive. Many critics forget "that innateness refers to the measurable probability that a trait will develop in a specified set of environments, not to the certainty that the trait will develop in all environments." Aggression in any species is "an ill-defined array of different responses" among which at least seven can be distinguished. None of these exists across a broad range of species.

Under the intense pressure of natural selection, changes can occur throughout an entire population in a few generations. Aggression is one of these changes whose behavior is usually responsive to crowding, or what has been called a "density-dependent factor." Human beings are not bloodthirsty as in the "drive-discharge model of Freud or Lorenz, but rather are best described by the "culture pattern" model developed by the anthropologist Richard G. Sipes. Thus the cultural growth of war is also accompanied by the parallel development of combative sports and other lesser forms of violent aggression.

While the behavior is learned, "it is the pattern of such probabilities that is inherited." Territoriality is one of the variants of aggressive behavior provoked by scarce resources, and these variants evolve "only when the vital resource is *economically defensible*." This appears in studies of hunter-gatherers such as those by Rada Dyson-Hudson and Eric A. Smith. Such biological territoriality translates easily

into the notion of property toward which each culture develops its own particular rules.

In testing several hypotheses about aggression, William H. Dunham concluded that "cultural traditions of primitive warfare evolved by selective retention of traits that increase the inclusive genetic fitness of human beings." The cultural evolution of aggression is guided by three forces; a genetic predisposition toward learning some form of communal aggression, the necessities imposed by the environment, and the previous history of the group which will bias it toward the adoption of one innovation as opposed to another.

What needs further exploration is the idea that in times of plenty and in the absence of other predators, females tend to become a density-dependent factor limiting population growth.

"The evolution of warfare was an autocatalytic reaction that could not be halted by any people, because to attempt to reverse the process unilaterally was to fall victim." Keith Otterbein has suggested that as societies become more centralized and complex they develop more elaborate military organizations and seek to expand. This process can be reversed as it was with the Maoris after the introduction of European firearms had decimated the population.

"To provide a more durable foundation for peace, political and cultural ties can be promoted that create a confusion of cross-binding loyalties."

Sociobiology's Program and Weaknesses

Charles Frankel

"Sociobiology and Its Critics." *Commentary* 68 (July 1979): 39-47.

Although the present development of sociobiology has caused some debate in academic circles, many of the ideas go back to the Greeks and were based on common sense. "The discipline carries the implication that mankind's social institutions and mores are the product not simply of tradition, historical accident, ideology, or the machinations of ruling classes, but of dispositions and drives of the human animal that have developed in the process of biological evolution and belong to the species' genetic heritage."

Perhaps the basic book is Edward O. Wilson's *Sociobiology: The New Synthesis* (1975). In Wilson's view, sociobiology seeks to bring the insights of Darwinian theory to a new level of comprehensiveness and precision. But this is a call for something not yet in existence. Though less extreme than the statements of Konrad Lorenz or Robert Ardrey in making pronouncements about contemporary political and social problems, Wilson must also bear some of the blame for the criticism along these lines which have come his way.

Sociobiology's core doctrine, in Wilson's approach, is a program to unify biology, the social sciences, and the humanities. It is based on a classic form of philosophical materialism and is joined to what used to be called "evolutionary ethics." These doctrines go back to such atomists as Democritus and Lucretius, but Wilson's scientific materialism is of a special kind. Wilson espouses the traditional form of reductive materialism, although he veers away from some of its consequences and thereby adds to the confusion. Wilson believes his ideas are "more radical in their implications, and more contrary to views that are widely held, because he reads a meaning into them which, in my opinion, they do not and cannot have."

A major reason biology cannot be unified into such disciplines as the humanities, is



because those studies use terms (such as love, hate, and envy) that cannot be dealt with adequately in science. "I am not persuaded that his own version of evolutionary ethics is an improvement over nineteenth-century versions."

Many of Wilson's terms such as "Altruism" have little cash value when applied to the insect world. Wilson is most vague and guarded when he comes near to what should be the basic question concerning sociobiologists: "what proportion of human behavior is physiological and genetic in its causes? How much of what we commonly explain as a product of history and convention, like monogamous marriage, private property, or organized warfare, is in reality bone of our bones and flesh of our flesh, and not subject to change except with extraordinary effort and unpredictable consequences?" Often on these contemporary questions Wilson's answers, such as they are, are rather conventional but in "biological wrappings."

What caused the major debate after Darwin was the notion that evolution was a process with no preordained end, a profoundly anti-teleological idea. This disturbed even Darwin. One would hope that

as an emerging new area of scientific inquiry sociobiology will in the future offer more insight into this fundamental question than has thus far been the case.

Aggression vs. Cooperation

E. Richard Sorenson
Smithsonian Institute

"Cooperation and Freedom Among the Fore of New Guinea." In *Learning Non-Aggression: The Experience of Non-Literate Societies*. Edited by Ashley Montagu. New York: Oxford University Press, 1978, pp. 12-30.

The Fore were hunter-gardeners, having already moved away from the hunting-gathering way of life. They exhibit a high degree of individual freedom and a close cooperation in searching out new garden sites, tilling them while they last, and then searching anew. This kind of proto-agriculture was a way of life which could remain stable as long as its ecological and demographic prerequisites persisted. However, in some regions settled agriculture was developing, "so what also presented itself was a kind of transformation which may have occurred extensively during the emergence of settled agricultural practice on our planet."

In the proto-agricultural environment, infants were in almost constant bodily contact with the mother while the child was allowed considerable opportunity for exploratory activities and independence with age-mates. "Undoubtedly the lack of frustration during infancy and childhood was a key factor in the development of their cooperative and free proto-agricultural character." This nonaggressive social system began to breakdown as settled agriculture emerged.

A time of troubles began as the different groups began to converge on the few remaining strands of virgin forest. Initial warfare began as informally organized raids. There were reprisals, usually against individuals or small groups which

had violated property such as stealing from a garden or taking a pig. As time passed and the pressure for land became severe, the "warfare became more common, better organized, and more institutionalized."

Thus three distinct ecological and demographic phases can be observed in the development of the Fore society and the growth of warfare:

(1) With abundant land and a structure of proto-agriculture, the society had little fighting and considerable cooperation.

(2) The second phase was characterized by the beginnings of competition for land as alien groups began to converge in the remaining forest. "There were increasingly frequent episodes of confusion, anger and fighting. Conflict characteristically involved small raiding bands bent on redressing specific immediate grievances. There was an increase in migration to avoid conflict."

(3) In the final phase, with a rarity of new land there was an increase in sorcery, suspicions, and accusations. More organized groups and attacks began to occur including alliances to drive some groups away. Some of these then undertook migrations of some distance.

This whole process was interrupted by the arrival of officials of the Australian government. The Fore utilized the opportunity to let these officials serve as arbi-

trators, and "an anti-fighting ethic quickly spread through the region." This provided an immediate solution to the warfare which might have otherwise taken a long time, if at all, to be resolved. The experi-

ence of the Fore suggests "that aggression is a culturally programmed trait which is not necessarily always adaptive or even expressed."

Natural Values and Individual Decisions

George Edgin Pugh

President of Decision-Science Applications,
former Deputy Assistant Director of U.S. Arms and Disarmament
Agency

"Values and Personal Decisions." Chapter 15 in *The Biological Origin of Human Values*. New York: Basic Books, 1977.

The individual is constantly caught in a conflict between his need for social approval and his personal preferences. What he needs is a prescriptive theory to guide him. Philosophers have traditionally developed criteria for decisions along three broad categories: authoritarian, absolutist, and naturalistic. The authoritarian has been based upon the supernatural, the absolutist on reason, while the naturalistic has sought for values that were innate in human nature.

"In the present theory, we postulate that the evolutionary development of human values can be explained by a chain of primary-secondary valuative deductions." Any practical system of ethics must be compatible with the innate human motivational system. In practice, a "natural" ethics is almost indistinguishable from hedonism, except that in application there is an altruistic or social component of innate values.

Antisocial behavior and violation of social norms is a problem of motivation as the social environment has failed to provide a system of psychological rewards and penalties to which the innate system can respond. Punishment for violators of the norms thus has an important role in society.

The natural ethics has a close relationship to the ethics of the great religions of the world. These include such ideas as "Know Thyself," "To Thine Own Self Be

True," "Be Moderate in All Things," "Love Thy Neighbor," and "Honor Thy Father and Mother." At the same time it is compatible both with a religious and a scientific world view. Widespread cruel behavior within a given social order is a result of superstition and a distorted world view.

There is rather strong evidence that cultural evolution accelerated with the advent of modern man about 40,000 years ago, and was very closely related to an improved linguistic capability. The natural theory of values offers some means to reconcile certain important differences between the humanist and existentialist philosophers. There are some similarities since the natural view also emphasizes that a person must discover who he is, decide what he is going to be, and learn by doing. The failure of the existentialist view is its inability to provide practical criteria for social change. This stems from an "excessive emphasis on personal individuality" and "insufficient emphasis on the role of reason."

We are now in a period of crisis resembling the axial period of several millennia ago. The natural value system offers a way to reconcile the religious, philosophical, and scientific points of view and to help us out of the present impasse. Rational analyses that do not take into account man's genetically inherited value system will not work.

Sociobiology and Ethics

Andrew Oldenquist
Ohio State University

"Evolution and Ethics." *The Personalist* 59 (1978):
58-69.

Reflecting on the relationship between evolutionary biology and moral philosophy, Oldenquist confronts the position that "Rightly or wrongly, it is difficult to resist thinking that while the hypotheses of social scientists might be useful to educators, social revolutionaries and others who are in the business of altering moral beliefs, the causal explanations proposed by evolutionary biologists are the deeper and more ultimate ones."

First, the author explores the straightforward idea of whether altruism (or helping behavior) or egoism (crude selfishness) is more functional. He argues that "The selective superiority of reciprocal altruism over both promiscuous altruism and total selfishness presupposes that the animals involved are intelligent enough to remember who helped them and who didn't. And it requires that the group be small enough for individuals to meet each other again fairly often."

Second, the program of sociobiologist Edward O. Wilson is appealing because it rejects T. H. Huxley's dichotomization of the selfishness of our biological nature and the altruism of our nobler human nature. Wilson's program rightly proceeds on "a conviction that Man is part of nature." Wilson claims that "*we* are conscious and our genes make us *value* the behavior they make us emit." Not only do our genes explain our behavior, but our genes also account for our reflection and our behavior. Thus, if "altruism was selected for in humans," then we will be inclined toward an altruistic ethical theory.

Also, this view would seem to favor the ethical theory of Charles Stevenson, that is, emotivism, in which "moral beliefs are not propositional items but instead are identical with supportive dispositions. . . ." A close bond may link "the causes of behavior and the causes of our feelings

and attitudes."

Thirdly, we may dismiss the nature/nurture dichotomy as too simplistic. By Wilson's account "ultimate moral attitudes are the joint product of genes and environment." Of course, "this determinism . . . invites the usual arguments for ethical relativism; for whenever one claims that some set of causes external to our thoughts produces our basic values the reasons and justifications we give for them look like mere rationalizations." What upsets political thinkers about sociobiology is that a biological account for values leaves the social engineer with little to manipulate. "Social reformers can tinker with society and thus change people's values, but they cannot (now) change people's values by tinkering with their genes."

Fourth, evolution itself is not strictly a biological notion, so contrary to widespread belief, sociobiology may leave more room for play and diversity and lifestyles. It seems that "selection and evolution which is cultural or 'Spencerian' does not fit into the sociobiologist's program because it is not biological. Once acquired traits get transmitted, it would appear that genes and the population biology based on the study of genes can no longer explain what happens."

Sociobiology and Edward O. Wilson, proclaim bold things at first but then retreat. It seems much of what is normatively relevant is not "innate" and has "wholly non-genetic causal differentia." So, "if some behaviors expressive of values were selected for in a way that involves only cultural, nongenetic evolution, the task of tracing their origin will belong more to the intellectual historian than to the Darwinian geneticist: here we shall do better reading William Lecky than reading Wilson."

Self-Interest: An Invisible Hand for Social Good

David Levy

"Adam Smith's 'Natural Law' and Contractual Society." *Journal of the History of Ideas* 39 (October/December 1978): 665-674.



Can Adam Smith's argument that a free and pleasant society is feasible meet Thomas Hobbes's contention that a society of free individuals must be a conflict-ridden state of war? We can sustain Smith's argument (illuminated by Hobbes opponents, Bernard Mandeville and David Hume) when we realize how Smith stipulated that free, self-interested choice should be informed by ethical judgment.

In his *Leviathan*, Hobbes contended that in a free "state of nature" unrestrained by fear of retaliation, each man's self-interest would unleash his "natural passions" in violence. Freedom and self-interest seemed to condemn man's life to being "solitary, poore, nasty, brutish and short." In game theory language, Hobbes attacked a society of individual freedom with the "prisoner's paradox: that state of affairs in which an individual's maximizing of his own utility does not seem to lead to maximizing results for the group." In effect, we need the fear of Big Brother, the

Leviathan State, to serve as a "civil theology" to restrain our anti-social self-interest.

Smith rejected Hobbes's malevolent view of man's nature as tied to debased anti-social passions. Men, for Smith, would adopt a rule of law because it in fact reflects humanity's commonly chosen morality. Through social evolution, as Mandeville pointed out in *The Fable of the Bees*, men would recognize their frail but good human nature and freely choose those institutions that would confer social order and benefits. Ethics would evolve a code that would not suppress our passions but channel any "anti-social passions into harmonious social conduct." Hume believed that moral codes evolving for socially beneficial purposes would, for reasons of utility, devise such rules of justice as respect for property. Individuals could learn that justice was in each's self-interest.

Smith argued that the moral sentiment (and justice) went beyond simple considerations of general utility. Men would indeed agree with the utilitarian benefits to social stability in adhering to laws of justice. But men approved of justice even before recognizing the social utility of justice. As men we restrain our "passions" and form a general rule of our duty to be just "as an inductive process resulting from our sympathetic judgment of resentment of injustice in individual cases." Thus our natural sense of duty will constrain our choices and prohibit ignoble action. Rational religion in evolutionary fashion, if free and competitive in its "market" will diffuse a noble sense of duty through society. Thus humane religion will inculcate duty as part of other market processes and will allow "selfish" individuals to respect their fellows and form a stable and free society.

Is Market Self-Interest Socially Responsible?

Harold Demsetz

University of California, Los Angeles

"Social Responsibility in the Enterprise Economy."
Southwestern University Law Review 10 (1978):
1-11.

Are self-interested market activities compatible with social benefits and social responsibility?

Free enterprise firms and corporations face the problem of evaluating which "individual choice opportunities" they should select in an economic context of resource scarcity. Market enterprises employ two criteria in selecting their behavior: (1) the competitive profit and loss signals of the market, and (2) the preferability of voluntary market transactions over coercive, fraudulent, non-market transactions. Demsetz, from a cost-benefit analysis, reveals that coercive, non-market transactions fail to allocate resources to their highest value use as is done in voluntary, profit-seeking transactions. Ethically considered, the free and voluntary market is superior to the governmentally-controlled command economy: "The command economy by virtue of its restrictions of choice opportunities strips observed behavior of ethical significance."

Market self-interest is socially responsible. As Adam Smith observed, the self-interest of profit-seeking is superior to altruism as a motive for securing "the coop-

eration and assistance of great multitudes" who have no personal knowledge of each other. The "profit and loss system creates a prima facie case in terms of the net benefit criterion in support of those activities that survive the market test." Furthermore, profitability in the market is highly ethical if we value freedom over coercion.

Government solutions seek to challenge the social responsibility of the market's profit and self-interest motivation by appealing to: (1) the need of paternalism to correct individuals' tendency toward unenlightened self-interest; (2) the need to correct underlying inequitable distribution of wealth; and (3) the problem of externalities by which businesses pass on costs to unwitting parties. Demsetz's detailed analysis finds each of these critiques of the market unpersuasive. After scrutinizing anti-market attacks on high prices, the evils of large monopolistic corporations, and the separation of corporate ownership and control, he concludes: "the charge of social irresponsibility runs a considerable risk of being irresponsible itself."

Is Egoism a Valid Ethic?

Tibor R. Machan

State University of New York/Fredonia

"Recent Work in Ethical Egoism." *American Philosophical Quarterly* 16 (January 1979): 1-15.

This bibliographical essay listing 65 works reviews selected philosophical treatments of ethical egoism published since 1950, and sketches a plausible ver-

sion of ethical egoism.

Taken broadly, ethical egoism holds that basic principles of conduct must be 'related' to some benefit for the agent.

Machan distinguishes subjective egoism (the view that "a code is applicable to the unique individual one happens to be") and classical ethical egoism (the view that treats the ego or the self "as an individual of a kind," namely, a human being). The egoism the author defends answers the question "How should I conduct myself?" with: "One should conduct one's life so as to achieve, in one's particular case, excellence as the kind of being one is."

Machan considers both proponents and opponents of egoism, developing in some detail the views of the former. His concern is the answers philosophers have given to two related questions: (1) Can egoism be a *bona fide* ethical theory? (2) Is ethical egoism a (the) correct ethical theory?

Philosophers concerned with the first question have considered issues such as whether the egoist principle is universalizable or satisfies other putative requirements of a *moral* principle. Machan gives no account of the troublesome principle of universalization, or of its role in moral theory. Discussing a critic's suggestion that a theory which embodies a preference for the good of the agent is no less acceptable from a formal point of view than a theory that embodies a preference for the good of others, Machan replies that "any practically viable morality must admit to some biases. . . . To ask of a moral

position that it be completely unbiased, impartial, and universalizable is to ask the improbable, perhaps even impossible, of human beings."

Machan discusses the egoistic theories of Eric Mack, Jesse Kalin, and Ayn Rand. He mentions briefly the criticisms advanced by Robert Nozick, Hazel Barnes, and James Rachels, and laments the paucity of philosophical response to Kalin's works and to Mack's defense of a neo-Aristotelian, functionalist and essentialist version of egoism. A recurring criticism of opponents of egoism is that they fail to aim their objections at specific views advanced by particular ethical theorists, that they rely instead on their own 'renditions' of ethical egoism.

Machan claims that classical egoism satisfies the requirement of universalization; that following egoistic principles need not engender social disharmony; and that in developing an egoist theory one can give the proper role and significance to ordinary intuitions about morality. He further contends that as an answer to the question "How should I conduct myself?" ethical egoism "appears to be as right as answers in the domain of ethics can reasonably be expected to be." He points out in closing that the ethical egoism he defends includes consequentialist and deontological elements.

Egocentric Altruism

Frederick H. Kanfer

University of Illinois

"Personal Control, Social Control, and Altruism."
American Psychologist 34 (March 1979): 231-239.

This article studies egocentrically motivated altruism (helping) as an alternative to attempts to regulate relationships between individuals and society. The distinctions between social control and personal control (self-regulation) provides

the context for this discussion.

Social controls are introduced in an attempt to resolve conflicts between an individual and the group arising from conflicts of interest. Such controls are most frequently applied regarding behaviors "for

which there is strong stimulation in the biological makeup or the immediate environment," e.g., aggression, sexuality, maintenance of property rights, and enforcement of commitments. The use of external social controls requires the existence of elaborate social structures to provide continuous surveillance to identify infractions.

A number of significant problems arise in attempts to exert such social regulation. (1) The regulators must have exclusive discretionary control over the incentives and reinforcers by which a person's behavior may be modified. (2) The surveillance must be constant. (3) The extensive use of aversive consequences and negative reinforcers is considered by many as morally objectionable and may create an impetus to defiance or rebellion. (4) It is necessary that controllers behave consis-

tently within their own actions, and similarly to all other controllers. "When the degree of social control is continually inconsistent with individual needs, the struggle against such control becomes intense."

Through *personal control* (self-regulation) the person maintains some independence from the environment. "[It] provides the opportunity for initiating, maintaining, and reinforcing actions that can result in either increased social benefits or excessive pursuit of egocentric objectives." Development of altruism is mostly to be achieved and maintained when such behaviors are perceived to be self-initiated rather than imposed. "The task . . . is to train persons to act for the benefits of another because it is in their own self-interest."

Individual Assertion vs. Aggression

James G. Hollandsworth, Jr.

Community Mental Health Center of Palm Beach County,
West Palm Beach, Florida

"Differentiating Assertion and Aggression: Some Behavioral Guidelines." *Behavior Therapy* 8 (1977): 347-352.

What behavioral criteria distinguish assertion from aggression?

An assertive response is defined as "the direct verbal, and nonverbal expression of one's feelings, needs, preferences, or opinions." Aggression is defined as "any response which delivers, either verbally or nonverbally, noxious stimulation to another individual." This latter definition does not eliminate the problem of subjectivity: what may be noxious to one person may not be to another. What we need for greater objectivity is a reliable indicator of what has a high probability of being perceived as noxious. Such an indicator is the use of coercive power, i.e., the use of threats and punishments in an effort to

obtain compliance.

Assertive behavior, in contrast to aggression does not involve the use of coercive power. Thus, assertive behavior can be placed under the rubric of the legitimate use of social power. Its power stems from the internalized values of the other individual and is consistent with socially defined rights. Where aggression may be effective in the short-term in gaining compliance, it is likely to reduce the likelihood of developing long-term effective interpersonal relationships. Aggression increases the potential for counter-attack. A person may use aggressive responses because effective assertive behaviors have never been learned.

Constructive Assertiveness

Saul Rosenzweig

Washington University, St. Louis, Missouri

"Outline of a Denotative Definition of Aggression."
Aggressive Behavior 3 (1977): 379–383.

This study offers a multi-level approach to the definition of aggression which subsumes under it "(1) generic assertiveness in apposite life situations; (2) neural mechanisms which subserve such behaviors; and (3) physiological conditions which mediate or promote these behaviors."

Assertiveness can be considered as the essential aspect of aggression with connotations that are not wholly negative. It includes potentially constructive actions by which goals may be achieved. Constructive means are those which do not entail damage or injury to other persons or objects while destructive means are ones which do result in damage or injury.

Three classes of settings for aggressive actions are described: (1) *privation*, includ-

ing the frustration of vital needs and frustrations arising from inner conflicts; (2) *conflict* (social), which involves competition between rivals for need satisfaction or the establishing and maintaining of dominance; and (3) *victimization*, including predatory-prey relationships and destruction for its own sake, e.g., vandalism. The distinction between destructive and constructive means is particularly relevant to social conflict. Destructive resolutions to conflicts are adversary contests whose object is to destroy, injure or demean the other. Constructive resolutions to conflict treat the situation as "a shared problem which can be solved with mutual benefits—benefits exploit the advantages of cooperating diversity."

Liberalism and Self-Interest

Eldon J. Eisenach

Cornell University

"Crime, Death, and Loyalty in English Liberalism."
Political Theory 6 (May 1978): 213–232.

Touching on many themes, Eisenach primarily attempts to separate two approaches in English liberalism for explaining human action. One theory bases learning and action on a desire to maximize self-interest in conditions of scarcity. Related to this is a conception of just society which limits government to enforcing contracts and protecting persons and their property. The second approach in liberalism attempts to uncover the springs of action through investigating the historical origins and development of political societies.



Even though these two approaches are distinguishable, some liberal writers, Locke for example, make use of both. Yet, according to Eisenach, "These two patterns of explaining human actions—one set in the timeless logic of psychological empiricism, the other located in the specificity of historical speech and action—come into obvious conflict in discussions of political loyalty and physical coercion."

Eisenach examines the treatment of crime, criminals, and coercion in three analytical contexts: (1) "In a state of na-

ture," (2) "in recorded history, both sacred and secular," and (3) "in the future, occasioned by the victory of liberal economic and legal values." By isolating these treatments of crime, criminals, and punishment, Eisenach hopes to show their importance to theories of political loyalty. An understanding of the issues arising from crime and punishment can enlarge our understanding of the problem of political obligation. In particular, Eisenach analyzes the often intriguing relationship between the role of religion and public (governmental) crime.

Sociology: Holism vs. Individualism

Chris R. Tame

"Change and Pseudo-Change in Sociology." *The Jewish Journal of Sociology* 19 (June 1977): 79–88.

Has contemporary sociology worked a revolution or "paradigm shift" to replace orthodox sociology's stress on deterministic social forces with a newer stress on "individual autonomy"? Not yet. For a newer paradigm to emerge with sociology viewed as a "science of liberty" that is individualistic alike in its methodology, psychology, and normative content, we need to go beyond the present scholarship.

Dennis H. Wrong's *Skeptical Sociology* (1977) and Monica B. Morris's *An Excursion Into Creative Sociology* (1977) are cases in point. Both works critique orthodox structural functionalist orthodoxy but need themselves to be supplemented.

Wrong dissects the inadequacy of structural functionalism's positivism and scientism. He also exposes the holistic and deterministic assumptions of conventional sociology whose over-socialized conception of human nature overlooks human choice

and autonomy. His own alternative model of human psychology, however, ignores the rationalist versions of humanistic or "third force" psychologies, and opts for a deterministic Freudianism. Furthermore, Wrong fails to identify the conservative-collectivist origins of traditional sociology as illustrated in such concepts as "rootedness," "community," and socially guaranteed "identity."

Monica Morris introduces the newer "creative" sociology, such as the phenomenological, ethnomethodological, and interactionist approaches, all of which challenge the positivism and deterministic view of human puppets passively manipulated by social forces. However, Morris's exposition needs far more analysis to show how "creative" sociology departs from traditional sociology. We still need to construct a voluntaristic and individualist sociology. □

IV

Economic Schools and Analysis

Economic thought and analysis arose in the West among the ancient Greek philosophers, Plato, Xenophon, and Aristotle, all of whom viewed economic affairs from an ethical and rational perspective. Later economic thought became immeshed in religious doctrines (such as the ban on interest as "usury"), and the marketplace became subject to rival interpretations of God's will. The more secular Greek economic analysis returned to the West, paradoxically, by a harmonious collaboration of Christian, Jewish, and Moslem scholars.

As the "heirs to Greece," the Arabs continued Greek scientific traditions when they conquered Alexandria in 639. During the ninth century, a Nestorian Christian, Hunain ibn Ishaq (809–872) made Baghdad a center for translating Greek treatises into Arabic and Syriac. Still later, the Arab empire together with the Byzantine Greeks "met together in Western Europe, carrying with them the seeds of the Renaissance." In particular, Moslem Spain acted as the principal channel through which Greek economic ideas passed into the west (see Marjorie Grice-Hutchinson, *Early Economic Thought in Spain 1177–1740*. London: George Allen & Unwin, 1978).

The following summaries explore selected strands and issues in economic history and analysis, beginning in ancient Greek economic thought and ranging through the influential Scholastic economic doctrines, mercantilism, economic liberalism, Adam Smith, and the modern period. The last six summaries examine methodological and ideological issues that touch on the nature of economics as a discipline and its relationship to the social sciences, politics, and society.

Ancient Greek Economic Thought

S. Todd Lowry

Washington and Lee University

"Recent Literature on Ancient Greek Economic Thought." *Journal of Economic Literature* 17 (March 1979): 65–86.

Although many contend that economic science began with either the Physiocrats or Adam Smith's *Wealth of Nations* in the eighteenth century, significantly the

name of economics itself derives from the more ancient Greek discipline of *oikonomia*, which designated estate management and public administration. The

well-known influence of classical Greek literature on European education from the medieval Aquinas to the present day should make us open to the possible contribution of ancient Greek thought on later economics. Even Joseph A. Schumpeter, who dismissed strict economic analysis in Xenophon's *Oeconomicus* or Plato's writings, recognized in Aristotle's *Politics* (Book I) and *Nichomachean Ethics* (Book 5) the "beginnings of formal analytic techniques applied to economic subjects." Schumpeter further judged that the first five chapters of Adam Smith's *Wealth of Nations* recapitulated Aristotle's economic contributions on barter, exchange, and the division of labor. Schumpeter, however, overlooked the possibility of subjective relativism in Aristotle's theory of money.

In fact the economic contributions of the Greeks were far more profound than even Schumpeter allowed and influenced such matters as spontaneous market harmony, equilibrium processes, subjective utility, proto-marginalist concepts, and monetary theory. These contributions are discussed in: Henry Spiegel's *The Growth of Eco-*

nomic Thought (1971); Glauco Tozzi's *Economisti greci e romani* (1961); and Barry Gordon's *Economic Analysis Before Adam Smith* (1975).

Tozzi's volume is especially important since (1) he draws extensively on French and Italian economic history scholarship that has never entered the English tradition; and (2) he poses "the question of an abstract empiricist view of justice, i.e., can justice be built as a social concept from the subjective self-interest of the individual participants in the political structure." Gordon's work notes the importance of Scholastic interpretations of Aristotle's theory of money exchange as "unnatural" because it was unlimited by natural and moderate human needs. This concept, together with the ancient and invidious comparison between noble *oikonomia* (public administration of the economy) and morally suspect *chrematistike* (private commercial activity or wealth-getting) supported the belief that public intervention on the economy was necessary.

Some 124 items of scholarship are cited in this far-ranging and suggestive assessment of ancient economic thought.

Scholastic Economic Thought

Julius Kirshner
University of Chicago

"Raymond de Roover on Scholastic Economic Thought." In *Business, Banking, and Economic Thought*. Edited by Julius Kirshner. Chicago: University of Chicago Press, 1974.

Scholastic economic thought has frequently been characterized as a forerunner of nineteenth-century socialist economics and a barrier to the development of medieval economic freedom. Others have claimed that the economic teachings of the Scholastics were totally irrelevant to the course of medieval economic history. Max Weber and Richard H. Tawney popularized the belief that medieval men disliked competition, condemned personal profit, and scorned acquisitive activity as a nec-

essary evil. Raymond de Roover's scholarship reveals a far different picture of economic thought and practice during the Middle Ages. De Roover stressed the continuity of Scholastic economic thought with modern views on such topics as monopoly, value, price, and usury.

De Roover places Adam Smith's attack on monopolies within a tradition embracing Aristotle, Roman law, and the Schoolmen. Scholastic monopoly theory rests on the doctrine of just price. The "just

price" is the competitive market price, subject to some government regulation. Because monopoly-creating agreements were often thought to result in artificial scarcity and price inflation, monopoly appeared to sin against brotherly love.

The concept of just price, in turn, rested on a subjective theory of value equating value with the relative scarcity of a good and its ability to satisfy wants. In the 1960s de Roover discovered that Scholastic economic writers such as St. Bernardine and St. Antonine had borrowed this concept of utility from a Franciscan, Peter Olivi who lived a life of poverty and led the spiritual party of his order. In addition to a subjective theory of value, Scholastic writers like John Buridan identified and attempted to solve the "paradox of value."

De Roover challenged Tawney's charge that Aquinas was a precursor of Marx. Aquinas, with most of his contemporaries, held that the just price was the market price. Moreover, this equation was extended to cover wages as well, and Scholastic writers vigorously criticized the medieval guilds for their monopolistic practices.

For de Roover the weakness of Scholastic economics was opposing usury. Yet even here the Schoolmen developed several doctrines that, in effect, allowed loans

at interest. One of these was based on a two-tiered theory of money which distinguishes (sterile) *pecunia* from (fertile) *capitale*. Since *capitale*, unlike *pecunia*, has a seminal quality of generating profit, writers like Olivi, Bernardine, and Antonine countenanced loans of *capitale* being repaid with interest. A more controversial doctrine, *lucrum cessans*, allowed a lender to claim a return beyond principal if to make the loan he had given up an opportunity to invest his capital in what appeared to be a profitable enterprise. Finally, the banking and exchange system was used to circumvent the usury doctrine by claiming that the exchange transaction was a buying and selling of foreign currency, not a loan.

Profit, Tawney and Weber notwithstanding, was not viewed as evil per se. Business was a legitimate activity if it performed a socially useful role by manufacturing, transporting, or distributing goods. Profit was seen as compensation for the labor and risks undertaken by the businessman. Schoolmen such as Aquinas, Scotus, Bernardine, and Antonine only condemned the craving of profit as an end in itself.

In sum, de Roover's revisionist portrait of medieval economic thought should lead to a substantial revision of the historical development of economic theory.

Scholasticism and Austrian Economics

Murray Rothbard

Polytechnic Institute of New York

"New Light on the Prehistory of the Austrian School." In *The Foundations of Modern Austrian Economics*. Edited by Edwin G. Dolan. Kansas City: Sheed & Ward, 1976, pp. 52-74.

Professor Rothbard focuses on the post World War II literature reinterpreting the development of subjectivist-marginalist economics, particularly the Austrian School. The Scholastics played a key role in this development according to the new interpretation. Joseph Schumpeter, Marjorie Grice-Hutchinson, and Raymond de Roover have demolished the view that the Scholastics believed in the labor theory of

value, the doctrine of the just price, and the immorality of trade. Instead these revisionists demonstrated that the most important Scholastic thinkers were precursors of the Austrian School of economics, which began in the 1870s.

The Scholastic thinkers specifically denied that labor or other costs determine price, but rather spoke of the scarcity or abundance of goods, and how this supply

was valued by the community. In other words, they had discovered the role of utility and scarcity in value determination, lacking only the concept of the margin. They scorned the notion that embodied-labor could or should determine price. On the question of the just price, a number of the Scholastics, including Thomas Aquinas, asserted that *the market price is the just price*. The Scholastics' view of trade evolved from a position of suspicion to one of support. Trade came to be viewed as mutually beneficial.

The Scholastic views survived the Reformation, influencing even some of the new Protestant thinkers, such as Grotius. Grotius even cited two of the Spanish Scholastics, evidence of the penetrating nature of their analysis. Pufendorf adopted Grotius's economic doctrines, along with his legal ones, but he dropped all references to Catholic Scholastics. When Pufendorf was translated into English, the Scholastic origins of his doctrines were lost. Francis Hutcheson weakened the utility doctrine by introducing cost of production analysis; this was absorbed by Adam Smith. This analysis

partially vindicates the view that Smith and Ricardo shunted economics onto the wrong track.

On the continent, the older utility doctrine lasted longer. In France, Condillac, Turgot, Quesnay, the Physiocrats, and J. B. Say preserved the doctrine. But British cost doctrines were to sweep the continent too. Rothbard leaves open the question whether Emil Kauder's analysis of eighteenth-century developments is correct. Noting that the utility doctrine persisted on the continent, especially among Catholic writers, while the cost doctrines gained the allegiance of British Calvinist-Protestants, Kauder hypothesized that the Catholic Church's Aristotelian-Thomistic tradition approved of moderate pleasure-seeking, focusing attention on utility as the motive of economic action. Calvinism, on the other hand, glorified labor and denigrated pleasure.

Rothbard notes that the Austrians can now be seen, not as erecting a new theoretical edifice upon British classical political economy, but as reviving and developing an older tradition shunted aside by classical political economy.

Mercantilism vs. Economic Liberalism

Joyce Oldham Appleby
San Diego State University

"A New Argument for Economic Freedom." In *Economic Thought and Ideology in Seventeenth Century England*. Princeton: Princeton University Press, 1978, pp. 158-198.

By the early seventeenth century wealth was associated with a favorable balance of trade, that is, with an excess of goods exported over those imported. This view evolved into a theory of economic growth which emphasized foreign trade's capacity to generate specie or wealth. This theory gave primacy to commercial over political factors, an innovation crucial for subsequent theoretical developments. Attention was focused on the production of goods for sale, with almost no notice of

consumption's role in economic progress. Linked with this one-sided view of economic activity was the treatment of trade as a "zero-sum game"—what one party to an exchange gained, the other party lost. Economic theorizing was often thinly disguised special-pleading by such groups as the clothiers, who wanted restrictions on imports of competing goods. To them, internal trade consisted merely of money transfers; consumption was "a necessary evil at best."

The balance-of-trade doctrine was an economic ideology for an era of intense political rivalries. Nation competed against nation, politically and economically, but in this ideology members of a society were to be united in one enterprise. The economic aspect of this enterprise consisted in selling surplus goods abroad to obtain specie (wealth).

Rising levels of income and consumption challenged the old mercantilist position and led to revolutionary changes in attitudes and analyses. Prosperity was not only associated with increased consumption, but also with increased imports, particularly East India fabrics. Observers such as Henry Martyn launched an attack on the very idea of a need for political stimulation of employment and political controls on consumption and trade. In this conceptualization of the economy, individuals occupied center stage. Individuals not only competed in production, but they had different wants, which could best be served by the production *and* importation of the greatest variety of consummables. Competition and economic freedom were extolled. Consumption was analyzed as a constructive activity, part of a dynamic process stimulating exertion, inventions, the entrepreneurial spirit, and ever greater production. Wealth was no longer viewed as a specific commodity, but as the capacity to purchase. Consumption was

treated as the end of economic activity and trade as mutually beneficial. The emphasis on economic freedom and the conclusions of the arguments for this freedom all ran counter to the old mercantilist position.

The new pamphleteers and writers developed a coherent and sometimes sophisticated picture of trade and commerce, of production and consumption, and of economic activity in general, all without recourse to equations. They did so by switching analysis from a static view of commerce to one in which commerce played a dynamic role in translating consumption wants into increased production. Moreover, this dynamic process was a coordinated one that could function without outside direction. Not anarchy, but lawful behavior based on natural forces would proceed from economic freedom.

Spokesmen for the privileged economic groups counterattacked, not by meeting the sophisticated arguments of the new economic theorists, but by appeals to patriotism, xenophobia, and "common sense." They explicitly divorced private profit and the public weal, both denying the chief argument of economic liberalism and anticipating twentieth-century responses to free market ideas. The conclusion of this debate was only worked out in the latter part of the eighteenth century.

The Social Meaning of Economic Liberalism

Joyce Oldham Appleby

San Diego State University

"Ideology and Theory: The Tension between Political and Economic Liberalism in Seventeenth-Century England." *The American Historical Review* 81 (June 1976): 499-515.

By the end of the seventeenth century—ninety years before Adam Smith's *Wealth of Nations* was published—British writers on political economy had challenged the cruder mercantilist fallacies. Yet in the eighteenth century the "balance-of-trade" doctrine was reasserted in its crudest forms. The author seeks the answer to this paradox in

the tension and interplay between theory and ideology.

The balance-of-trade doctrine focused on production for the foreign market as the source of specie, and hence, of wealth. Domestic consumption robbed the nation's store of capital. Therefore, foreign markets for British goods were sought. This view conceived of the whole nation as one

patriotic unit or enterprise. There was scant appreciation of individuals' particular interests and desires.

The balance-of-trade theory could not explain Britain's economic growth, especially the great rise in domestic consumption (which should have impoverished the nation). Writers of political economy such as Henry Martyn, Nicholas Barbon, Daniel Defoe, and Bernard Mandeville fashioned a new social view challenging the foundations of the old. They viewed society as an agglomeration of self-interested individuals, and they extolled the role of domestic consumption for its effects on economic growth. These writers also stressed the dynamic interaction between growing consumption wants and increased effort and increased production. Not only would new products meet a demand, but consumers, having discovered products heretofore undreamed of, would be stimulated to work harder and produce more. Growth would be "self-sustaining."

If crude errors had been decisively rejected by the end of the seventeenth cen-

tury, why were the new ideas not developed? Appleby argues that ideology was a barrier to further theorizing along new lines. The prevalent ideology enshrined an idea of upper class governance and lower class deference and discipline. The sociopolitical structure would have been threatened by the new ideas. Among other things, the new view suggested that the poor could improve themselves through individual effort—too democratic a view for the times.

Businessmen sought freedom for themselves, including freedom from the bonds of a traditional society. They nonetheless accepted the permanent rule of the lower classes by an elite, of which they were now members. A theory in which the poor's interests were one with the ruling class's, in which the poor could improve themselves through effort, and in which the consumption of the lowest classes was elevated to the end of production, clashed too strongly with the dominant ideology and with class interests.

Adam Smith Scholarship

E. G. West
Carleton University

"Scotland's Resurgent Economist: A Survey of the New Literature on Adam Smith." *Southern Economic Journal* 45 (October 1978): 343–369.

Professor West surveys fifty-eight studies in a critical review of the important developments of the literature on the *Wealth of Nations* (WN) in the last thirty years. He steers a middle course between the over-exuberant interpreters who see Smith presaging neoclassical economics, and those critics who fail to consider the historical and social circumstances in which Smith wrote. Paul Samuelson falls in the first category, seeing Smith as an always logical and consistent analyst who anticipated "general equilibrium modeling." But this view ignores Smith's advocacy of removing governmental restraints on the economy in order to end monopolies

and improve efficiency.

In his criticism of Smith's political advice to sovereigns, George Stigler overlooks the political realities of the seventeenth century and misunderstands Smith's task in the WN. Smith was interested in *constitutional* reform, not the day-to-day calculus of the vote-grubbing politician.

What emerges from West's summary is the traditional liberal interpretation of the WN reaffirmed and strengthened. Smith was "a 'total political economist', a man who has not only competent analysis but economic *judgment* and a full sense of what issues are relevant." West finds Smith an advocate of markets freer of sub-

stantial political interference than was heretofore believed. Government should exist only to permit a liberal civil and commercial society to prosper, and not to pursue other goals, however laudable. Smith's "concessions" on government economic activity in the provision of highways, bridges, and canals represent misunderstandings. He advocated not government's providing these goods, but legal permission for joint-stock enterprises to provide these "public works." Once again misinterpretation arises from the failure of modern readers to appreciate eighteenth-century institutional realities.

The *WN* compares favorably with modern neoclassical economic analysis in two critical areas: the treatment of institutions and the view of competition. Modern economics is all but devoid of institutional considerations. The social, legal, and political institutions played a central role in Smith's analysis, with much of the *WN* advocating changes in British laws of trade, tariffs, and monopolies.

Smith viewed competition as a process, whereas most modern theorists treat it statically, as a state of affairs ("perfect competition"). In recent times, Smith's approach to the theory of competition has been advocated by relatively few theorists, F. A. Hayek being the most prominent among these. The only modern economic school following Smith in this area is the Austrian. In this view, competition is a dynamic process occurring precisely because we are not in an "equilibrium." Divergence of expectations, change, invention, and profits and losses characterize this process. All this is absent from modern analysis.

The Smithian view of competition is integrated with his institutional emphasis. In an uncertain world, we seek not those "experts" who know best, but those institutional arrangements best suited to facilitating *unknown* individuals' using their talents and knowledge to their advantage and thus to society's.

Jevons and Laissez-faire

Ellen Frankel Paul

Miami University

"W. Stanley Jevons: Economic Revolutionary, Political Utilitarian." *Journal of the History of Ideas* 40 (April/June 1979): 267-283.

In the last quarter of the nineteenth century, the fundamental principles upon which classical economics had been founded were questioned and in most instances found wanting. Primary among these was the labor or cost of production theory of value which W. Stanley Jevons completely overturned with his final utility theory of value. Other important components of the classical framework were also shattered, such as the Malthusian population theory; the projection of a future stationary state; the Ricardian "iron

law" of wages; and the macroeconomic approach to determining the shares distributed to each class in the production process. What is truly remarkable, however, is that despite these dramatic alterations in economic theory per se, little direct effect can be seen from this quarter on the question of the government's role in the economy. There was no essential break between John Stuart Mill and Jevons in their approaches to this question, for both were Utilitarians, and, hence, they both advocated an ad hoc evaluation of each

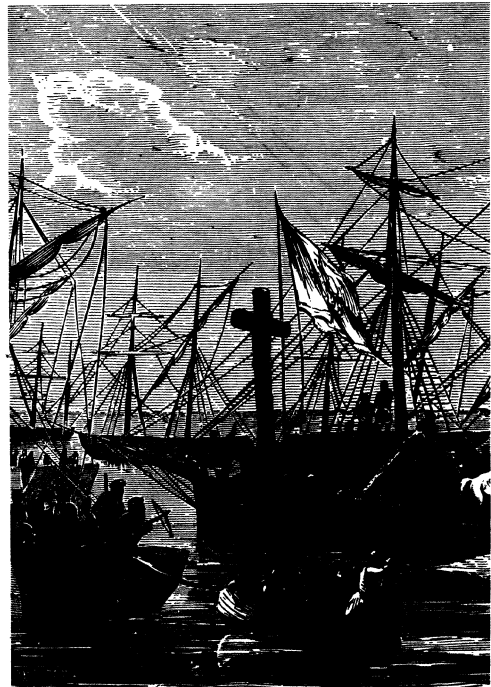
particular proposal for governmental intervention.

The movement away from *laissez-faire* which was begun in the third quarter of the nineteenth century came to completion in this later period. It was no longer necessary to disavow any connection between economics as a science and the doctrine of *laissez-faire*. *Laissez-faire* had become something of a dead issue resulting from the combined influences of attacks by J. S. Mill, Henry Sidgwick, and J. E. Cairnes, plus the rise of trade unions, and practical men's demands for an increased regulatory role for the state enabling it to deal with the pressing social questions of the day. Thus for economists of this later period, such as Jevons, Wicksteed, and Marshall, it was no longer necessary to prefer even the formalistic, and largely empty, obeisance to *laissez-faire* that Mill uttered before examining the particular cases for governmental intervention. Their approach, then, was entirely empirical, proceeding with no preconceived preference for either state action or unfettered, free competition. The two were placed more nearly upon an equal footing. In this development, there was no decided break with their immediate predecessors, rather, they completed the disassociation with *laissez-faire* that the last generation had begun.

Jevons was more extreme than Mill in his enthronement of utility and expediency as respectively the objective and the test of legislation, and in his all but complete disavowal of *laissez-faire* as the regnant principle governing state intervention in the economy. When it came down to actual proposals, Jevons was, however, not nearly as adventuristic as Mill, and he did not display Mill's enthusiasm for socialistic ventures, although he had no preconceived hostility towards them. He was perfectly willing to adopt such measures if they proved their suitability for maximizing general happiness. While Adam Smith on several occasions dismissed various state activities by saying that they constituted violations of the right to property, Jevons, in contrast, says that any violation of property is valid so long as it can be scientifically shown to

increase the general good. This comparison of Smith and Jevons sharply focuses on the contrast between the moral theories of Lockean natural rights and Benthamite utility as they affected the question of the proper role of government in the economy.

The principle of utility coexisted with *laissez-faire* governmental policies for a time, particularly in Bentham and to a lesser extent in Mill, but in Jevons's *laissez-faire* the former was finally victorious over the latter. On the question of the proper limits of the government's interference in the economy, Jevons completed the work of Mill; i.e., he abandoned all a priori opposition to state regulation and subjected each case to the test of expediency with the Utilitarian end of general happiness. Jevons held the Ricardian-Millian economics in nothing short of utter contempt, yet on the level of political theory his revolutionary economics did not lead him to question the assumptions and conclusions of the Utilitarian School.



Social Sciences and the "Methodenstreit"

Samuel Bostaph

Western Maryland College

"The Methodological Debate Between Carl Menger and the German Historical School." *Atlantic Economic Journal* 6 (September 1978): 3-16.

The "war of methods" (*Methodenstreit*) began with the publication of Carl Menger's *Untersuchungen über die Methode der Socialwissenschaften und der Politischen Oekonomie Insbesondere* in 1883 (translated as *Problems of Economics and Sociology*). In that volume Menger both presented his positive position on the scope and method of the social sciences and criticized the position of the intellectually-dominant German historical school. The dean of the younger German historical school, Gustav Schmoller, responded in a caustic review of Menger's book. A highly polemical exchange ensued that involved each scholar's followers.

The debate pitted two radically different methodological positions against one another. The "Austrian" position argued that economic theory can and should discover "absolute" laws of economic behavior, and held that these laws are discoverable using methodological individualism. The result would be abstract laws that are "exact," i.e., necessarily true. The "German" position denied the possibility of discovering universally true economic laws and hence denied the possibility of constructing an economic theory in the Austrian sense. Schmoller adopted "methodological collectivism" in seeking to discover contingent economic laws by observing the formation of actual social institutions. Such laws would only be applicable in a cultural context.

Historians of thought have generally been critical of this methodological debate. Besides noting its polemical nature, they point to the inability of the participants to resolve any of the issues involved. Historians have generally concluded that the differences were minor compared to the similarities between the schools. Both "induction" and "deduction" are necessary.

In an important historical reinterpretation, Bostaph argues that the differences between Menger and Schmoller were far greater than even they realized. The debate raged so long and so furiously, not because methodological debates are fruitless, but because most historians never identified the fundamental basis of disagreement.

Ultimately, Menger and Schmoller disagreed over epistemology, particularly over the theory of concepts. Schmoller as a nominalist, believed that only the names men choose arbitrarily to ascribe to phenomena are universal, not the phenomena themselves. For the nominalist there are no universal characteristics (essences) of phenomena having independent ontological status. Hence, there can be no necessary causal connections between phenomena. The search for absolute or universal laws would consequently be a fruitless one. Bostaph links the historical school's position on causality to Hume's.

Menger adopted an Aristotelian position in which phenomena themselves are viewed as possessing essential properties that characterize all instances of an ontological type. By abstracting from the individual elements of the phenomena one can discover these essences, as well as necessary causal connections among elements of the phenomena. By building up from the simplest elements and relationships, one can reconstruct and understand the complex social phenomena we actually observe. For the methodological individualist, like Menger, one can only understand the complex phenomena by developing an abstract theory built up from an investigation of the micro elements of the phenomena. Menger's methodological individualism is distinct from Schmoller's

methodological holism, in which one attempts to understand complex phenomena by collecting data on the macro phenomena directly.

As Bostaph observes, the two approaches of the *Methodenstreit* are not complementary, but are the result of

widely divergent views on the scope and logic of economic and social-scientific inquiry (*Sozialwissenschaften*). The issues cannot be swept aside by arguing for an eclectic approach. Bad methodology may condemn modern economic researchers to a lifetime of wasted effort.

The Limits of Mechanistic Economics

John C. Moorhouse
Wake Forest University

"The Mechanistic Foundations of Economic Analysis." *Reason Papers* 4 (Winter 1978): 49–67.

The neoclassical paradigm that dictates the methodology of mainstream economics limits the problems analyzed within economics and shapes their solution. Whatever success economics enjoys among the social sciences stems from the set of questions it considers appropriate. In pursuing this Kuhnian analysis, Moorhouse also draws support from F. A. Hayek's critique of the methodology of economics. Hayek argues that, as a social science, economics requires a methodology distinct from that of the natural sciences.

Economics enthusiastically borrowed its methodology from classical (mechanical) physics. Basically, those methods are analytic *reduction* and *isolation*, the assumption of *reversibility*, and the framing of questions in terms of *equilibrium*. The role of each of these methods in both physics and economics is sketched and then discussed in terms of their inappropriateness in economics. This criticism arises from the fact that economic systems involve human actions. Whereas mechanical processes are reversible, human beings learn from experience—so that initial conditions can never be restored. In a mechanical process, the equilibrium state and adjustment path are uniquely determined by the initial conditions; however, human actions are adaptive and purposive

— so that far different sets of economic conditions can produce the same equilibrium, and a stochastic shock to an economic process may not affect the final equilibrium. While the mathematical techniques associated with equilibrium/maximization work with known factors in physics, knowledge of the means and ends relevant to the economic system is dispersed among individual persons—so that the use of such techniques is limited in economics. Whereas we can successfully apply the analytic tools of *reduction* and *isolation* to reversible mechanical processes in closed systems and in experimental settings, human action adds qualitative, adaptive, and subjective dimensions to the processes under study. This makes it difficult to isolate economic relationships from impinging factors, and the economic system is only misleadingly divisible into units of analysis.

These limitations of the neoclassical paradigm suggest that economists could explore an alternative paradigm that takes as given the complexity of economic systems and sets out to explain their qualitative change and evolution.

Governmental attempts to regulate and direct the economy are based on the same mechanistic assumptions that have allowed the success of economics in limited

respects but have hampered any fundamental understanding of economic systems. Examining these assumptions can help to explain the inherent difficulties

and recognized failures of such governmental attempts, and can redirect the discipline of economics and the course of government-economy relations.

Economic History and Government

Douglass C. North
University of Washington

"Structure and Performance: The Task of Economic History." *Journal of Economic Literature* 16 (September 1978): 963-978.

Economic history, by adopting quantitative methods and the analytical framework of neoclassical economics, has "gained in rigor and scientific pretension." But this rigor has neglected the vital relationship between changes in economic structure and changes in economic performance. North characterizes economics as a theory of choice subject to constraints, and he believes that economic history's task is to theorize about the forces shaping the evolution of those constraints. With this framework, how do we explain the transformation of the American economy in the last century?

The past 100 years has profoundly transformed the structure of the American economy. In the century since 1875, government expenditures have ballooned from 2-3% of GNP to about 24% of GNP, and the proliferation of regulatory agencies has made access to government influence a key factor in economic decision making. These, and other changes that have altered the structure of the economy, are not explained by the cliometric efforts of the "new" economic historians. The work of Joseph Schumpeter fares better when measured against this standard, but seems fundamentally flawed because Schumpeter's framework lacks an explicit analysis of the political process.

In developing an analytical framework useful to the economic historian, one must begin by examining the constitutional

structure established by the Founding Fathers. The Constitution imposes heavy costs on attempts to use the political process to redistribute wealth and income. The critical question in light of the developments of the last 100 years, is "What energized groups to undertake the private costs of altering the political-legal structure?" Three lines of inquiry account for economic historians' perplexity in explaining the transformation of economic structure.

(1) "Neoclassical theory simply ignores the losers. . . ." These losers seek to avoid the costs of being losers through political intervention in the market. Most importantly, the losers who undertook changing the political-legal system to reduce their losses were not the "proletarian losers" of the nineteenth century (e.g., Indians, ex-slaves), but propertied groups such as farmers.

(2) Economic historians have not grasped the organizational implications of science and technology's application to economic activity in the past century. This produced a radical reduction in production costs; the growth of large scale enterprise; the creation of an urban society; a reduction in the cost of measuring the dimensions of the goods or services exchanged; and a reduction in the costs of measuring the externalities generated by economic activity. But the underlying cause of these changes was the enormous change in

transaction costs that occurred. In addition, the advent of a highly technological economy has sharply decreased the costs of information and transportation that has widened the individual's range of effective choice.

(3) "Tastes do change." North notes that some studies show that the best indicator

of legislative voting behavior is not visible economic interest but ideological attitudes. In general, political and judicial conceptions of the "public good" have changed in the last century. Understanding ideological change is one important key to understanding popular, legislative, and judicial behavior.

Austrian Economics vs. the Mixed Economy

S. C. Littlechild

University of Birmingham

The Fallacy of the Mixed Economy. London: The Institute of Economic Affairs (1978) 83 pp. Reprint. San Francisco: Cato Papers (1978).



At once an historical sketch of the Austrian economic school and a brief outline of Austrian economics, this monograph both explains Austrianism and contrasts it with economic theory in the neoclassical mainstream. One of the most engaging aspects of the monograph is Professor Littlechild's use of Professor James Meade's *The Intelligent Radical's Guide to Economic Policy: The Mixed Economy* to illustrate the differences between Austrianism and neoclassical economics. Meade's work marshalls the full theoretical forces of neoclassical economics to defend the "mixed economy" against its socialist critics. Littlechild considers Meade's theoretical arguments, provides an Austrian critique, and then shows that the economic policies which Meade supports will frustrate or impede the very achievement of his policy goals. In addition to considering Meade's views, Littlechild also considers in generic form the various arguments offered by neoclassical economists for governmental economic intervention. The result is an effective presentation of how Austrian economists take subjectivism and methodological individualism more seriously than

their mainstream counterparts.

In the course of his exposition Littlechild moves from a discussion of Austrian economy theory to "Austrian policy." Since policy conclusions do not follow immediately from economic theory, Little-

child implicitly imputes certain value judgments to Austrian economists in order to formulate "Austrian policy." The values Professor Littlechild employs to formulate "Austrian policy" are held by many but not all Austrians.

Macroeconomic Formalism vs. Human Action

Ludwig Lachmann

New York University

Macro-economic Thinking. Studies in Economics No. 6. Menlo Park, Calif.: Institute for Human Studies (1978) 48 pp.

Professor Lachmann outlines the debate between two schools of economic thought: Cambridge (U.S.) and Cambridge (U.K.). These schools represent, respectively, neoclassical and post-Keynesian economics. Though the debate is ostensibly about capital theory and theoretically abstract, Lachmann points out its wider implications.

Cambridge (U.K.) economists have continued the attack of economist Piero Sraffa on marginalism in economic theory, denying in particular its applicability to factor pricing. This attack is the key element in their general critique of the market economy. The American neoclassical response has been ineffectual because these economists have evidenced no enthusiasm for defending the market economy. Their reluctance bespeaks the remoteness from reality of the neoclassical model. In particular, neoclassical economists view the world through the eyes of their model of perfect competition, a perspective from which real world competition will always be questioned and criticized.

The debate is further narrowed because of the limiting context of *macroeconomic* equilibrium. In this context, the focus is on long-term economic forces and their effects on highly aggregated variables like na-

tional income or "investment." This macro perspective avoids any appreciation of human action in the real world of constant change—a world in which there is no equilibrium, though there are equilibrating forces. Though the protagonists give lip service to the need for microeconomic, causal explanations of macro phenomena, these admissions do not in practice affect their thinking. As Lachmann puts it: "Economic events are the result of some kind of collective process of decision-making the *modus operandi* of which is never explained. Imaginary beings take the place of real people."

Lachmann, critical of both schools, adopts the perspective of Austrian economics, which focuses on human choice and human action in an uncertain world. He emphasizes the need to coordinate individual plans, an insight that directs attention to the *market process* instead of equilibrium states. The Austrian approach directs one's attention from macroeconomic formalism to microeconomic processes. This in turn enables one to understand how much Cambridge (U.S.) has conceded to Cambridge (U.K.) by accepting macro-formalism as the proper approach to economic questions. ^[1]

INDEX

Authors

Appleby, Joyce Oldham. "A New Argument for Economic Freedom"	79
—— "Ideology and Theory: The Tension between Political and Economic Liberalism in Seventeenth-Century England."	80
—— "The Social Origins of American revolutionary Ideology."	49
Barnett, Randy. "Toward A Theory of Legal Naturalism."	41
Baumgarth, William. "Hayek and Political Order: The Rule of Law."	38
Beitzinger, Alfons. "The Philosophy of Law of Four American Founding Fathers."	44
Bogin, Ruth. "New Jersey's True Policy: The Radical Republican Vision of Abraham Clark."	55
Bostaph, Samuel. "The Methodological Debate Between Carl Menger and the German Historical School."	84
Bradford, Melvin E. "A Virginia Cato: John Taylor of Caroline and the Agrarian Republic."	56
Branson, Roy. "James Madison and the Scottish Enlightenment."	59
Cress, Lawrence D. "Radical Whiggery on the Role of the Military: Ideological Roots of the American Revolutionary Militia."	50
D'Amato, Anthony. "The Limits of Legal Realism."	43
Dawkins, K. E. "The Legal Philosophy of Lon L. Fuller: A Natural Law Perspective."	42
Delgado, Richard & Millen, David R. "God, Galileo, and Government: Toward Constitutional Protection for Scientific Inquiry."	45
Demsetz, Harold. "Social Responsibility in the Enterprise Economy."	71
Eisenach, Eldon J. "Crime, Death, and Loyalty in English Liberalism."	74
Ekirch, Roger A. "'A New Government of Liberty': Herman Husband's Vision of Backcountry North Carolina, 1755."	55
Farnell, R. S. & Porter, J. M. "John Adams and American Constitutionalism."	57
Frankel, Charles. "Sociobiology and Its Critics."	66
Grey, Thomas C. "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought."	53
Hamowy, Ronald. "Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's <i>Jefferson's Declaration of Independence</i> ."	61
Hayek, F. A. "The Three Sources of Human Values: A Postscript to <i>Law, Legislation, and Liberty</i> ."	63
Hollandsworth, Jr., James G. "Differentiating Assertion and Aggression: Some Behavioral Guidelines."	73
Kanfer, Frederick H. "Personal Control, Social Control, and Altruism."	72
Katz, Stanley N. "Republicanism and the Law of Inheritance in the American Revolutionary Era."	54
Kirshner, Julius. "Raymond de Roover on Scholastic Economic Thought."	77
Lachmann, Ludwig. <i>Macro-economic Thinking</i>	88
Levy, David. "Adam Smith's 'Natural Law' and Contractual Society."	70
Littlechild, S. C. <i>The Fallacy of the Mixed Economy</i>	87
Lowry, S. Todd. "Recent Literature on Ancient Greek Economic Thought."	76
McCoy, Drew R. "Benjamin Franklin's Vision of a Republican Political Economy for America."	58
Machan, Tibor R. "Recent Work in Ethical Egoism."	71
May, William E. "The Meaning and Nature of the Natural Law in Thomas Aquinas."	40
Moorhouse, John C. "The Mechanistic Foundations of Economic Analysis."	85
Neville, Robert. "Philosophical Perspectives on Freedom of Inquiry."	45
Niegorski, Walter. "The Significance of the Non-Lockean Heritage of the Declaration of Independence."	59
North, Douglass C. "Structure and Performance: The Task of Economic History."	86
Oldenquist, Andrew. "Evolution and Ethics."	69
Paul, Ellen Frankel. "W. Stanley Jevons: Economic Revolutionary, Political Utilitarian."	82
Pocock, J. G. A. "Between Machiavelli and Hume: Gibbon as Civic Humanist and Philosophical Historian."	51
Pugh, George Edgin. "Values and Personal Decisions."	68

Rosenzweig, Saul. "Outline of a Denotative Definition of Aggression."	74
Ross, Dorothy. "The Liberal Tradition Revisited and the Republican Tradition Addressed."	60
Rothbard, Murray. "New Light on the Prehistory of the Austrian School."	78
Smith, James Charles. Book Review of Morton J. Horwitz's <i>The Transformation of American Law, 1780-1860</i> .	46
Sorenson, E. Richard. "Cooperation and Freedom Among the Fore of New Guinea."	67
Tame, Chris R. "Change and Pseudo-Change in Sociology."	75
Ullmann-Margalit, Edna. "Invisible-Hand Explanations."	64
Weisstub, David N. "Law and Telos: Some Historical Reflections on the Nature of Authority."	39
West, E. G. "Scotland's Resurgent Economist: A Survey of the New Literature on Adam Smith."	81
Wilson, Edward O. "Aggression."	65

Research Fields

Anthropology

Sorenson, E. Richard. "Cooperation and Freedom Among the Fore of New Guinea."	67
---	----

Economics

Bostaph, Samuel. "The Methodological Debate Between Carl Menger and the German Historical School."	84
Demsetz, Harold. "Social Responsibility in the Enterprise Economy."	71
Kirshner, Julius. "Raymond de Roover on Scholastic Economic Thought."	77
Lachmann, Ludwig. <i>Macro-economic Thinking</i> .	88
Littlechild, S. C. <i>The Fallacy of the Mixed Economy</i> .	87
Lowry, S. Todd. "Recent Literature on Ancient Greek Economic Thought."	76
Moorhouse, John C. "The Mechanistic Foundations of Economic Analysis."	85
North, Douglass C. "Structure and Performance: The Task of Economic History."	86
Rothbard, Murray. "New Light on the Prehistory of the Austrian School."	78
West, E. G. "Scotland's Resurgent Economist: A Survey of the New Literature on Adam Smith."	81

History

Appleby, Joyce Oldham. "A New Argument for Economic Freedom."	79
— "Ideology and Theory: The Tension between Political and Economic Liberalism in Seventeenth-Century England."	80
Bogin, Ruth. "New Jersey's True Policy: The Radical Republican Vision of Abraham Clark."	55
Cress, Lawrence D. "Radical Whiggery on the Role of the Military: Ideological Roots of the American Revolutionary Militia."	50
Ekirch, Roger A. "'A New Government of Liberty': Herman Husband's Vision of Backcountry North Carolina, 1755."	55
Katz, Stanley N. "Republicanism and the Law of Inheritance in the American Revolutionary Era."	54
McCoy, Drew R. "Benjamin Franklin's Vision of a Republican Political Economy for America."	58
Pocock, J. G. A. "Between Machiavelli and Hume: Gibbon as Civic Humanist and Philosophical Historian."	51

Law

Barnett, Randy. "Toward a Theory of Legal Naturalism."	41
Beitzinger, Alfons. "The Philosophy of Law of Four American Founding Fathers."	44
D'Amato, Anthony. "The Limits of Legal Realism."	43
Dawkins, K. E. "The Legal Philosophy of Lon L. Fuller: A Natural Law Perspective."	42
Delgado, Richard & Millen, David R. "God, Galileo, and Government: Toward Constitutional Protection for Scientific Inquiry."	45

Farnell, R. S. & Porter, J. M. "John Adams and American Constitutionalism."	57
Smith, James Charles. Book Review of Morton J. Horwitz's <i>The Transformation of American Law, 1780-1860</i>	46
Weisstub, David N. "Law and Telos: Some Historical Reflections on the Nature of Authority."	39

Philosophy

Machan, Tibor R. "Recent Work in Ethical Egoism."	71
May, William E. "The Meaning and Nature of the Natural Law in Thomas Aquinas."	40
Neville, Robert. "Philosophical Perspectives on Freedom of Inquiry."	45
Ullmann-Margalit, Edna. "Invisible-Hand Explanations."	64

Political Philosophy

Baumgarth, William. "Hayek and Political Order: The Rule of Law."	38
Bradford, Melvin E. "A Virginia Cato: John Taylor of Caroline and the Agrarian Republic."	56
Branson, Roy. "James Madison and the Scottish Enlightenment."	59
Eisenach, Eldon J. "Crime, Death, and Loyalty in English Liberalism."	74
Grey, Thomas C. "Origins of the Unwritten Constitution: Fundamental Law in American Revolutionary Thought."	53
Hamowy, Ronald. "Jefferson and the Scottish Enlightenment: A Critique of Garry Wills's <i>Jefferson's Declaration of Independence</i> ."	61
Levy, David. "Adam Smith's 'Natural Law' and Contractual Society."	70
Niegorski, Walter. "The Significance of the Non-Lockean Heritage of the Declaration of Independence."	59
Paul, Ellen Frankel. "W. Stanley Jevons: Economic Revolutionary, Political Utilitarian."	82
Ross, Dorothy. "The Liberal Tradition Revisited and the Republican Tradition Addressed."	60

Psychology

Hollandsworth, Jr., James G. "Differentiating Assertion and Aggression: Some Behavioral Guidelines."	73
Kanfer, Frederick H. "Personal Control, Social Control, and Altruism."	72
Rosenzweig, Saul. "Outline of a Denotative Definition of Aggression."	74

Sociology

Appleby, Joyce Oldham. "The Social Origins of American Revolutionary Ideology."	49
Tame, Chris R. "Change and Pseudo-Change in Sociology."	75

Sociobiology

Frankel, Charles. "Sociobiology and Its Critics."	66
Hayek, F. A. "The Three Sources of Human Values: A Postscript to <i>Law, Legislation, and Liberty</i> ."	63
Oldenquist, Andrew. "Evolution and Ethics."	69
Pugh, George Edgin. "Values and Personal Decisions."	68
Wilson, Edward O. "Aggression."	65

INTERPRETATION

A JOURNAL OF POLITICAL PHILOSOPHY

G Building, Room 101

Queens College

Flushing, New York 11367

Editor-in-Chief: Hilail Gildin

Editors: Seth G. Benardete, Hilail Gildin, Robert Horwitz,
Ann McArdle, Howard B. White (1912-1974)

Consulting Editors: John Hallowell, Wilhelm Hennis, Erich Hula, Arnaldo Momigliano,
Michael Oakeshott, Leo Strauss (1899-1973), Kenneth W. Thompson

Assistant Editor: Marianne Grey

Editor, Queens College Press: Lee Cogan

Assistant Editor, Queens College Press: Anne M. Demerle

Volume 8, Issue 1

Leo Strauss	Preface to <i>Hobbes politische Wissenschaft</i>
Michael Platt	Falstaff in the Valley of the Shadow of Death
John F. Wilson	Reason and Obligation in <i>Leviathan</i>
Michael P. Zuckert	An Introduction to Locke's First Treatise
Abraham Rotstein	Lordship and Bondage in Luther and Marx
Thomas J. Scorza	Tragedy in the State of Nature: Melville's <i>Typee</i>

INTERPRETATION appears three times a year. Annual subscription rate: \$10 for individuals, \$12 for libraries.

Order from: **INTERPRETATION**, G 101, Queens College, Flushing, N.Y. 11367

THE INSTITUTE FOR HUMANE STUDIES

1177 University Drive, Menlo Park, California 94025

4 MONOGRAPHS BY F.A. HAYEK

- THE USE OF KNOWLEDGE IN SOCIETY (1971, 17 pp.)—why only a free society can utilize the special knowledge of individuals to the benefit of the entire society
- THE INTELLECTUALS AND SOCIETY (1971, 26 pp.)—Hayek's classic exploration of the role of "intellectuals" in the development and dissemination of ideas
- KINDS OF ORDER IN SOCIETY (1975, 19 pp.)—an examination of the theories that underlie factors of order such as voluntary exchange and the division of labor
- THE RULE OF LAW (1975, 56 pp.)—the development of the rule of law through seventeenth and eighteenth century England, the decline in the nineteenth century, and implications for today



**The four monographs are
available for a total price of \$3.**



Please send order, accompanied by payment, to:
IHS Publications
Dept. LL
P.O. Box 2256
Wichita, Kansas 67201

*Official Journal
of the European
Consortium for
Political Research*

European Journal of Political Research

EDITORS:

MONICA and JEAN CHARLOT,
Paris, France

EDITORIAL BOARD:

IVOR CREWE,
Colchester, England

WILFRIED DEWACHTER,
Louvain, Belgium

SERGE HURTIG,
Paris, France

JEAN LECA,
Grenoble, France

GERHARD LEHMBRUCH,
Tübingen, F.R.G.

M. RAINER LEPSIUS,
Mannheim, F.R.G.

JACK LIVELY,
Coventry, England

MOGENS PEDERSEN,
Odense, Denmark

PERTTI PESONEN,
Helsinki, Finland

ALBERTO SPREAFICO,
Catania, Italy

This journal fosters collaboration among European political scientists by publishing, in English, their research findings as well as information about ongoing research. Work from scholars not affiliated to institutions in Europe is also published if it deals with European comparative politics or international relations.

Yearly Special Issues:

Referenda in Europe (*March 1976*). Political Generations in Europe (*June 1977*). Political Elites in Europe (*March 1978*). Crises and Political Change in Europe (*March 1979*). The 1979 European General Elections (*1980*).

Subscription Information:

1979 - Volume 7 in four issues

US \$59.50 / Dfl. 122.00 for libraries and institutes

US \$28.75 / Dfl. 59.00 for individuals
(Prices include postage).

Free sample copies are available on request.



Elsevier

P.O. Box 211,

Amsterdam, The Netherlands.

52 Vanderbilt Avenue,

New York, N.Y. 10017

The Dutch guilder price is definitive. US \$ prices are subject to exchange rate fluctuations.



FOR MORE THAN HALF A CENTURY

The Journal of Modern History

has been devoted to preserving and extending our knowledge of Europe and its relations with the rest of the world. Unique in its scope, the **Journal** investigates the political, diplomatic, military, social, and intellectual events and movements that have shaped the history of the European continent—including Russia—since the Renaissance.

In bringing the past to life,

JMH frequently publishes important revisions of accepted ideas. Special issues, for example, have focused on such topics as Fernand Braudel and the *Annales* School, technology and war, the English civil war, and in December 1979, the era of the French Revolution. Regular issues feature such diverse studies as:

David Abraham, Constituting Hegemony: The Bourgeois Crisis of Weimar Germany

Allan McGill, Michel Foucault as Historian

Arthur Mitzman, Roads, Vulgarly, Rebellion, and Pure Art: The Inner Space in Flaubert and French Culture

John A. Phillips, Popular Politics in Unreformed England

For the busy scholar

the **Journal** provides abstracts of each article in the same issue in which the article appears. JMH also features an extensive reviewing service, devoting more than half of each issue to review essays, book reviews, and book abstracts.

The **Journal of Modern History** is edited by William H. McNeill.

The University of Chicago Press

THE JOURNAL OF MODERN HISTORY

Published quarterly

One-year subscriptions: ☐ Instit. \$24.00 ☐ Indiv. \$18.00 ☐ Students \$14.40

Add \$2.00 for subscriptions mailed outside the USA and its possessions.

Name _____

Address _____

City _____ State/Country _____ Zip _____

Master Charge or Visa/BankAmericard accepted. Please enclose account number, Interbank number (Master Charge only), expiration date, and signature. Or mail with your check, money order, or purchase order to The University of Chicago Press, 11030 Langley Avenue, Chicago, Illinois 60628.

LL

STUDIES IN ECONOMIC THEORY

INTRODUCING A DISTINGUISHED NEW BOOK SERIES

CAPITAL AND ITS STRUCTURE

by Ludwig M. Lachmann
156 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

THE ULTIMATE FOUNDATION OF ECONOMIC SCIENCE An Essay on Method

by Ludwig von Mises,
Introduction by Israel M. Kirzner
168 Pages, Index
\$9.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

ECONOMICS AS A COORDINATION PROBLEM

The Contributions of Friedrich A. Hayek
by Gerald P. O'Driscoll, Jr.
Foreword by F.A. Hayek
240 Pages, Index
\$9.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

NEW DIRECTIONS IN AUSTRIAN ECONOMICS

Edited with an Introduction by Louis M. Spadaro
256 Pages, Index
\$9.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

CAPITAL, EXPECTATIONS, AND THE MARKET PROCESS Essays on the Theory of the Market Economy

by Ludwig M. Lachmann, Edited with an
Introduction by Walter E. Grinder
360 Pages, Index
\$9.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

LIBERALISM

A Socio-Economic Exposition
by Ludwig von Mises
207 Pages, Index
\$9.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

THE FOUNDATIONS OF MODERN AUSTRIAN ECONOMICS

Edited with an Introduction by Edwin G. Dolan
248 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

CAPITAL, INTEREST, AND RENT

Essays in the Theory of Distribution
by Frank A. Fetter
Edited with an Introduction by
Murray N. Rothbard
408 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

THE ECONOMIC POINT OF VIEW

An Essay in the History of Economic Thought
by Israel M. Kirzner
Introduction by Laurence S. Moss
248 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

AMERICA'S GREAT DEPRESSION

by Murray N. Rothbard
381 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

THE ECONOMICS OF LUDWIG VON MISES Toward a Critical Reappraisal

Edited with an Introduction by Laurence S. Moss
140 Pages, Index
\$8.00 Cloth, \$3.50 Paper (\$4.50 in Canada)

Forthcoming titles in the Studies in Economic Theory series will feature major new works by contemporary Austrian economists plus republication of such seminal classics as:

Principles of Economics, by Carl Menger
Economic Calculation in the Socialist Society,
by T.J.B. Hoff
Epistemological Problems of Economics,
by Ludwig von Mises

The series will also include translations of previously inaccessible writings by Carl Menger, Richard Strigl, Ewald Schams, Leo Schönfeld-Illly, Ludwig von Mises, and others.

For book order or free catalog please write:
Institute for Humane Studies Publications
Department L L
P.O. Box 2256
Wichita, Kansas 67201

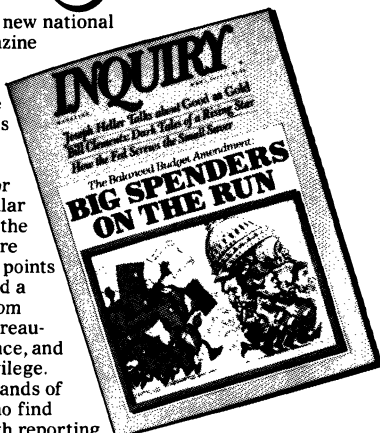


INQUIRY[®]

MAGAZINE

INQUIRY is the new national political magazine that speaks to the politics of today. While others—liberals and conservatives alike—recoil in horror from the popular revolt against the welfare-warfare state, *INQUIRY* points the way toward a future free from repression, bureaucratic arrogance, and economic privilege. Join the thousands of Americans who find *INQUIRY*'s tough reporting and daring analysis the perfect antidote to the old politics.

For information, write to:
INQUIRY
P.O. Box 2500, Dept. LLI
Menlo Park, California 94025.



CATO
INSTITUTE

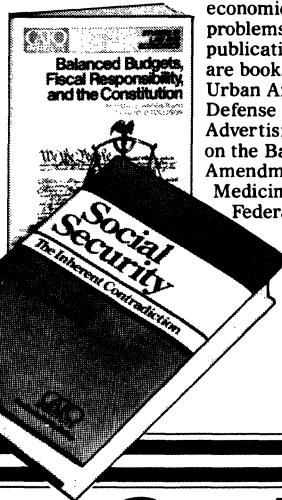
BOOKS AND MONOGRAPHS

As part of its public policy research program, the Cato Institute publishes books and monographs on topics of vital importance to us all. Designed for scholars and concerned laymen, these studies are notable for their distinctive analyses, which shed new light on possible solutions to our nation's chronic

economic and political problems. Scheduled for publication in Spring 1980 are books on Social Security, Urban Affairs, Strategic Defense Policy, Government Advertising, and monographs on the Balanced Budget Amendment, Socialized Medicine, Rent Control, Federal Tax Policy.

For information, write to:
Cato Institute
Publications—Dept. LLB
1700 Montgomery Street
San Francisco, CA 94111

CATO
INSTITUTE



POLICY REPORT

Policy Report, the monthly newsletter on economic policy questions, has already established itself as an important tool for those who need to stay on top of what is happening in Washington—who need to know *why* policy changes are being made and *what* the probable consequences will be. Businessmen, policy analysts, congressional staffs, and concerned laymen are turning to *Policy Report* for its unique analysis of current economic problems.

For information, write to:
Cato Institute
Publications—Dept. LLP
1700 Montgomery Street
San Francisco, CA 94111

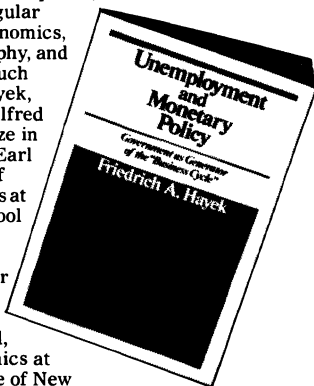


CATO
INSTITUTE

The Cato Papers

A continuing series of reprints, chosen for their singular contributions to economics, law, history, philosophy, and current affairs, by such scholars as F. A. Hayek, 1974 winner of the Alfred Nobel Memorial Prize in Economic Science; Earl Ravenal, a professor of international relations at the Georgetown School of Foreign Service; Oskar Morgenstern (1902–1976), Professor of Economics at Princeton University; Murray N. Rothbard, Professor of Economics at Polytechnic Institute of New York; Yale Brozen, Professor of Business Economics at the University of Chicago; Richard Epstein, Professor of Law at the University of Chicago; Stephen Littlechild, Professor of Commerce at the University of Birmingham.

For information, write to:
Cato Institute
Publications—Dept. LLC
1700 Montgomery Street
San Francisco, CA 94111



CATO
INSTITUTE

Now Available:

E Pluribus Unum

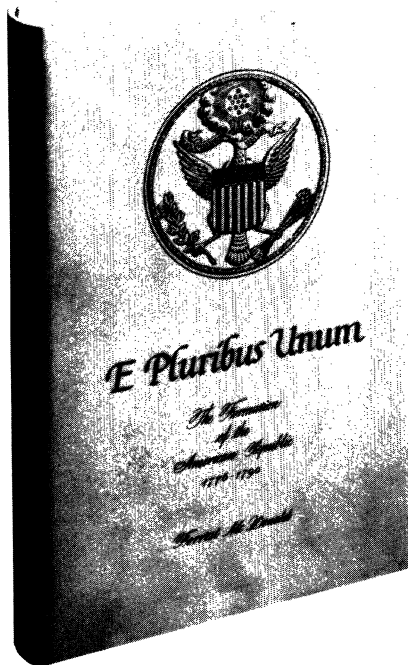
*The Formation of
the American Republic
1776-1790*

By Forrest McDonald

Having won their independence from England, the American colonies faced a new question of paramount importance: Would this be politically one nation, or would it not? *E Pluribus Unum* is a provocative and spirited look at how that question came to be answered.

"A fresh, vivid, and penetrating recreation of the crucial fourteen years in which a new nation was born"—*New York Times Book Review*. "Original and stimulating"—*American Historical Review*. "Highly readable and highly recommended"—*Library Journal*. "Will

lead scholars to reassess some of their assumptions about the formative years of the American republic. As one of the most sprightly written brief accounts of this turbulent era it is also likely to gain a non-academic audience"—*Annals of the American Academy*. Hardcover \$8.00, Paperback \$3.50.



LibertyPress LibertyClassics

We pay postage, but require prepayment, on orders from individuals. Please allow four to six weeks for delivery. To order this book, or for a copy of our catalog, write:
LibertyPress/LibertyClassics
7440 North Shadeland, Dept. W11
Indianapolis, Indiana 46250