

IS POLITICS INSOLUBLE?



HENRY HAZLITT

EDITED BY FELIX R. LIVINGSTON

Is Politics Insoluble?

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Is Politics Insoluble?

by Henry Hazlitt

*Edited with an
Introduction*

by

Felix R. Livingston

The Foundation for Economic Education, Inc.
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Is Politics Insoluble?

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Biographical Preface

Henry Hazlitt (1894-1993) was an economic journalist. He had a profound understanding of economics and a talent for clear expression. He was a serious scholar, an economist of the “Austrian” persuasion, which means that he favored free markets and limited government. He understood especially well how government intervention can disrupt the economy. In his classic best-selling *Economics in One Lesson* (1st edition, 1946) he explained that one should consider not only the direct, immediate, and “seen” consequences of any government action but also its indirect and “unseen” consequences. In his *The Foundations of Morality* (1964) he dealt with ethical issues, voluntarism, and the role of government force. And Hazlitt’s many years as a working journalist, writing for such publications as the *New York Times* and *Newsweek*, taught him to write lucidly and simply about difficult issues. Thus he was eminently qualified, through both study and experience, to write on political theory.

Henry Hazlitt was a founding trustee of The Foundation for Economic Education and served on its Board until his death.

—THE PUBLISHER

Introduction*

During the ninth decade of a long and productive life, Henry Hazlitt made plans to write a treatise on political science.¹ In 1978 he prepared a provisional outline for a book that would have the title *Is Politics Insoluble?* Hazlitt planned to include chapters on legislation, government growth, centralization of power, and alternative forms of government. Other chapters would touch on ideas of prominent political thinkers, including Plato, Aristotle, John Locke, America's Founders, James and John Stuart Mill, Herbert Spencer, T. H. Huxley, Wilhelm von Humboldt, Henry Maine, and Robert Nozick.²

In a 1984 letter confirming the donation of his personal library to The Foundation for Economic Education, Hazlitt wrote: "one particular book that I am still planning . . . is already half written: *Is Politics Insoluble?* The title chapter was published in *Modern Age*, and about four or five additional chapters in *The Freeman*. I hope to do up to perhaps a half dozen more to make a complete book."³ Unfortunately, Hazlitt never finished the project and eight of the outline's fourteen chapters remained unwritten at the time of his death.

Despite substantial gaps in a project never completed by Hazlitt, there is value in making these writings available in one collection.⁴ First, they clearly illuminate the need for government and the dangers of excessive legislation. Second,

*Felix R. Livingston, Dean of Institutional Research at Washington & Jefferson College in Washington, Pennsylvania, was Vice President of The Foundation for Economic Education from 1994 to 1997.

careful study of these writings can improve understanding of democratic government and of the difficulty of limiting its scope. Finally, publication of these essays in book form provides an opportunity to supply some of the missing pieces left by Hazlitt so that an important endeavor can be brought to completion.

Overview of Hazlitt's Essays

In “Is Politics Insoluble?” (1976) Hazlitt explores important methodological issues in the development of a social science. He argues that the main propositions of political theory must be developed “a priori” and not by means of statistics. Unlike the parameters of an algebraic expression, there are no constants in the science of human action. Different people respond differently to the same circumstances, and individuals change both their objectives and the means of achieving them as understanding improves and preferences shift. Hazlitt echoes David Hume’s speculation that governments probably resulted from conflicts among savages which they learned to resolve by deferring, in one degree or another, to tribal leaders who offered security. Whatever the origin of government, Hazlitt identifies the most critical problem in organizing a political society—how can the political power that is vested with some person or group be constrained? In particular, how can this be accomplished by means of democratic arrangements?

In “The Torrent of Laws” (1979) Hazlitt points out that even if we could agree on the role of government, there would still exist practical difficulties in deciding just how much legislation is enough. Beyond laws that inhibit the antisocial acts of force, fraud, and theft, there is no clear answer concerning how many statutes are required for “laying down rules of action” necessary to foster “cooperation and harmony.” Hazlitt

observes that while honest disagreement can exist concerning the ideal level of government in theory, in practice there are far too many prohibitions and compulsions and a reduction is nowhere in sight. Candidates for office seek votes by promising to “do something” about various problems and, if elected, they aggressively advocate new laws despite obvious and continuing failures of public policy. The offspring of political ambition are torrents of laws, rapid expansion of bureaus and agencies, and rising economic burdens of regulation.

The situation is even worse today than it was when Hazlitt wrote this essay. The total number of pages in the Federal Register recording new regulations for the year approached its all-time high in 1995. Since 1979, the Code of Federal Regulations has been lengthened by 40 percent, and federal expenditures on regulatory activities has increased by 41 percent. The total cost of regulation is projected to reach \$721 billion by the end of the century, which amounts to more than \$5,000 per household.⁵ To understand and keep abreast of these commands requires a reading of hundreds of official documents. The Government Printing Office lists publications for 37 Departments and Agencies from “A” (Agriculture Department) to “V” (Veterans Administration). Published rules range from “A” (Airworthiness Standards) to “W” (Workers’ Compensation) and are arranged in 79 different subject areas from “A” (Acquisition) to “W” (Workforce). In addition to federal laws, there are thousands of state and local rules concerning zoning restrictions, tort law, insurance mandates, workers’ compensation, labor policies, and occupational licensing. Many more regulations affect education, banking, telecommunications, trucking, electricity, solid-waste disposal, toxic chemicals, and labeling. Clearly, Hazlitt’s torrent of laws has become a flood of compulsion and coercion and the end is still not in sight.

In “The Case for the Minimal State” (1979) Hazlitt critiques Harvard philosopher Robert Nozick’s 1974 book, *Anarchy, State, and Utopia*. Although critical of Nozick’s writing style, Hazlitt agrees with his basic conclusion that “a minimal state, limited to the narrow functions of protection against force, theft, enforcement of contracts, and so on, is justified; that any more extensive state . . . is unjustified; . . .” While praising the ingenuity of Nozick’s arguments, Hazlitt rejects Nozick’s reliance on “natural law” to justify his conclusions. Hazlitt asserts that utilitarianism, rightly understood, provides a sounder argument, and he devotes a large portion of this essay to comparing “rule-utilitism” and “natural law.”

In 1980, Hazlitt wrote three essays exploring the ideas of prominent nineteenth-century political thinkers who wrestled with the problem of limiting government power. He applauds John Stuart Mill’s conclusion that laissez faire “should be the general practice,” and government intervention the exception. Hazlitt suggests, however, that Mill’s rules for exceptions provide “an excuse for almost any arbitrary government intervention whatever.” Although respectful of Mill’s substantial contributions to political theory, Hazlitt observes that “on the central question of what ought to be the limits of government power, he clearly granted too much.”

Hazlitt admires Herbert Spencer’s insightful writing but questions his formula of justice that “Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man.” Hazlitt finds this rule inadequate because it does not “exclude aggression against or harm to others.” Hazlitt prefers formulas of liberty offered by John Locke and Montesquieu, although he faults them both for not explicitly restraining laws to be “just, definite and minimal.” Hazlitt notes the remarkable similarities between elected representatives of nineteenth-century England and twentieth-

century America—both bribe voters with preferences and then hide or shift costs to unfavored groups.

Hazlitt views T. H. Huxley's philosophy as accurately reflecting ideas "of the great mass of the British public in the 1880s and 1890s, to the extent that they bothered to formulate any philosophy." Huxley opposed limiting government and argued that the state has a duty to interfere in people's lives to whatever degree necessary given the circumstances. Since government is the "corporate reason of the community," Huxley believed that politicians will know "when State interference has been carried far enough." While commending Huxley's writings "to anyone who still takes Natural Law or Natural Rights doctrines seriously," Hazlitt provides a devastating critique of Huxley's "merits of the case" approach to government and he explains why "a prioristic" thinking is necessary in politics.

In a 1977 review of Henry Maine's *Popular Government*, Hazlitt recommends that it be read by "all students of politics." First published in 1885, Maine's book explored ideas on democracy's origin and fragility. It criticized majoritarian democracy and lamented the inevitable consequences—the emergence of demagogic rulers who bribe their constituents with the property of others, and the rapid growth of legislation and "fiscal tyranny." Hazlitt uses Maine's praise of American constitutional government as an occasion for discussing factors in the recent deterioration of American constitutional safeguards—the advent of direct election of senators, and the gradual removal of voter qualification criteria such as property ownership, tax payment, education, and literacy. More generally, Hazlitt restates the central problem of all governments. Given that power must be vested in someone or some group, how do we define what powers are appropriate and "how can we prevent whoever the government is

from using whatever powers it already has, to extend its powers still further?"

In "From Spencer's 1884 to Orwell's 1984" (1969), Hazlitt discusses the origin of excessive government and praises Herbert Spencer's "uncanny clairvoyance" concerning rapid expansion of the state.⁶ Spencer saw clearly that once legislators exceed the boundaries of preserving law and order and promoting peace and social cooperation, an inexorable growth of interventionism is assured. "Ineffective measures" require additional supplementary legislation which then creates the need for still more laws to deal with "artificial evils continually caused." As government expands, people increasingly regard the state as the only source of certain goods and services—public schools destroy and replace private schools, compulsory charity begets compulsory insurance, and "the buying and working of telegraphs by the State are made a reason for urging that the State should buy and work the railways." An ever-expanding government imposes higher taxes and makes each citizen a slave who "labors under coercion to satisfy another's desires."

In "Why Politics Is Insoluble" (1984) Hazlitt reveals his doubt that "political science" can ever be more than "a vain hope." The central problem of government cannot be solved by a "science" built on the quicksand of value judgments and shared values. Competing political parties perpetrating confiscations that are endorsed by activist judges make modern democracies "inherently unstable." Hazlitt observes that the "passion built into a very large number of men to rule over others" has never been, nor will it ever be, successfully constrained by any form of government. Although he doubts that an "ideal" government can ever be designed and implemented, Hazlitt urges us to continue the effort to improve our political institutions.

Hazlitt's pessimism about our ability to objectively define an ideal government, much less to achieve it, is tempered by "The Task Confronting Libertarians," this anthology's final chapter. Written in 1968, this essay offers valuable insights about how individuals can contend with government as it is and always will be, which is to say, imperfect. Hazlitt warns that to fight "the inflationist or socialist trend" requires more than repeating "pious generalities about liberty, free enterprise, and limited government." To contest the state we must "form and maintain organizations" that espouse and promote the philosophy of freedom. And we must improve our understanding of the confiscatory nature of public policy and of its deleterious "secondary and long-run consequences." Hazlitt suggests that if there is one subject we should all study, it is the causes and cures of inflation. For if we lose the battle against inflation, we "are threatened with the loss of every other issue." Hazlitt urges each person—regardless of the area of an individual's expertise—to make himself heard or risk destruction of civilization.

Filling the Gaps⁷

Hazlitt intended to write about several other political thinkers, including Plato, Aristotle, John Locke, America's Founders, Wilhelm von Humboldt, and James Mill. This section considers ideas of these individuals along with the theories of others who have been important in shaping contemporary thought about the role of government.⁸

Consider a restatement of Hazlitt's conception of the central problem of government. Social cooperation under a division of labor facilitates our development and enables us to reach a potential not possible in a "law of the jungle" society where coercion is the norm and physical power is the source of

its own justification. Just as our well-being depends on voluntary cooperation, so does a peaceful society require a controlling power to curb the tendency of some individuals toward violence, fraud, and theft. When this entity, named government, is given a monopoly in the use of force to minimize total coercion in society, a potential is created for oppression and abuse of authority. If those occupying seats of government are left unguarded, they will use their political power to advance their private interests.

To check and restrain the tendency of legislators toward oppression and abuse of power, we must revert to a higher law. This law stems from long-standing traditions and moral habits and is codified in the form of a constitution. Whether written or unwritten, a constitution stands in relation to government as government stands to society—it makes possible ends for which government is intended, just as government makes possible ends of which a private property order is capable.

Aristotle

It is not surprising that Hazlitt intended to write about Aristotle, who was the first to make a systematic study of constitutional law. In *The Politics*, considered among the great works of political philosophy, Aristotle developed ideas about the *polis* and its relationship to the citizen.⁹ His theory followed practice—study was made of 158 constitutions gathered by Aristotle and his friends in the Lyceum.¹⁰ The very first of these written laws, in turn, was a reflection of ancient customary law found in the earliest literature of Western civilization.¹¹

Aristotle considered evolution of the state as a natural consequence of man's proclivity to form associations. First, there was the union of man and woman; next came formation of the family, followed by that of the village; and, finally, the

state came into existence.¹² Among these naturally evolved associations, Aristotle regarded the state as offering the greatest advantage in that it fostered the highest degree of social cooperation on which man's most significant accomplishments are based. As a consequence, he believed that the state should be a predominant authority in the lives of its citizens.

This formulation did not mean that Aristotle favored authoritarian rule. To the contrary, his ideal state was a government "in which every man, whoever he is, can act best and live happily." This requires that any person holding power, whether a king, aristocrat, or member of a constitutional assembly, should rule with justice, for otherwise "there may be might where there is no right."

Aristotle contrasted voluntary cooperation with unlawful rule. In commercial life, a supplier of material things must please his customers and not coerce them. Aristotle found it ironic that what was unacceptable behavior in private life was revered in public life—men known as statesmen unabashedly devote time and effort to "dominate and tyrannize over others, whether they are willing or not." He contended that in a well-ordered state, the law of a constitution is never violated regardless of the ends to be gained.

Aristotle rejected Plato's vision of good government, that "it is best for the whole state to be as unified as possible." Because the *polis* is, by nature, a combination of individuals with many different talents and opinions, Aristotle warned that trying to fit them all into one mold would destroy the state. He also disagreed with Plato's ideal of commonly owned property, as described in *The Republic*. For Aristotle, property should be private as a general rule since commonly held things are neglected, and because magnanimous acts require ownership. Thus, Aristotle recognized the dangers of Plato's solution for creating harmony—eliminating differ-

ences in preferences and property requires the untiring efforts of a ruthless tyrant.

For Aristotle, the rule of law “is preferable to that of any individual.” Every citizen among equals should have an opportunity to rule and every ruler should be bound by constitutional law. Aristotle warned that:

... he who bids the law rule may be deemed to bid God and Reason alone rule, but he who bids man rule adds an element of the beast; for desire is a wild beast, and passion perverts the minds of rulers, even when they are the best of men.¹³

Unconstrained by the rule of law, kingly rule becomes tyranny, aristocratic rule becomes oligarchy, and constitutional government becomes democracy. Aristotle contended (as did Plato) that the most depraved of these perversions is tyranny, toward which democracy moves in proportion to the extent that the “people” are not bound by laws. Where laws are not supreme, the “many in one” collectively become a despotic monarch. “Demagogues spring up” and sway the people in much the same way that flatterers influence tyrants. And where “the laws have no authority,” notwithstanding existence of a written charter, “there is no constitution.”

Jean Bodin

Constitutional law was virtually unchanged for nearly two thousand years after Aristotle. In the sixteenth century, when France passed from a feudal to a national state, Jean Bodin changed the form of constitutionalism forever when he redefined the scope of sovereignty and changed the justification for exercise of its power.¹⁴ While Aristotle’s political theory never

sacrificed the individual's interests for the good of the state, Bodin's ideas paved the way for French royal absolutism. He also provided the foundation for modern political science.¹⁵

In *Six Books of the Commonwealth* (1576), Bodin defined sovereignty as "the absolute and perpetual power of a commonwealth."¹⁶ Bodin's sovereign had complete power over others without consent of his subjects and was exempt from all human law, including laws made by the sovereign himself.¹⁷

While in possession of unlimited power in matters of civil law, Bodin's sovereign was constrained by the law of God and nature. For example, a sovereign must not kill without justification because such an act would violate this higher law. Similarly, force should not be used to take the property of subjects unless there was just and reasonable cause.¹⁸ A sovereign who would commit such wrongful acts was regarded by Bodin as a weak coward no better than other barbarians, tyrants, and thieves who violate the law of God and of nature. Quoting the Roman philosopher Seneca, Bodin wrote, "To kings belongs the power over everything, to private individuals the property. . . . The king possesses everything in governance, individuals in ownership."

Thomas Hobbes

Following Bodin, Thomas Hobbes constructed a theory of sovereignty that was even more absolute. In his *Leviathan* (1651), beginning with the premise of a state of nature characterized by a war of all against all, Hobbes speculated that a social compact was created in which individuals surrendered all their material and nonmaterial rights to one person who became an absolute sovereign.¹⁹ No powers are reserved by the "people" because the "people" do not exist in Hobbes's

state prior to the compact. In contrast to Bodin, Hobbes's sovereign cannot commit an injustice. Oppressed subjects can never withdraw from the covenant or enter into a new agreement, even if it is with God. In return for complete servility, subjects in Hobbes's imagined state flourish in a society made peaceful by the sovereign.

John Locke

Standing in opposition to the absolutist theories of Bodin and Hobbes were seventeenth-century political thinkers who restated and revived ideas widespread in the Middle Ages, a period when self-government existed inside the city though not in the kingdom.²⁰ Emphasizing the fiduciary character of government, their theories reserved for individuals the right to resist and, if necessary, to destroy rulers who violate the people's trust. Predominant here is John Locke, whose ideas provided justification for at least two rebellions—the English Revolution of 1688 and the American Revolution in 1776.²¹

Starting from a state of nature in which individual rights are imperfectly secured, Locke speculated that people surrendered a limited number of “natural rights” which advanced the common good by strengthening private property. Locke's social contract involved a two-stage procedure. People first agreed to form a civil society, and next they created a legislative body which is the source of law. As long as a government endures, the legislature has legal authority. But the ultimate sovereign is the civil society which precedes formation of the state. Unlike Bodin and Hobbes, Locke does not view the sovereign as absolute. Being a “fiduciary body,” government is a subordinate authority that can be dissolved if it fails to protect and preserve the lives, liberties, and estates of individuals living in civil society.

America's Founders

Locke provided America's Founders with philosophical justification to support many of their claims of rights, and he gave them a rationale for establishing a *novus ordo seclorum*—a new order of the ages. In this new order, government was relegated to the role of protecting the “natural rights” of life, liberty, and property.

Other individuals who influenced the Framers include Montesquieu, from whom they gleaned the separation of powers doctrine, and Adam Smith, who helped them understand the social benefits of a private property order.²² Smith's explanation of spontaneous order may have given the Founders confidence that anarchy would not be the result of limiting government. This important idea was missed by Aristotle, Bodin, and Hobbes. For example, Aristotle wrote that “order among men could extend only so far as the voice of a herald could reach and that a state numbering a hundred thousand people was thus impossible.”²³ Hobbes warned that social life without a controlling Leviathan is “nasty, brutish and short.” And Bodin wrote:

[A] sovereign prince has to have the laws in his power in order to change and correct them according to the circumstances; just as the master pilot, said the jurist Sextus Caecilius, ought to have the rudder in his hand to move at his discretion if the ship is not to go down while waiting on the opinion of its passengers.²⁴

Ideas of David Hume also guided the Framers. Throughout the Constitutional Convention, they heeded his warning that when a constitution is being drafted with its checks and controls, “every man ought to be supposed a knave and to have no other end in all his actions than private interests.”²⁵

Thus, James Madison wrote in *Federalist*, No. 51, that “If men were angels, no government would be necessary” and “ambition must be made to counteract ambition.”

The Framers’ “first principles” can be summarized as follows. Because the judgments of a democratic majority will be as flawed as the orders of a tyrant, all forms of government must be limited.²⁶ To effectively constrain the coercive power of public officials requires free elections, constitutional restraints, such as the rule of law and due process, and a Bill of Rights. The most important right to protect is that of private property, the keystone of the free society.²⁷ Finally, underlying America’s institutions and moral traditions is the individual citizen who limits his desires and who is guided by the law of measure—democracy only works when there is a “belief in things higher than democracy.” Thus, John Adams wrote that “virtue is the only Foundation of Republics.” And George Washington, in his First Inaugural Address, stated that “there exists in the economy and course of nature an indissoluble union between virtue and happiness . . .”

Jean-Jacques Rousseau

Following the American experience, a French Revolution tested a different set of principles. What Thomas Hobbes was unsuccessful in accomplishing for the English king,²⁸ Jean-Jacques Rousseau achieved for the French “people.”²⁹ In his *Social Contract* (1762), Rousseau assumed a state of nature in which all liberty and property were surrendered to the whole community. The resulting body politic was “directed by a single motive,” a condition Rousseau believed necessary for the “people’s” self-preservation.³⁰

In this utopia, each citizen must yield to the “general will” as determined by a simple majority in matters of routine law-making and by a qualified majority in more serious matters.³¹

Although everyone is bound by the sovereign, the sovereign cannot be constrained even by law in the social contract. The sovereign can treat citizens equally or it can create privileges and social classes. Rousseau believed that human perfection is only made possible by a sovereign that substitutes a communal existence for individual liberty. In such a society dissidents objecting to the general will are “forced to be free.” Thus, Rousseau noted approvingly that in Genoa the word *Libertas* was found on the doors of prisons and the fetters of galleys.

Rousseau’s *Social Contract* fueled the violent demise of twelve French constitutions, each lasting about ten years, and provided a rationale for twentieth-century absolutism. Popular ideas traceable to Rousseau are that majority rule should be the supreme authority, popular decisions tend toward the general welfare, and anyone who challenges majority rule damages the common good. Partly as a result of these ideas, the limited government that characterized America’s founding has gradually been replaced by a majoritarian system that has vested tremendous power in the hands of the “people” or their representatives.

Wilhelm von Humboldt

Wilhelm von Humboldt and James Mill stand in sharp contrast to Rousseau. As a firsthand observer of the French Revolution, Humboldt wrote that “Constitutions cannot be grafted upon men as sprigs upon trees”—reason can only give form to long-standing traditions and moral habits.³² For Humboldt, societies flourish because of individual creativity made possible by freedom, and liberty, in turn, “increases in exact proportion as public freedom declines.”³³ Humboldt’s most important book on political theory is dedicated to discovering “to what end State institutions should be directed, and

what limits should be set to their activity.”³⁴ “[H]uman disputes . . . make absolutely necessary at all times the existence of some supreme power.” Because security is “the only thing which the individual can’t obtain for himself and by his own unaided efforts,” the role of government should be that of maintaining security “against the attacks of foreign states and internal dissensions.” Citizens have legal freedom “when, living together in the full enjoyment of their due rights of person and property, . . . [they] are out of the reach of any external disturbance from the encroachments of others.”³⁵ Humboldt condemned “[a]ny State interference in private affairs” in absence of violence to individual rights. Attempts by the state to promote positive welfare “fetter the free play of individual energies,” “weaken the vitality of the nation,” and “hinder the development of individuality.”

Although Hazlitt concurred with Humboldt on the role of government, there were areas of disagreement. For example, Humboldt admired the monarchical form of government. In contrast, Hazlitt’s assessment of monarchy in “Why Politics Is Insoluble” was that it:

can hardly be called a “solution” of most major political problems. It provides government; but it does not ensure good government. The typical king, as Walter Bagehot has reminded us, is “a spoiled common man.” He can be much worse than that—occasionally a fanatic or an idiot.

Humboldt praised war as “one of the most salutary phenomena for the culture of human nature.” But Hazlitt wrote about war:

The wanton destruction of anything of real value is always a net loss, a misfortune, or a disaster, and

whatever the offsetting considerations in a particular instance, can never be, on net balance, a boon or a blessing.³⁶

James Mill

James Mill argued that the state's role should be to ensure "to every man the greatest possible quantity of the produce of his labor."³⁷ In achieving this end "All the difficult questions of Government relate to the means of restraining those, in whose hands are lodged the powers necessary for the protection of all, from making a bad use of it." The desire felt by some to control the lives and property of others, which makes formation of a government necessary in the first place, also affects "those in government who have monopoly power." Mill observed that property rights can only be secure if well defined in the Civil Code. There must exist exact descriptions of "the facts giving birth to rights," the "extent of the rights," and "the facts which put end to rights." An accurate Civil Code along with an exacting Penal Code makes "clear and simple" the inquiries of judges concerning disputes over property rights. Thus, James Mill endorsed ideas of Locke and Montesquieu, who held as Hazlitt did, that "all practicable liberty is liberty under law."

Democracy and Parliamentary Government

Two remaining topics in Hazlitt's outline will now be considered—democracy compared to other forms of government and the centralization of government power. Since Hazlitt preferred the British parliamentary system, which he believed resulted in "a higher quality of leadership, and more compromise and conciliation, than the American Presidential system,"³⁸ analysis in this section will be confined to how this

form of government has preserved liberty under the rule of law. British constitutional scholar A. V. Dicey noted that the salient feature of English political institutions has been the “sovereignty of Parliament,” which he defined as the King, the House of Lords, and the House of Commons.³⁹ Dicey argued that the power of Parliament is absolute and not subject to constitutional law. He agreed with English jurist Sir Edward Coke that “The power and jurisdiction of Parliament are so transcendent and absolute that it cannot be confined, either for causes or persons, within any bounds. . . .”⁴⁰ Parliament on occasion has “prolonged its own legal existence,” interfered with private rights for the public advantage, made illegal transactions legal thereby freeing individuals from liability for breaking laws, conferred privileges or liabilities on particular individuals and groups, overridden the law of judges, and transferred sovereign authority to a new sovereign body. Parliament, in short, has done “everything that is not naturally impossible.”

Given Parliament’s unlimited legal sovereignty, what constrains the power of this form of government? Dicey commented on two limiting factors—one external and the other internal. The external factor, first identified by David Hume, is that a large number of subjects can resist the sovereign’s laws, a circumstance which has constrained even the most despotic of governments. An internal limit is the sovereign’s personal moral code. We will not consider Dicey’s internal limit because, in both theory and practice, when a consensus of an assembly is required, immoral legislation frequently occurs even if individual electors are highly moral.⁴¹

With respect to Dicey’s external constraint, Hume observed that “as FORCE is always on the side of the governed, the governors have nothing to support them but opinion.”⁴² A sovereign is only secure when there is a general belief that government is providing citizens with advantages that

would otherwise be unavailable, that those in power are a legitimate controlling force, and that private property rights are secure. A government will eventually collapse if people believe that one or more of these conditions are not being met. Hazlitt understood well the importance of public opinion in the parliamentary system. Even while admiring its efficiency, he wrote that it "is only a virtue to the extent that public opinion is sound. . . . When public opinion is corrupted, it most promptly enacts the corruption."

The Centralization of Power

The final topic that was to occupy Hazlitt is the tendency of government power toward centralization. Specifically, why is a power that used to be shared now supreme? And why have constitutional laws yielded to Hobbes's Leviathan and Rousseau's general will? Consider French political philosopher Bertrand de Jouvenel's observations concerning concentration of power.⁴³ When government was in the person of a king, people could see that an increase of royal power was a diminution of their own and they jealously guarded their private rights from such excursions.⁴⁴ When power took on the fiction of an "impersonal and passionless instrument of general will," protests against power's expansion were muffled. As people began viewing their rulers as instruments of a "collective being," a tyranny was made possible that would not have been tolerated under kingly rule.

Early in the life of each society, there was a general fear of the supernatural, a veneration of ancestors, and a loyalty to custom. The divine will was sovereign and those holding power were constrained in deference to God. Later on, following a "rationalist crisis," people began placing their faith in deliberately designed social processes while rejecting those

that evolved historically. In eighteenth-century France, philosopher Antoine-Nicolas de Condorcet wrote that “nature has set no term to the perfection of human faculties; . . . the perfectibility of man is truly indefinite.”⁴⁵ Thus, Condorcet reasoned, a nation should not be chained to its constitution because flawed institutions are “capable of perfection as men become more enlightened.”

A similar “rationalist crisis” has occurred in America during the twentieth century. Many judges now believe themselves capable of continually improving law using a Cartesian process that identifies and applies a single, coherent set of principles. This radical standard has given judges license to search for imaginative new legal arguments. Some constitutional theorists have argued that it is perverse to place questions of history and society above the structure of a legal argument. This philosophy of law places unlimited power in the hands of a *de facto* sovereign—judges are authorized to prevent individuals from obtaining things that the prevailing theory of justice says they should not have.

Once “questions of history and society” are abandoned, power’s constraints fall by the wayside. All that remains are opinions that must be settled politically or militarily. Jouvenel observes that liberty is lost under the rule of law when:

law comes merely to reflect the caprices of the people, or of some body to which the legislative authority has been delegated, or of a fraction which controls the body, [because then] obedience to the laws means subjection to the inconstant, uncertain, unknown, arbitrary will of men who give this will the force of law.⁴⁶

Thus, we return to Aristotle’s warning that “he who bids man rule adds an element of the beast.” Unlimited power is a poi-

son that blinds the eyes of moral insight and “perverts the minds of rulers, even when they are the best of men.”

Is Politics Insoluble?

Despite Hazlitt’s pronouncement that politics is insoluble, he lights a path toward a greater liberty. In “The Task Confronting Libertarians,” Hazlitt deplored “the sad fact . . . that most of the heads of big businesses in America have become so confused or intimidated that . . . they fail to defend themselves adequately even when attacked.” He attributed this apathy to several factors, including fear of harassment by government commissions and agencies, pursuit of preferences and privilege at the expense of the general public, ignorance concerning the consequences of interventionist policies, and sheer timidity and cowardice.

Because liberty has always depended to some degree on the private efforts of individuals who have challenged political authority, the indifference and indolence of some businesses in defense of their private property are matters of concern. Throughout history, a greater general freedom has frequently been the unintended consequence of the efforts of particular persons who have fought to secure or expand their individual rights.⁴⁷ Part of the genius of America’s Founders was to create a constitutional apparatus enabling them to peacefully defend what was theirs. When property is defended against government encroachment, a barrier is erected between the freedom of a private property order and the tyranny of unlimited democracy. Democracy’s flatterers must be challenged because the demagogue’s authority will expand incessantly if left uncontested. Authority fears the unrelenting conscience of its opponents.

Overcoming timidity in the battle for freedom involves sacrifice and requires courage. Business proprietors who chal-

lenge political authority run the risk not only of being penalized by government tax authorities and regulators, but also of being labeled antisocial at a time when legislative acts are considered the “people’s” will. And defending one’s property rights in the courts and legislative arenas can be very costly.⁴⁸ In older civilizations, nobles and aristocrats were honored when they courageously followed rules that tended to preserve the society in which they lived.⁴⁹ In America today, individuals who defend their economic rights against an acquisitive political authority should also be honored because their acts help to further the free society.

Hazlitt proposed the formation of private associations dedicated to preserving freedom. He urged that organizations like The Foundation for Economic Education be formed to advance broad principles of liberty, and that other more specialized associations be started to oppose caprice at all levels of government. This tried-and-true formula has characterized America since its founding. In the middle of the last century, Alexis de Tocqueville astutely observed that “In no country in the world has the principle of association been more successfully used or applied to a greater multitude of objects than in America.”⁵⁰ Tocqueville attributed this trait to our self-reliance and mistrust of governmental authority.

Hazlitt’s essays remind us that just as there were two Greeces in history, constitutional Athens and despotic Sparta, so are there two Americas. The first is bound by the rule of law and upholds the private property order and its attendant obligation of self-reliance and self-discipline. In this America, “every man, whoever he is, can act best and live happily.” But there is also a second America. Its laws go far beyond those that are “just, definite and minimal,” and its judges twist precedent to transform judicial decision into judicial legislation. In the second America, opportunities to “act best” are

narrowed and hopes to “live happily” are dashed. A careful study of the chapters in this anthology will help readers understand how the first America can be realized and how dangers inherent in the second America can be diminished.

1. For an overview of Hazlitt’s prolific career see the Introduction and Chapters 1–3 of *The Wisdom of Henry Hazlitt* (Irvington-on-Hudson, N.Y.: The Foundation for Economic Education, Inc., 1993).

2. Hazlitt’s outline is shown in Appendix I.

3. Henry Hazlitt to Robert G. Anderson, 21 February 1984, Foundation for Economic Education Correspondence Files, Irvington-on-Hudson, New York.

4. The placement of selected essays in Hazlitt’s outline is shown in Appendix II.

5. Data sources are the Office of the Federal Register and the Budget of the United States FY 1997. Total cost of regulation estimates are from Thomas D. Hopkins, *Regulatory Costs in Profile*, Center for the Study of American Business, Policy Study Number 132, August 1996.

6. Hazlitt’s chapter on “Why government grows” lists the name of Allan H. Meltzer, an economist primarily known for his work in monetary theory. Hazlitt apparently had read an article by Meltzer in a popular business magazine that had explained the growth of government using a “public choice” argument. This is the recollection of the Reverend Edmund A. Opitz, Hazlitt’s friend and former member of the senior staff of The Foundation for Economic Education.

7. Most references in this section are part of the Henry Hazlitt library located at The Foundation for Economic Education. Hazlitt gave the Foundation approximately 2,400 of his books, plus pamphlets, and subject and correspondence files.

8. Political thinkers discussed in this section whom Hazlitt did not plan to consider are Jean Bodin, Thomas Hobbes, and Jean-Jacques Rousseau.

9. Ironically, because he was born in Macedon, Aristotle was denied citizenship in Athens, something he considered essential for achieving a full life.

10. Of those used for Aristotle’s study, only *The Constitution of Athens* survives.

11. For example, most of *The Iliad* is not concerned with the siege of Troy per se, but with the tension and conflict created by Agamemnon when he takes Achilles' private property without justification.

12. See Aristotle, *The Politics*, ed. with an intro. by Stephen Everson (Cambridge: Cambridge University Press, 1988), pp. 2–3.

13. *Ibid.*, p. 78.

14. These are elements that constitute the core of constitutional law. See A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty Classics, 1982), p. cxl.

15. Charles E. Merriam, Jr., *History of the Theory of Sovereignty Since Rousseau*, intro. Harold E. Lasswell (New York: Garland Publishing Co., 1972), p. 13.

16. Jean Bodin, *On Sovereignty: Four Chapters From The Six Books Of The Commonwealth*, ed. and trans. Julian H. Franklin (Cambridge: Cambridge University Press, 1992), p. 1.

17. Bodin's only exception is when a prince's law is a promise to another prince who has an interest in the law being kept. *Ibid.*, pp. 11–13.

18. Although Bodin's theory initially made him a favorite of the French political elite, his active opposition to a tax as an unjustified expropriation of property resulted in his removal from the King's court. See Julian Franklin's introduction in *Ibid.*

19. Thomas Hobbes, *Leviathan: Or the Matter, Forme and Power of a Commonwealth Ecclesiastical and Civil*, ed. Michael Oakeshott and intro. Richard S. Peters (New York: Collier Books, 1962), pp. 100–132.

20. Peter Riesenberg, *Citizenship in the Western Tradition: Plato to Rousseau* (Chapel Hill, N.C.: The University of North Carolina Press, 1992), pp. 142–145 and 187.

21. Two other seventeenth-century philosophers who helped revive this theory of government were Johannes Althusius (*Politics Systematically Considered*, published in 1609) and Samuel Pufendorf (*The Law of Nature and of Nations*, published in 1672).

22. Almost all of the Framers were acquainted with Smith's *Wealth of Nations*, and some, including Alexander Hamilton and James Madison, incorporated Smith's ideas in their writings and speeches. See Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence, Kan.: University Press of Kansas, 1985), p. 128.

23. F. A. Hayek, *The Fatal Conceit: The Errors of Socialism*, ed. W. W. Bartley, III (Chicago: University of Chicago Press, 1988), p. 11.

24. Bodin, p. 24.

25. In addition to Hume, Locke, Montesquieu, and Smith, the Framers also continually quoted or paraphrased James Harrington and Blackstone. McDonald, p. 7.

26. In *Federalist*, No. 51, James Madison wrote that "In framing a government . . . you must first enable the government to control the governed; and in the next place oblige it to control itself."

27. See James Madison, *Federalist*, No. 44, and Alexander Hamilton, *Federalist*, Nos. 60 and 79.

28. Hobbes's ideas were considered so alarming that they "found little support and had little influence on contemporary conditions." Merriam, p. 27.

29. Jean-Jacques Rousseau, *The Social Contract*, tran. and intro. Maurice Cranston (Middlesex, England: Penguin Books Ltd., 1968).

30. Thus, the idea of spontaneous order was also foreign to Rousseau.

31. Although Rousseau does not qualify what constitutes routine law-making, he does identify the social pact as the most important law to be considered by a qualified majority. *Ibid.*, p. 152.

32. Quoted in Ralph Raico, "Wilhelm von Humboldt," *The Freeman*, September 1961, p. 47.

33. Wilhelm von Humboldt, *The Limits of State Action*, ed. and intro. J. W. Burrow (London: Cambridge University Press, 1969), p. 12.

34. John Stuart Mill popularized Humboldt's ideas and used the following quotation as the epigraph to *On Liberty*: "The grand, leading principle, towards which every argument hitherto unfolded in these pages directly converges, is the absolute and essential importance of human development in its richest diversity." *Ibid.*, p. 51.

35. *Ibid.*, p. 83.

36. Henry Hazlitt, *Economics in One Lesson*, intro. Steve Forbes (San Francisco: Laissez Faire Books, Fiftieth Anniversary Edition, 1996), p. 18.

37. James Mill, *Essays on Government, Jurisprudence, Liberty of the Press and Law of Nations* (New York: Augustus M. Kelley Publishers, Reprints of Economic Classics, 1825), p. 4.

38. The thoughts concerning these systems are fully developed in Henry Hazlitt, *A New Constitution Now* (New Rochelle, N.Y.: Arlington House Publishers, 1974).

39. Dicey, p. 3.

40. Quoted in *Ibid.*, p. 4.

41. See Reinhold Niebuhr, *Moral Man and Immoral Society* (New York: Charles Scribner's Sons, 1932).

42. David Hume, "Of the First Principles of Government," chap. IV in

Essays: Moral, Political and Literary, ed. with foreword, notes, and glossary by Eugene F. Miller (Indianapolis: Liberty Fund, Liberty Classics Edition, 1985), p. 32.

43. Bertrand de Jouvenel, *On Power: The Natural History of Its Growth* (Indianapolis: Liberty Fund Inc., Liberty Press Edition, 1993).

44. Thus, Jean Bodin observes that a prince's personal treasury had to be kept separate from the public treasury—his private domain was different than that of the public. Bodin, p. 84.

45. Antoine-Nicolas de Condorcet, *Sketch for a Historical Picture of the Progress of the Human Mind*, trans. June Barraclough (London: William Clowes and Sons, Ltd., 1955), p. 4.

46. Jouvenel, p. 275.

47. Felix R. Livingston, "The Entrepreneur as a Social Makeweight," chap. in *Private Enterprise: Facing the Challenges of the 21st Century*, ed. Francis W. Rushing (East Lansing, Mich.: Michigan State University Press, forthcoming).

48. See Felix R. Livingston, "The Entrepreneur as a Defender of Liberty," *The Freeman*, September 1996.

49. Alexis de Tocqueville, *Democracy in America*, ed. J. P. Mayer, trans. George Lawrence (Garden City, N.Y.: Anchor Books Edition of Doubleday & Company, Inc., 1969), pp. 616–627.

50. See "Political Associations in the United States," Chap. XII in Tocqueville.

Is Politics Insoluble?*

H. L. Mencken was fond of saying that most of the problems men agonize over are inherently insoluble. A haphazard search among his books has failed to turn up a supporting quotation, and perhaps my memory misleads me. He may merely have said “some,” not “most” problems. In the latter case, at any rate, I agree with him. I would include at least two whole categories of problems among the insoluble ones. First, all problems commonly classed as metaphysical, ontological, or cosmological—such as “How can we tell the really real from the apparently real?” or “What was the First Cause?,” or “What is mankind here for?,” or “What is the purpose of the universe?” And so on. The second category contains all the really basic political problems.

There are differences, of course, in what is meant by “insolubility” as applied to each of these sets of problems. The metaphysical problems are forever insoluble because man’s limited five senses, narrow experience and finite mind cannot possibly encompass eternity, “ultimate” reality, or infinity. The basic political problems, on the other hand, are insoluble because . . . well, for one thing, because we are not even sure what we mean by a “solution.”

Suppose we address ourselves to this problem first. What is a “solution”? It is easy to cite an illustration. A man’s car fails to start on a cold morning. He finds that his battery is dead, or that his spark plugs are fouled, or that a wire is disconnected, or that the carburetor is flooded, or that he has run

*From the Fall 1976 issue of *Modern Age*. The article subsequently appeared in the September 1994 issue of *The Freeman*.

out of gas. Once this basic “cause” is discovered, he probably knows how to fix it or have it fixed. Or, again, the man feels some distress; and his doctor identifies it as diabetes and prescribes insulin. Once a doctor has correctly diagnosed a disease with a known palliative or cure, he has “solved” his problem.

In the physical sciences, then, the problems commonly arise because something is working unsatisfactorily, and if we have identified A as the cause and M as the solution, we know we have found the cause and the cure if we can in that and similar cases make things work satisfactorily once again.

But when we turn to the social sciences, and particularly to politics, this kind of certainty or confidence is no longer to be found. Let’s take a typical broad problem: What should the state do about the poor and the needy? Historically the answers have run from nothing to everything. The nothing answer has run typically like this: “It is not the function of the state to try to help the needy or provide relief. The proper function of the state is simply to prevent force, theft, and fraud, and maintain internal and external peace.”

Such an answer immediately confronts obstacles of several sorts. The first concerns its humanity or even its practicality. Suppose, for example, that a child has been hit by an automobile and is found bleeding and unconscious in the street. Are we to hope that whoever finds him proves to be a Good Samaritan? And also well enough off to have the child driven to a hospital and to guarantee to pay the bill if the parents are not found or are unable to do so?

“All right,” the answer may come; “let the state at least provide for emergency help of this sort.” But how far shall we carry this answer? How far shall we extend the definition of “emergency” help? Should the state pay every hospital bill of everybody who claims he cannot pay? Should it put everybody

on relief who claims he cannot find a job? How high should the relief be? At just what level will it seriously undermine the incentives to find or hold jobs? At just what level will it undermine the incentives to work and save of the taxpayers who are asked to support the idle? At just what level will it bankrupt the state?

There are people who are untroubled by these questions. They want to “guarantee everybody a decent job,” or a minimum income, or even equality of income, regardless of all individual differences of effort, ability, or contribution, regardless of the effect on incentives, regardless of any other social consequence. So, in fact, not only historically but today, the answers to the question, “What shall government do about the needy,” still run from nothing to practically everything.

Most people who have given serious thought to the problem have proposed or accepted some compromise. A typical compromise proposal is that we should assure the needy or the unemployed an “adequate” relief payment for a “reasonable” time, but not enough to “undermine their incentives” to find jobs or improve themselves, and not enough to undermine the incentives of the working and productive taxpayers who are being asked to shoulder the bill.

There are inherent difficulties in this compromise. It is something of a self-contradiction. If the relief recipient himself considers his dole “adequate,” this is almost equivalent to saying that he has no incentive to take a job or otherwise expend effort to increase it. At all events, the compromise lacks any precision. On the one hand, even a high standard dole may fail to meet the urgent needs of some families. On the other hand, almost any dole of any amount may tend to undermine some people’s incentive to a certain extent. As a result of such difficulties, it is hard to get any two people to agree on what should be the amount of a proposed or actual

dole, or on who should be eligible for it, or how long or under what conditions it should continue to be paid. So there are hundreds of different answers to these questions.

I do not use this last figure rhetorically but literally. It can be illustrated even within our own country. If we take the federally financed program of Aid to Families with Dependent Children, we find that the average monthly payment per recipient in August 1975, for example, was different for each of the fifty states, ranging from \$14.41 in Mississippi to \$105.39 in Alaska. In the "general assistance" program we find a similar range of variation for the same month—from \$11.94 per recipient in Mississippi to \$144.95 in the District of Columbia. And when we turn to state unemployment insurance systems, even though these also are federally aided, we find not only a similar wide range in weekly benefits, but in the proportion that the benefits bear to the recipient's previous wages, and in the number of weeks in each year for which such benefits are payable.

When we come to comparing not only different states in our own country but different countries, we encounter an enormously greater range of differences in both the amounts and formulas used for calculating relief or so-called unemployment insurance payments. Great Britain, for example, pays its unemployed three-quarters of their previous salaries (which makes its recent prolonged unemployment rate not surprising). In many countries, on the other hand, nothing whatever is paid for unemployment insurance or even relief—not primarily because national sentiment does not favor it, but because the funds do not exist.

If we turn from relief to, say, education, we find a similar wide range of opinion and practice among national governments concerning how much education to make compulsory or how much the state should pay for. It ranges from govern-

ments that provide no education at all, through those that provide free public schools, or free high schools, or subsidized college and university education. The prescribed age ranges for compulsory education are similarly wide.

There is one generalization we can make that applies both to relief and education, and, in fact, to any other intervention of the state, once the principle has been granted that it should be allowed to undertake that function at all. The intervention will tend to be indefinitely expanded. The individual amount of relief will tend to grow, the period of payment to be lengthened, the eligibility requirements to be relaxed, the number of recipients to be enlarged, and additional forms of relief to be piled on to those already offered. The like will tend to apply to the length and coverage of state education. Public expenditures will always tend to grow. Because of the politicians' fear of increasing taxation correspondingly, deficits will be increasingly tolerated and rationalized, and inflation will appear and tend to accelerate.

In the last hundred years the historic tendency nearly everywhere has been a constant increase in government intervention in the economy, a constant increase in government paternalism and in government power. Each new power that any government has acquired has almost inevitably been used by it to obtain still further powers. It is hardly to be wondered at that a small but perceptibly growing number of political thinkers are beginning in desperation to go beyond even their previous belief that the role of the state should be limited to trying merely to prevent force and fraud, and have begun to advocate a complete abolition of the state.

It is hard not to feel some sympathy with them. It is pleasant, indeed, to draw up attractive pictures of what an ideal anarchistic society would be like. But all these dreams would be shattered by the almost certain outcome. If there were no

established government, the country would be taken over by the criminals and gangsters. Eventually one gang would subdue or wipe out its rivals, and that gang would become the new *de facto* government. It would systematically exact tribute from all the rest of us, only this would again in time be called taxes. In brief, it is impossible to maintain a peaceful anarchy unless some authority is set up to enforce it.

This points, indeed, to the probable origin of the state. We need look no further back than the middle of the last century, when the "vigilance committees" were formed in our own Wild West. One of these, for example, was organized in San Francisco in 1851, and promptly arrested, tried, and hanged a goodly number of desperadoes. If this and similar committees had not been formed in California and elsewhere, the desperadoes themselves would no doubt in time have become the *de facto* government.

But we need not speculate afresh at this time concerning the probable origin of government. That has already been done quite satisfactorily, and by no one better than by David Hume in his essay "Of the Origin of Government" in the mid-eighteenth century. His conjectures are at once so simple and plausible that they warrant direct quotation:

It is probable that the first ascendant of one man over multitudes began during a state of war, where the superiority of courage and of genius discovers itself most visibly, where unanimity and concert are most requisite, and where the pernicious effects of disorder are most sensibly felt. The long continuance of that state, an incident common among savage tribes, inured the people to submission; and if the chieftain possessed as much equity as prudence and valor, he became, even during peace, the arbiter of all differ-

ences, and could gradually, by a mixture of force and consent, establish his authority. The benefit sensibly felt from his influence made it cherished by the people, at least by the peaceable and well-disposed among them; and if his son enjoyed the same good qualities, government advanced the sooner to maturity and perfection; but was still in a feeble state till the farther progress of improvement procured the magistrate a revenue, and enabled him to bestow rewards on the several instruments of his administration, and to inflict punishments on the refractory and disobedient. Before that period, each exertion of his influence must have been particular, and founded on the peculiar circumstances of the case. After it, submission was no longer a matter of choice in the bulk of the community, but was rigorously exacted by the authority of the supreme magistrate.

There may have been somewhere, as a few eighteenth-century philosophers dreamed, a group of peaceful men who got together one evening after work and drew up a Social Contract to form the state. But nobody has been able to find an actual record of it. Practically all the governments whose origins are historically established were the result of conquest—of one tribe by another, one city by another, one people by another. Of course there have been constitutional conventions, but they merely changed the working rules of governments already in being.

But however the state may have originated historically, we confront a fundamental dilemma: No small group of men, and certainly no single man, can be completely trusted with the power to rule, yet somebody must be trusted with that power. And if we cannot peacefully agree on who is to be

granted that power, and how much, somebody is going to seize it by force, and impose whatever coercion he finds expedient. So some limited power must be voluntarily granted to somebody to rule. But this one practical conclusion merely presents us with a score of further problems. What limits should we set on this power? How can we hold the selected rulers within these limits? Who is to do the selecting? By what process? For how long a term?

Concerning most of these problems we have been able to arrive, at best, at only makeshift and temporary agreement. In addition, in politics we confront, so to speak, a double layer of problems. Suppose one of us is able to devise an ideal form of government. Suppose he has found exactly where to draw the limits around the powers that ought to be granted to a government. How does he convince a majority of his fellow citizens that his answers are right? And what dependable devices does he propose to hold government powers within the limits he has prescribed?

In the West there is some semblance of political agreement because most of us accepted some time ago a magic password—democracy. If it were not the best of all conceivable forms of government, then, as the comfortable joke went, it was at any rate the “least worst.” Yet we never quite arrived at any agreement even about the meaning of the word. Does it mean merely government by majority consent, or must there be majority “participation?” And which majority? Of the whole population? Of adults? Of male adults? Of “eligible” voters? And what should be the requirements for voting eligibility—of age, property, literacy, language? Hardly any two governments set exactly the same standards.

And does democracy mean presidential government or a parliamentary form? Here, again, in practice, we find endless

variety. I implied, a while back, that democracy has become almost a religion; yet perhaps this statement should be put in the past tense. Even a superficial observer can begin to detect a declining faith in it. Almost everywhere we look—in Latin America, Africa, Asia, Eastern Europe—we find a similar pattern or cycle repeating itself: full democracy—the welfare state—inflationism—a trend toward socialism or communism—and then a military dictatorship either to preserve or reverse the trend. Even in recent months we have seen the great subcontinent of India changed almost overnight, and without a shot being fired, from an apparent democracy to one-woman rule.

Walter Judd recently quoted the warning by the British historian Alexander Tytler nearly 200 years ago:

A democracy cannot exist as a permanent form of government. It can only exist until the voters discover that they can vote themselves largess out of the public treasury. From that moment on, the majority always votes for the candidate promising the most benefits from the public treasury—with the result that democracy collapses over a loose fiscal policy, always to be followed by a dictatorship.

Americans have come a long way since 1917, when they went to war, under Woodrow Wilson's slogan, "to make the world safe for democracy." Yet if many in the West have been losing their faith, and beginning to wonder how to make the world safe *from* democracy, they have found no definite alternative. There are today more than 130 separate nations. Some of them have parliamentary governments, some presidential; some of them are extreme democracies, some absolute dicta-

torships. But no government is precisely like the other. In fact, few of them are precisely like they were a little while ago or will be in a little while from now.

It is not merely that nations are constantly changing the particular persons or parties in power; they seem to be chronically dissatisfied with the very nature of their governments. Thumb through an annual like *The Statesman's Year-Book* at haphazard. You will find Costa Rica: "The constitution, promulgated on 7 Dec. 1871, has been modified very frequently, last in 1949." Or Nicaragua: It had a new constitution in 1963. "On 31 Aug. 1971 the Congress voted in favor of dissolution of the Constitution. A 100-member Constituent Assembly started its discussions on a new Constitution in May 1972." Or Guatemala: "Following the revolution of June 1954 the Constitution of 1945 was replaced in Aug. 1954 by a 'Political Statute.' On 1 March 1956 a new Constitution came into force. This Constitution was in 1963 replaced by a Fundamental Charter of Government. A new constitution was promulgated on 15 Sept. 1965 with effect from 6 May 1966."

We seem to have made very little advance since the sixteenth century, when the Reverend Richard Hooker was writing:

He that goeth about to persuade a multitude, that they are not so well governed as they ought to be, shall never want attentive and favourable hearers.

So where are we left? Generations of mankind, and great philosophers, have wrestled with these basic political problems, and said some penetrating things about them—Plato, Aristotle, Machiavelli, Hobbes, Locke, Montesquieu, Hume, Rousseau, Burke, Bentham, the Mills, Spencer, Dicey, Acton.

. . . But have they come up with anything that the majority of our contemporaries are willing to accept as definitive? And can their successors ever hope to do so? Is it possible to lay down in politics any propositions to which we can confidently add: Q.E.D.? Can we prove anything? In brief, is such a thing as political *science* possible?

Raising this question reminds me that at least one of the great philosophers mentioned above, Hume, published an essay in 1752 with the very title: "That Politics May be Reduced to a Science." That a philosopher remembered chiefly for his skepticism would venture to raise such a hope seems especially encouraging. Yet a modern reader will find the argument of Hume's essay vague and disappointing, consisting of a few generalizations, drawn partly from a priori grounds and partly from history, that strike one as plausible but hardly as proved.

And yet—there may be examples in one or two other social disciplines to give us reasons for hope. By the reasoning and research of scholars, and more particularly by thousands of judicial decisions, jurisprudence, or legal philosophy, has been raised to the level of a near-science. We find there an increasing area of accepted and established principle, and neither the enormous diversity in theory or practice that we find in the wider area of politics.

Still more promising is what has been achieved in economics. Since the eighteenth century a series of great thinkers—including Hume, Adam Smith, Ricardo, Bentham, Menger, Böhm-Bawerk, and Ludwig von Mises—have succeeded in creating a genuine social science. As described by Mises: "Economics is the youngest of all sciences. . . . It opened to human science a domain previously inaccessible and never thought of."¹ It "deals with a regularity in the concatenation and sequence of phenomena that is valid in the whole field of

human action.”² Economics, in fact, is merely a branch, though the hitherto best elaborated branch, of “praxeology”—the science of human action. “In all its branches this science is a priori, not empirical. Like logic and mathematics, it is not derived from experience; it is prior to experience. It is, as it were, the logic of action and deed.”³ “It is a science that aims at the ascertainment of universally valid laws of human conduct.”⁴

True, this is not the description of economics that we commonly get. It is—or at least once was—almost peculiar to Mises. But it correctly describes, I think, the nature of modern economics, which was not put on a truly scientific basis until the appearance of the so-called Austrian school of thinkers. It is very important to keep in mind, of course, what kind of science economics is. It has its own methodology. It is a mistake to try to turn it into an imitation of the physical sciences. It is an absurdity to assume, for example, that we can use it to predict the general economic future, and say what the course of profits or employment or GNP is going to be in the next six months or the next year—though hundreds of professional forecasters pretend that they can do just that. There are too many thousands of imponderable factors to be taken into account. All such predictions must forever remain mere guesswork.

But predictions of a certain kind—always with the proviso “other things remaining equal”—can confidently be made. We know, for instance, that if the government attempts to fix the price of any commodity or service below what the unhampered market would produce, then—“other things remaining equal”—it will inevitably bring about a shortage of that commodity or service. We know that if a government issues more money faster than more goods are produced, it will bring about inflation and raise prices. We know that if a government makes its own irredeemable paper money legal tender,

while gold or silver coin remain outstanding, people will pay off their debts in the irredeemable paper money and hold on to their coins: "Bad money drives good money out of circulation." And we can make hundreds of other predictions of the same kind. We know that any government intervention in the market must in the long run produce results unforeseen by its advocates, and usually less satisfactory even in their judgment than the situation they were trying to improve. And we know this not because that was the result of a previous similar intervention, but inevitably from the inherent nature of the action.

Any hopes for the future, however, based on the analogy of what we have achieved in economics, cannot excuse us from recognizing the present still wretched state of the theory of politics. Can we some day get beyond such basic dilemmas as the one we formulated earlier—that no small group of men, and no single man, can be completely trusted with the power to rule, yet that someone must be trusted with at least some power to rule? Can we eventually build up a series of interconnected propositions, a solid edifice of theory, that will be entitled one day to be recognized as a science? Perhaps. But right now that day seems far, far distant.

1. *Human Action*, p. 1.

2. *Theory and History*, p. 203.

3. *Epistemological Problems of Economics*, pp. 12–13.

4. *Ibid.*, p. 68.

The Torrent of Laws*

All over the United States, if you are reading this in a daylight hour, there is a ceaseless downpour of new laws. Every day some of us, somewhere, are being encumbered or shackled by still more restrictions. There are just too many laws.

But how do we tell how many laws are too many, and which ones are pernicious?

Let us begin with some elementary considerations. A law may be defined as an edict which either forbids you to do something or compels you to do something. Sometimes, it is true, it may be merely a guiding rule which tells you how to do something, or defines procedures or standards, like weights and measures. But such standard-setting laws are few in number. Most laws are prohibitions or compulsions—in short, commands.

Why are laws necessary? They are necessary, first of all, to prevent people from injuring or aggressing against their neighbors; to prevent theft and fraud, vandalism and violence. On the more positive side, they are necessary to lay down rules of action, so that others may know what to expect of us and we of others, so that we may anticipate each other's actions, keep out of each other's way, and work and act so far as possible in cooperation and harmony.

In a modern society, the traffic laws epitomize law in general. When they instruct us to keep on the right side, to drive within a specified speed limit on a given street or highway, to stop at a red light, to signal our intended turns, they may

*From the January 1979 issue of *The Freeman*.

seem to an impatient driver to be restricting his liberty, to be preventing him from getting to his destination in minimum time. But because these restrictions apply to everyone else, they are, if they are well-conceived, helping not only him but all of us to get to our multitudinous destinations in the minimum time in which this can be done smoothly and safely.

How many traffic laws do we need? That is a difficult question to answer numerically. A general traffic code need consist only of a few simple rules, but they could all, it would seem, easily be embodied in a single statute. In any case, if the government confined itself to enacting a code of laws simply intended to prevent mutual aggression and to maintain peace and order, it is hard to see how such a code would run into any great number of laws.

England in 1854

Now let us look at the situation we actually face. In order to get an adequate picture, let us begin by comparing it with the situation as it existed more than a century ago in, for example, England. Let us take the year 1854, when the British philosopher Herbert Spencer wrote an essay on "Over-legislation." Some of us are apt to assume that the mid-nineteenth century in England was perhaps the time and place when a great nation came nearest to a *laissez-faire* regime. Spencer did not find it so. He found the country buried under needless legislation, and piling up more. With the change of a few details, his essay sounds as if it were written yesterday:

Take up a daily newspaper and you will probably find a leader exposing the corruption, negligence, or mismanagement of some State-department. Cast your eye down the next column, and it is not unlikely that

you will read proposals for an extension of State supervision. . . . Thus, while every day chronicles a failure, there every day reappears the belief that it needs but an Act of Parliament and a staff of officers, to effect any end desired.

Spencer went on to refer to mid-nineteenth-century England's "20,000 statutes, which it assumes all Englishmen to know, and which not one Englishman does know." He found officialdom systematically slow, stupid, extravagant, unadaptive, and corrupt; and yet given more and more duties to fulfill. Instead of being confined to its primary duty of protecting each individual against others, the state is asked in a hundred ways to protect each individual against himself—"against his own stupidity, his own idleness, his own improvidence, rashness, or other defect."

"It is in the very nature of things," he continued, "that an agency employed for two purposes must fulfill both imperfectly. . . . And if an institution undertakes, not two functions, but a score—if a government, whose office it is to defend citizens against aggressors, foreign and domestic, engages also to disseminate Christianity, to administer charity, to teach children their lessons, to adjust prices of food, to inspect coal mines, to regulate railways, to superintend housebuilding, to arrange cab-fares, to look into people's stink-traps, to vaccinate their children, to send out emigrants, to prescribe hours of labor, to examine lodging-houses, to test the knowledge of mercantile captains, to provide public libraries, to read and authorize dramas, to inspect passenger-ships, to see that small dwellings are supplied with water, to regulate endless things from a banker's issues down to the boat-fares on the Serpentine—is it not manifest that its primary duty must be

ill discharged in proportion to the multiplicity of affairs it busies itself with?"

Let us now pass over a century and a quarter, and see how our situation today compares with England's then.

It is the individual states that enact the laws that affect their citizens most often and most intimately in their daily living. A figure averaging the number of laws passed each year in each of the 50 states would be hard to compile on a continuing basis and perhaps mean less than particular examples. Let us take our two most populous states, New York and California. During 1975, 1976, and 1977, the New York state legislature passed, respectively, 870, 966, and 982 public laws. ("Private laws" are not included here, as these individually affect only a handful of people.) During these same three years the California state legislature passed 1280, 1487, and 1261 public laws.

Prohibitions or Rule-Changes

Now let us look at the implications of this. What does a new law do? It either puts a new prohibition or a new compulsion on each of us (or a large number of us), or it changes the rules under which we have hitherto been acting. So on the basis of these figures the citizens of individual states are being subjected to an average of about a thousand new prohibitions or rule-changes every year. No one is excused from not knowing what every one of these new laws commands. I leave it to the reader to picture what all this means in terms of human liberty.

But we have not even got to federal laws. Supposedly, these are only needed to cover such matters as interstate com-

merce and are subject to severe limitations by the Constitution, so an innocent reader of that document might not see the need for many such laws. Though the federal books were presumably blank when it started, the First Congress, which began on March 4, 1789, did not see the need for many federal laws. It enacted only 94.

But then, as more and more laws were piled up, succeeding Congresses were convinced that more and more additional laws were necessary. The 85th Congress, which opened in January 1957, enacted 1,009 laws; the 94th, which began in January 1975, enacted 588. The ten Congresses during that period enacted an average of 735 laws each, which means an average of 367 new federal laws a year—or one new law every day. The reader should be reminded that individually many of these laws ran to well over 100 pages each.

Congressional Promises

The mania for piling up additional laws—new compulsions or prohibitions or changes of the rules—seems to be endemic in our democratic process. Every two years, when a new Congress is chosen, the rival candidates are eager to convince the voters that they can shower more blessings upon them than their respective competitors. “There ought to be a law,” they tell the voters, to forbid this or that, or to give you this or that. “If I am elected, I will introduce a bill”—to guarantee you this or that. So almost every congressman introduces at least one bill with his name attached to it.

In the 94th Congress, which began in January 1975, 3,899 bills were introduced in the Senate and 15,863 in the House—an average of 37 bills per member. These are by no means unusual figures. In the 93rd Congress, 4,260 bills were intro-

duced in the Senate and 17,690 bills in the House. It is at least one stroke of luck for the country that only about one in every 30 or more such bills survives to enactment. But the individual congressman who introduces it has made his point. He has "carried out his promise" to the voters.

It has been estimated that American legislative bodies ranging from city councils to Congress pass 150,000 new laws every year.¹ This total does not mean too much, because only a small section of the total applies to the residents of any given town or state. But a very meaningful figure would be the total number of live laws that still do apply to American residents of any given city or state.

Since its beginning Congress has enacted more than 40,000 laws. It is a fair assumption that most of these are still operative in some form.

When we come to the individual states we get to some really formidable figures. For Connecticut I am officially informed that: "We do not have information on the 'live' laws now on the books, but it is our understanding that there are about 3,500,000 words in the eleven volumes of the General Statutes."² The legislative authorities of California regret that so far as the number of "presently operative statutes" of that state are concerned, "no such enumeration is readily obtainable," though "most (but not all) enactments of the California legislature are codified in one of twenty-eight codes." And the Department of State of New York informs me that so far as the total of live laws on the state's books are concerned, "unfortunately, we don't have the answer to this question." So far as the "consolidated" (as distinguished from the "unconsolidated") laws are concerned, however, these can be found in "six volumes covering 6,891 pages." No one is allowed to plead ignorance of any of these state laws, of course, if he happens to violate one.

Local Ordinances

When we come to the number of town and city ordinances to which each of us is subject, it is difficult to say precisely what would be an average figure. But in Boston, for example, the Building Code alone contains about 500 pages; in addition, the City of Boston Code consists of approximately 300 pages of ordinances and 300 pages of statutes. The Administrative Code of New York City consists of ten volumes running to a total of 8,000 pages. There are also 23 thick volumes of ringbinder notebooks containing the rules and regulations of city agencies published since 1967.

But on top of all of these laws—federal, state, and local—is piled the greatest mountain of all—the endless orders, regulations, and edicts issued by the federal and state “independent agencies.” There are 89 separate federal independent agencies listed in the Congressional Directory for 1977. These are in addition to the innumerable commissions, “offices,” “services,” and “administrations” listed under the 12 cabinet departments. As long ago as 1954 the Hoover Commission found that the federal government embraced no fewer than 2,133 different functioning agencies, bureaus, departments, and divisions. And practically all of them were running “programs.”

It was ten years ago that Delaware Congressman William V. Roth and his staff made an eight-month statistical study and came up with the finding that “no one, anywhere, knows exactly how many Federal programs there are”—or who is spending how much on what. According to the 1968 Roth study, the federal government at that time had 1,571 identifiable programs. Questionnaires sent to various agencies drew spotty responses. Inquiries were made as to the purpose of some 478 programs in Health, Education and Welfare; only 21 responded.

In August 1978, Congressman Gene Taylor from Missouri,

going through stacks of the Code of Federal Regulations, found that the Code ran to 19,789 pages in 1938, to 20,643 in 1958, to 73,149 in 1976, and calculated it would top 120,000 pages by the end of 1978.

Adding the Costs

How can we add up the countless costs, penalties, discouragements, delays, hazards, impediments, obstructions, that these orders place in the way of production and commerce?

Even if we give up the futile attempt to add up the government regulations numerically, we can still point to some of the costs and hardships that they impose on the taxpayer, the motorist, the businessman, the homeowner, the consumer, the worker, the investor, and the nation as a whole. In the *July Tax Review* of 1978, published by the Tax Foundation of New York, Murray L. Weidenbaum, a former Assistant Secretary of the Treasury, has detailed some of these costs:

- The outlays of 41 regulatory agencies are estimated to have increased from \$2.2 billion in the fiscal year 1974 to \$4.8 billion in fiscal 1979, a growth of 115 percent over the five-year period.
- Federally mandated safety and environmental features increased the price of the average passenger automobile by \$666 in 1978.
- There are over 4,400 different federal forms that the private sector must fill out each year. That takes 143 million man hours. The Federal Paperwork Commission recently estimated that the total cost of federal paperwork imposed on private industry ranges from \$25 billion to \$32 billion a year, and that “a substantial portion of this cost is unnecessary.”
- Regulatory requirements imposed by federal, state, and

local governments are adding between \$1,500 and \$2,500 to the cost of a typical new house.

- On the basis of a conservative estimating procedure, the aggregate cost of complying with federal regulation came to \$62.9 billion in 1976, or over \$300 for each man, woman, and child in the United States. On the same basis, these costs may have reached \$96.7 billion in the fiscal year ending September 30, 1978.
- The minimum-wage law has priced hundreds of thousands of people out of the labor markets. One increase alone has been shown, on the basis of careful research, to have reduced teenage employment by 225,000.
- Approximately \$10 billion of new private capital spending is devoted each year to meeting governmentally mandated environmental, safety, and similar regulations rather than being invested in profit-making projects. Edward Denison of the Brookings Institution has estimated that in recent years these deflections of private investment from productive uses have resulted in a loss of approximately one-fourth of the potential annual increase in productivity.
- The nation as a whole feels the effect of government regulation in a reduced rate of innovation and in many other ways. The adverse consequences of government intervention in business decision-making range from a slowdown in the availability of new pharmaceutical products to the cancellation of numerous small pension plans.

Congressman Gene Taylor, whose figures on the extent of the Code of Federal Regulations I have previously cited, declares: "The cost imposed on the American economy by federal regulatory activity is now more than \$60 billion per year.

This serves to drive up the cost of consumer items, harasses small businessmen, fuels inflation, and increases the tax burden on the individual citizen.”

An Ominous Trend

Suppose we turn back from our survey of the present enormous power and control now exercised by government, to a look at its growth since 1854 in England, when Herbert Spencer was already expressing his alarm at the extent of that control. If the reader will glance down the list of the interferences that Spencer was then deploring, he will see that our own government is still engaged in all of them, or their equivalent (with the exception only of disseminating Christianity and sending out emigrants), but has added literally hundreds more.

In 1977 The Conference Board of New York was referring to some of that year's economic interventions: price and income controls; limitations on profits; growing representation of workers and government on company boards of directors; statutory wage hikes; credit limitations; foreign exchange and import controls; limitations on foreign ownership; rent controls and subsidies; regulations on land-use planning; environmental, safety, and consumer protection regulations; antitrust laws; direct and indirect taxes; and government ownership. But the list could have been indefinitely extended.

There are two or three ways of trying to measure the size or growth of government quantitatively. One index is the number of people that it wholly or partly supports. In 1940 all American governments, federal, state, and local, were employing 4,474,000 people. In 1977, the number was 14,624,000. The federal government alone, in 1978, employed

2,066,000 persons in its armed forces and 1,930,100 in full-time permanent civilian employment. In addition, it was making Social Security payments to some 33 million persons, and the Congressional Budget Office was estimating that about 44 million were receiving some form of welfare aid.

The annual expenditures of the federal government tell a succinct story. If we take them at ten-year intervals since 1929, we get the following result:

Year	Expenditures
1929	\$3.1 billion
1939	8.8 billion
1949	38.8 billion
1959	92.1 billion
1969	184.5 billion
1979	487.5 billion

If any forecaster had dared to predict in 1929 that 50 years later the federal government would be spending nearly 160 times as much in dollars in a single year (or 43 times as much in “real” terms), nobody would have believed him. By such a comparison, we have had a 4,200 percent growth in the federal government since 1929.

A Bewildering Mass of Government Interventions

Some readers may object that it is meaningless to complain about the mere number of laws; that we should carefully separate the “good” laws from the “bad,” and deplore only the latter. What this objection overlooks is that the mere multiplication and proliferation of laws is itself a major evil. Every unnecessary law is itself bound to be pernicious. And almost all laws that interfere with the functioning of the free market tend to delay or prevent necessary readjustments in the bal-

ance of production and consumption and to have other consequences opposite to those that the Framers intended. When the rules of the game are being changed every day, when the totality of laws and regulations reaches the tens of thousands and the hundreds of thousands, the number of legislative blunders must multiply far more than proportionately. How is it possible to talk of retaining our liberties, for example, when collectively we are subjected not only to thousands of prohibitions and compulsions but to daily increasing prohibitions and compulsions?

More than 40 years ago the Swedish economist Gustav Cassell was warning: "The leadership of the state in economic affairs . . . is necessarily connected with a bewildering mass of governmental interferences of a steadily cumulative nature. The arbitrariness, the mistakes and the inevitable contradictions of such a polity will, as daily experience shows, only strengthen the demand for a more rational coordination of the different measures and, therefore, for unified leadership. For this reason planned economy will always tend to develop into dictatorship."

Whatever the outcome may be, the future seems ominous. By whatever standard we measure it—the number of laws, the rate at which new ones are enacted, the multiplication of bureaus and agencies, the number of officeholders, pensioners, and relief-recipients the taxpayer is forced to support, the total or relative tax load, the total or per capita expenditures—there has been an accelerative growth in the size, arbitrary power, and incursion of government, and in the new prohibitions, compulsions, and costs it keeps imposing upon us all.

1. *Newsweek*, January 10, 1977.

2. Letter, June 7, 1978, from Agnes L. Kerr, Director, Administrative-Legislative Division, Office of the Secretary of State, State of Connecticut.

The Case for the Minimal State*

Since at least as far back as Plato, many of the world's great minds have devoted themselves to the problems of politics. But they have not come up with any answers that have satisfied more than a narrow and transient majority in some country here or there. Today there are about 150 national governments in the world; but no two operate on exactly the same principles. If a free expression of opinion could be obtained in any one country, it would probably be found that at least a substantial minority was unhappy with some important part of the existing political arrangement or its operation.

We may distinguish at least three major political problems, which have existed since the beginning of time:

1. Should there be a government at all, and if so, exactly what should be the extent and nature of its permitted powers? Should these powers be precisely specified and limited, or is there an indeterminate area between certain minimum and maximum powers that may safely be left to popular choice?

2. Once the proper limits to the province and powers of the state have been decided upon, how can we stop the politicians in office from using their existing powers to extend and increase their powers?

3. By what method should the holders of office and power be chosen? For what terms, and so forth? How should their individual powers be allotted and delimited; and what provision should be made to assure that they responsibly execute those powers and no others?

*From the November 1979 issue of *The Freeman*.

It will be noticed that the political problem is twofold. It is not only to find what the best arrangements would be for choosing or changing political leaders or their powers, but for assuring that these arrangements are adhered to. This is one of the chief reasons (if not the chief) why the political problem has almost nowhere been better than temporarily solved. The ambition of men for political power has immemorially led them not only to demagoguery and deceit, but to force, war, and murder, to achieve and increase it. It is because of this that I have elsewhere raised the question whether the principal problems of politics are in fact solvable. ("Is Politics Insoluble?" *Modern Age*, Fall 1976.)

This is not on its face an encouraging quest. But the answer is so important for the future of mankind (let alone the immediate future of our own country) that we are bound to extend every effort to try to get as near to a workable solution as we can.

One promising procedure is to examine the answers that have been offered historically by the great political thinkers of the past to try to determine where they went wrong or what important problems they neglected to answer. We could do this chronologically beginning with the earlier answers, but I think it would be more interesting if we began with one of the latest answers and tried to find whether it satisfied us, and if not, why.

So I shall begin by examining the answer offered by Professor Robert Nozick of Harvard in 1974 in his book *Anarchy, State, and Utopia*. This book has attracted more attention than any other in the last five years that attempted to solve the problem of the proper province of the state. It won the National Book Award in 1975.

Away from Anarchy

Not least interesting about it is that it begins with a patient and open-minded discussion of anarchy—of the possibility of getting along with no government at all. It considers the suggestion of the New Anarchists, for example, that honest and peaceable citizens could solve the problem of protecting their property and persons by joining and paying dues to private protective associations. Nozick shows how there would tend to grow up competing protective associations, that some of these might be little better than gangster associations, that some would be stronger than others, that it would not give anyone adequate protection to become a member of one of the weaker associations, and that in time one association would tend to establish a monopoly. But if such an association had the power of excluding some people from membership, or failed to act with complete morality and impartiality, it would be intolerable. Hence society would be forced to adopt a “minimal” state.

Nozick announces his main conclusions on the very first page of his Preface:

Our main conclusions about the state are that a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right. Two noteworthy implications are that the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection.

Now, this conclusion, though it would be regarded as extreme not only by popular opinion but by the great majority of political writers in every country today, is one that has a respectable history, and will be regarded sympathetically by a large number of declared libertarians.

But I am troubled, most of the time, by the kind of arguments by which Nozick reaches his conclusion. Going a little further, I am frequently troubled by Nozick's style. It seems at times almost deliberately obscure. It is interrupted by diversions, digressions, parentheses, involutions, excessive footnotes—by a sort of self-heckling. He constantly confronts us with logic-chopping, with technicalities, and with abstractions without any helpful concrete references or illustrations.

Natural Law

Coming to problems of substance, I am bothered by his explicit rejection of any form of utilitarianism, and his attempt to substitute "natural law" justifications of his position. Here he seems to have been influenced by his Harvard colleague John Rawls—though he rejects Rawls' conclusions in many other respects. But as not only Nozick but an astonishing number of young libertarians have recently been taking this natural-law position, it is worth examining in some detail.

Nozick dismisses utilitarianism because his conception of it, like that of Rawls and others, is essentially a caricature. He sees the utilitarian as a fellow who judges conduct by its immediate effect on the balance of pain and pleasure, and makes a mechanical pain-pleasure calculus of the results of a particular action, without considering "justice" and other values. One or two of the older utilitarians may have been guilty of giving such an impression, but this has little to do with the doctrine in its modern form.

I have suggested in my book, *The Foundations of Morality* (1964, 1972), not only that the utilitarianism of Bentham, and even of Mill and Sidgwick, has been in important respects superseded, but that it would increase clarity of thought to abandon the old term entirely. I have recommended substituting the term “rule-utilitism” because it comes much closer to describing a satisfactory moral system.

We should not take or judge an action in accordance with what we think would be its consequences considered as an isolated act. Not only can we never be certain what such consequences would be, but with such a moral code (or lack of code) we would never be able to depend on each other’s conduct, and we would fall far short of that social cooperation by which we most fully promote our own and each other’s ends. Moral action, for the most part, is action in accordance with accepted *principles* or *rules*. It is only when each of us can be depended upon to act consistently in accordance with such principles or rules that we can depend on each other. It is only when we can rely on each other to keep our promises, to tell the truth, to refrain from theft, fraud, and violence, and to help each other in emergencies, that we can best promote that social cooperation so essential to attaining our individual ends.

These moral rules evolved during the centuries, long before they were explicitly formulated or codified, and certainly long before any moral philosopher explicitly formulated any single rationale or test by which good rules could be distinguished from bad ones or the best from the second best. But the doctrine of utility, first put forward by David Hume and later elaborated by Bentham, Mill, Sidgwick, and others, was the first test that unified and clarified the whole area of morals.

The Pleasure-Pain Balance—An Unsolved Problem

The first attempts to generalize the proper aim of all moral rules—such as rules conducive to promoting “the greatest happiness of the greatest number,” proved to have some awkward shortcomings. Was the goal of “pleasure” or “happiness” sufficiently inclusive? Or sufficiently noble? And when an action promoted one man’s happiness—or even a hundred men’s happiness—but at the cost of another man’s pain or misery, by what kind of moral arithmetic could we determine the net balance? The utilitarians have never satisfactorily solved this problem—but neither has anybody else. Fortunately, because an acceptable moral code prescribes principles or rules of action rather than particular acts, there are very few occasions when the need for such moral arithmetic seriously arises.

More important than this, rule-utilitists are not necessarily bound by any pain-pleasure principle, or even any happiness-maximizing principle. They can simply accept as the principles of moral action those rules that would lead to the most satisfactory or desirable results for society, without trying to be more explicit as to the exact way of measuring such results. Anti-utilitists, rejecting such a criterion, would then be obliged to contend that their substitute criterion should be applied instead, even though it admittedly prescribed moral rules that would lead to less satisfactory or less desirable results for society.

Justice and Utility

One favorite contention of some anti-utilitists is that the utilitist criterion must be abandoned because it does not

include "justice." That this contention is being seriously pressed today is odd historically, because John Stuart Mill devoted the whole last third of his famous essay *Utilitarianism* in 1863 to discussing "The Connection Between Justice and Utility." He concluded that: "Justice is a name for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility, and are therefore of more paramount obligation, than any others."

But those who make "justice" the supreme if not the sole criterion of moral judgment regard it as a requirement that must be met for its own sake, regardless of what consequences it may lead to. The motto of these people is: *Fiat justitia, ruat caelum*: "Let there be justice, though the heavens fall." But the real reason for insisting on justice is to prevent the heavens from falling.

Those who insist that justice is solely an end in itself, and never a means to social peace and cooperation or other ends beyond itself, are also nearly always those who take a simplistic view of it. Everybody is supposed to know what "justice" is: it is simply "fairness," and we all know what is "fair." But through the centuries it has been the main function of thousands of legislators and jurists to decide what is justice both in abstract types of cases and in particular cases and circumstances.

Most of the non-utilitists and anti-utilitists in the past have been champions of Natural Law. The doctrine of Natural Law, it is true, has a very respectable history. It was promulgated or accepted by Plato and Aristotle, by the Stoics, by St. Thomas Aquinas, by Hugo Grotius and Samuel Pufendorf, by John Locke, by Jean-Jacques Rousseau, and by some of the Founding Fathers when they drafted or defended the American Constitution. But it has always owed a large part of its appeal to its ambiguity. The physical laws of nature, of cause and effect, determine everything, including, in one sense,

human action. But this is something quite different from “natural laws” that are supposed to *prescribe* how men should conduct themselves.

A Nebulous Concept

The central difficulty with Natural Law is that no two of its votaries seem to have been able to agree regarding precisely what it enjoins. For Aristotle it sanctioned the subordination of women to men and of slaves to Athenian citizens. For the Stoics it prescribed equalitarianism. For many it meant the plain dictates of “right reason,” though nobody could quite agree regarding what right reason prescribed. For others it meant the “divine will,” with even more disagreement regarding what *this* commanded. Still others derived Natural Law from the law that existed in a “state of nature.” But for some this meant savagery and for others a sort of Garden of Eden. According to the Declaration of Independence “the Laws of Nature” made certain “unalienable” rights “self-evident.”

Finally, Jeremy Bentham, toward the end of the eighteenth century, was moved to exclaim that Natural Law was “nonsense on stilts.” In his *Principles of Morals and Legislation* (1780), he wrote (Chapter 2):

A great multitude of people are continually talking of the Law of Nature; and then they go on giving you their sentiments about what is right and what is wrong: and these sentiments, you are to understand, are so many chapters and sections of the Law of Nature.

This is not too unfair a description of those who are trying to revive the doctrine of Natural Law even today. They try to

deduce its prescriptions from certain moral “axioms” taken from Locke or of their own devising. A typical one goes: “Every man owns himself; therefore ____.” It is also clear that some of the rules that the natural-law champions “deduce” are, in fact, disguised or crypto-utilitist rules. Thus John Rawls, an avowed anti-utilitarian, in trying to deduce the principles of justice (in his *A Theory of Justice*), begins by assuming a society of persons “who in their relations to one another recognize certain rules of conduct as binding;” and “these rules specify a system of cooperation designed to advance the good of those taking part in it (page 4).” He goes on to remark that “social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts” and so on. But rules designed to “advance the good” and make possible “a better life for all” are precisely utilitist rules. The ideal of justice is an inherent part of rule-utilitism, not a separate or competing concept.

No Firm Foundation

The great difficulty with Natural Law, on the other hand, is not only that there is no agreed-upon code, but no agreement on the principles upon which such a code could be constructed. The greater part of the Natural Law votaries are really intuitionists in their moral philosophy.

I apologize for having given so much space to a seemingly irrelevant discussion of the relative merits of utilitist versus Natural Law standards. But it is not only Nozick who explicitly rejects utilitist tests in favor of Natural Law, but an increasing number of young libertarians who have apparently been influenced by him.

So far practically all I have written on Nozick’s book has been negative. Why, then, am I discussing his book at all?

I do this because, while I think that Nozick often fails to

base his reasoning on genuine first principles, and while his logic often seems to me unduly technical or irrelevant, he more than makes up for this by many brilliant arguments on special points. I shall cite a few of these.

Nozick is especially good in analyzing the rhetorical nonsense behind many of the leftists' recent objections to capitalism. A fashionable objection today is that workers lose their self-esteem by being frequently ordered about, under the authority of others unselected by them, and by having to work at tasks that they do not regard as "meaningful." Nozick points out that even members of a symphony orchestra are constantly ordered about by their conductor, and not consulted about the overall interpretation of their work, but nevertheless retain a high self-esteem.

More seriously, he points out that fragmentation and specialization of tasks are not problems peculiar to capitalist modes of production, but would go with any industrial society. The reason is that they tend to lead to the lowest costs and the highest efficiency and production. Suppose (which is most probable) that dividing a firm's work force into "meaningful" segments, rotating the workers into different tasks, and so on, could only be accomplished at the cost of less efficiency and production (as judged by market criteria). Would the workers be willing to accept lower pay in order to do this more "meaningful" labor? Or would consumers be willing to pay higher prices for the same goods, or get less of them, in order that this more "meaningful" work could be provided? Who would be willing to pay for such a reform, and how much? Would a socialist government *forbid* "non-meaningful" work?

Labor Theory Refuted

As a more important example, let us take Nozick's refutation (on pages 253 to 262) of Marx's labor theory of value and

his general exploitation theories. Similar refutations have been made before, notably by Böhm-Bawerk, but Nozick's is an especially compact one. Marxist theory, he concedes, "does *not* hold that the value of an object is proportional to the number of simple undifferentiated labor hours that went into its production; rather, the theory holds that the value of an object is proportional to the number of simple undifferentiated *socially necessary* labor hours that went into its production."

But then, it turns out (though Marx himself never got around to seeing or acknowledging this clearly) that the amount of labor that really is "socially necessary" is determined by the utility and value of the particular commodity that is made! As Nozick concludes: "*What* is socially necessary, and how much of it is, will be determined by what happens on the market! There is no longer any labor theory of value; the central notion of socially necessary labor time is itself defined in terms of the processes and exchange ratios of a competitive market! . . . One might be left with the view that Marxian exploitation is the exploitation of people's lack of understanding of economics."

"Distributive Justice"

I come to my final example. This is Nozick's theory of "entitlements." He has argued that "the minimal state is the most extensive state that can be justified," and that "any state more extensive violates people's rights." He then addresses himself to the argument that a more extensive state is justified in order to achieve "distributive justice."

One trouble with this whole conception, he points out, is that it implicitly assumes that goods have *already* been "distributed" by some central source or according to some single principle, and that the duty of the state is to *redistribute* them according to some *other* "patterned" principle. But this over-

looks the whole history of how the present “distribution” of goods came about. “Things come into the world already attached to people having entitlements over them. From the point of view of the historical entitlement conception of justice in holdings, those who start afresh to complete ‘to each according to his _____’ treat objects as if they appeared from nowhere, out of nothing.”

How did the existing “distribution” of things come about? It came about because some people *made* the things they now hold, or because they were paid their marginal contribution to output in wages, or because they inherited property, or the objects (or money) were given to them by their parents, their spouses, or their friends. So even if the state made some “patterned” redistribution of wealth—“to each according to his needs,” or to each equally—that pattern would very quickly be upset by some people continuing to create more than others, or some people giving freely to others, or some people voluntarily paying well for certain services, or to see or hear a particular professional athlete or performer, and so on. As Nozick sums up: “The socialist society would have to forbid capitalist acts between consenting adults.”

The system of entitlements is defensible, he argues, “when constituted by the individual aims of individual transactions. No overarching aim is needed, no distributional pattern is required.”

He goes on later to contend persuasively that: “Taxation of earnings from labor is on a par with forced labor (page 169).”

Unfinished Arguments

But in spite of many excellences, Nozick’s argument for his minimal state is in the end not quite convincing. A good part of the reason for this is revealed in his own description of his procedure in his Preface:

Part I justifies the minimal state; Part II contends that no more extensive state can be justified. I proceed by arguing that a diversity of reasons which purport to justify a more extensive state, don't. Against the claim that such a state is justified in order to achieve or produce distributive justice among its citizens, I develop a theory of justice (the entitlement theory) which does not require any more extensive state, and use the apparatus of this theory to dissect and criticize other theories of distributive justice which do envisage a more extensive state. . . . Other reasons that some might think justify a more extensive state are criticized, including equality, envy, workers' control, and Marxian theories of exploitation.

But his book, he goes on, is not "a political tract" but a "philosophical exploration." It does not pretend to be "a finished, complete, and elegant whole," but "a less complete work, containing unfinished presentations, conjectures, open questions and problems, leads, side connections, as well as a main line of argument. There is room for words on subjects other than last words."

No doubt there is. But it is precisely because Nozick has elected to write a book with a rambling and "unfinished" argument, with so many digressions, that many readers will find it unsatisfying and even occasionally irritating, that they will lose the thread of the main argument, and though finding it often persuasive, will in the end not find it quite conclusive.

I am not saying that it could not have been made so. Nozick does convincingly make his argument against anarchy. Others before him have advocated precisely his minimal state, "limited to the narrow functions of protection against

force, theft, fraud, enforcement of contracts, and so on." It is an attractive ideal. But it has never been held by more than a tiny minority. If its appeal is ever to be widened to reach an effective number of thought leaders it must be by a broadly understandable but orderly chain of reasoning, without confusing digressions and without serious missing links, that makes its conclusion seem inescapable.

John Stuart Mill*

I remarked in “The Case for the Minimal State” (*The Freeman*, November 1979) that we might get some help in dealing with the central problems of government power by examining the answers offered over the years by the great political thinkers. But I suggested it might be more interesting to do this rather in the reverse of their chronological order, and begin with the latest answers first. We accordingly began with the recent book by Robert Nozick, *Anarchy, State, and Utopia*. I should like now to turn to some of the answers offered in the nineteenth century.

To try to present the whole of nineteenth-century thought on this subject would in itself require at least a full-length book and probably a repetitious one. So I shall confine myself to the answers offered by three or four outstanding writers who seem to me to offer representative approaches—beginning with John Stuart Mill.

Mill’s main discussion of the problem occurs in Volume II (Book V, Chapters I and IX) of his *Principles of Political Economy*, first published in 1848. When one recalls that Mill was brought up in the laissez-faire tradition, some of his conclusions may seem surprising.

He begins by distinguishing between the “necessary” and the “optional” functions of government. The first are those which “are either inseparable from the idea of government, or are exercised habitually and without objection by all govern-

*From the January 1980 issue of *The Freeman*.

ments." The second are those functions of which the "expediency of its exercising them does not amount to necessity" and "on which diversity of opinion does or may exist."

Mill's Extended List of Necessary Functions of Government

The necessary functions of government, he insists, are "considerably more multifarious than most people are at first aware of." The contention, for example, that "governments ought to confine themselves to affording protection against force and fraud," and "that, these two things apart, people should be free agents," is much too narrow. What about, for example, the laws of inheritance? Not only is the government obliged to decide what happens to an estate when there is no will; it must pass on the validity of a will; it must decide among litigants.

Again, the government must enforce contracts. It must decide what contracts are fit to be enforced. (A contract to do something contrary to law? A contract to sell oneself into slavery?) The state must also establish civil tribunals to settle disputes. It must keep a registry of facts, such as births, deaths, marriages, wills, and contracts, and judicial proceedings. It must decide on the legal competency of children, or alleged lunatics, and provide for guardians. It may undertake the function of coining money, and of prescribing a set of standard weights and measures. It may make or improve harbors, build lighthouses, make surveys for accurate maps and charts, raise dykes to keep the sea out, or embankments to keep rivers in. National governments may build roads, and municipal governments may pave, light, and clean the streets. "Examples might be indefinitely multiplied without intruding on any disputed ground."

In a later chapter, Mill considers some of the reasons for limiting government power. "There is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. . . . A second general objection to government agency is that every increase of the functions devolving on the government is an increase in its power"—which may soon become "arbitrary." . . . "A third general objection to governmental agency rests on the principle of the division of labor. Every additional function undertaken by the government is a fresh occupation imposed upon a body already overcharged with duties. A natural consequence is that most things are ill done; much not done at all."

There follows a long description of the reasons why, in general, private enterprise and initiative are more efficient than government in carrying on any enterprise. In every instance these reasons are more than sufficient, Mill concludes, to throw "the burden of making out a strong case, not on those who resist, but on those who recommend, government interference. *Laissez faire*, in short, should be the general practice: every departure from it, unless required by some great good, is a certain evil." He supplements this with a recital of the incredible restraints on business imposed historically in seventeenth-century France and elsewhere.

But then Mill turns to what he regards as the "exceptions" to the generally beneficent rule of *laissez faire*:

The proposition that the consumer is a competent judge of the commodity, can be admitted only with numerous abatements and exceptions. . . . The uncultivated cannot be competent judges of cultivation. Those who need most to be made wiser and better, usually desire it least, and if they desired it, would be inca-

pable of finding the way to it by their own lights. . . . Education, therefore, is one of those things which it is admissible in principle that a government should provide for the people. . . .

With regard to elementary education, the exception to ordinary rules may, I conceive, justifiably be carried still further. . . . It is therefore an allowable exercise of the powers of government, to impose on parents the legal obligation of giving elementary instruction to children. This, however, cannot fairly be done, without taking measures to insure that such instruction shall be always accessible to them, either gratuitously or at a trifling expense.

The one safeguard Mill insists on is that “the government must claim no monopoly for its education.”

More Exceptions

Mill continues with his “exceptions” to the principle of *laissez faire*. “Insane persons are everywhere regarded as proper objects of the care of the state.” “It is right that children and young persons . . . should be protected, as far as the eye and hand of the state can reach, from being over-worked.” “Cruelty to animals” should be forbidden. “The law should be extremely jealous” of all “engagements for life”—including marriage. If it grants a monopoly for a private road, canal, or railway, the state “should retain, and freely exercise, the right of fixing a maximum of fares and charges.”

The state should have the right to diminish the hours of adult labor.

Mill approves the Poor Laws, and endorses the principles of the Poor Law of 1834. “The claim to help, created by destitution, is one of the strongest that can exist.” But the prob-

lem is “how to give the greatest amount of needful help, with the smallest encouragement to undue reliance on it.” For “if the condition of a person receiving relief is made as eligible as that of the laborer who supports himself by his own exertions, the system strikes at the root of all individual industry and self-government.” Yet we cannot depend on “voluntary charity”:

In the first place, charity almost always does too much or too little: it lavishes its bounty in one place, and leaves people to starve in another. Secondly, since the state must necessarily provide subsistence for the criminal poor while undergoing punishment, not to do the same for the poor who have not offended is to give a premium on crime.

Mill goes on to recommend government subsidies for colonization, for “scientific researches,” and for other modes “of insuring to the public the services of scientific discoverers.”

And as a final argument for extending government power still further, he adds: “The intervention of government cannot always practically stop short at the limit which defines the cases intrinsically suitable for it. In the particular circumstances of a given age or nation, there is scarcely anything really important to the general interest, which it may not be desirable, or even necessary, that the government should take upon itself, not because private individuals cannot effectually perform it, but because they will not.”

An Open-Ended Formula

This last argument is capable of serving as an excuse for almost any arbitrary government intervention whatever. Mill

ends by granting most of the contentions of the present-day statist. As he keeps adding to his list of "exceptions" to the general rule of *laissez faire*, he gradually seems to forget all his earlier warnings against piling an unmanageable number of functions on the state and building excessive powers that can more easily be abused. In many of his exceptions he unconsciously takes it for granted that the state will necessarily do better than private initiative. He overlooks the possibility that scientists may be subsidized on the basis of favoritism or that the subsidized projects will be selected on the basis of political rather than scientific appeal.

After having warned us that the state may carry out its delegated powers very badly, he assumes in particular instances that they will carry out these powers very well. He rightly approved the restrictive principles of the Poor Law of 1834, which required from the applicant for relief, as Nassau Senior put it, "monotonous and uninteresting" toil in a workhouse, so that he would retain an incentive to become again as soon as possible an independent laborer. What Mill did not foresee was the immense political difficulty of retaining such a disciplinary system once relief was embarked upon. He did not foresee that this disciplinary system would soon come to be regarded by a large part of the public as needlessly harsh and even heartless. The sentimental but powerful pen of Charles Dickens, for example, was shortly to make the retention of the workhouse system impossible. The almost inevitable tendency in any relief system is for demagogic politicians to remove one by one all the original restraints and safeguards and to load the relief rolls to the point where work incentives are destroyed, the national budget becomes chronically unbalanced, and a progressive inflation sets in.

Even more broadly, what Mill overlooked was that once these broad powers of control were put in the hands of the

state, under a popularly elected government, that government would be very unlikely to adhere to the sound economic (and anti-interventionist) principles that Mill, and other economists of his school, were recommending in their textbooks, but would enact popular prejudices leading to inflation, to price controls, to “soak-the-rich” taxes, to the redistribution of wealth and income, to anti-capitalistic and anti-productive policies of every other kind, and incidentally to the eventual destruction of liberty.

In his essays on *Liberty*, on *Representative Government*, and on *The Subjection of Women*, Mill made important contributions to political theory. But on the central question of what ought to be the limits of government power, he clearly granted too much. He left unanswered the great problem: How can we retain interventionist democratic government and yet prevent majority rule from degenerating into mob rule?

Herbert Spencer*

Herbert Spencer (1820–1903) was the nineteenth century's philosopher of evolution. He aspired to universal knowledge. What he called his Synthetic Philosophy ran to ten volumes. They included *First Principles* (1862), followed by volumes on *The Principles of Biology*, *The Principles of Psychology*, *The Principles of Sociology*, and *The Principles of Ethics*. Spencer also wrote at least eight other books.

But his earliest published work was a pamphlet, *The Proper Sphere of Government*, which he wrote at the age of 22, and his first important book was *Social Statics*, published in 1851. These publications advocated what would today be called, and was in fact called at the time, "an extreme form of laissez faire."

The limitation of state power remained one of Spencer's dominant interests till the end of his life. In a later edition of *Social Statics* he omitted a chapter entitled: "The Right to Ignore the State," but essentially his ideas on the subject of state power changed very little as he grew older. In 1884 he published a small volume entitled *The Man Versus the State*. In 1891 appeared Part IV of *The Principles of Ethics*: "The Ethics of Social Life: Justice," and he declared this to represent his definitive views on the subject. Let us summarize and analyze them.

After some prior discussion, Spencer arrives at what he

*From the August 1980 issue of *The Freeman*.

calls "a formula of justice: . . . Every man is free to do that which he wills, provided he infringes not the equal freedom of any other man." This is almost exactly the maxim that he had laid down in his *Social Statics* 40 years earlier, but I regret that it seems to me vague and unsatisfactory.

In *The Principles of Ethics* Spencer was aware of criticisms that must in the meantime have been made of it by others, for he immediately proceeds to deal with one of them:

A possible misapprehension must be guarded against. There are acts of aggression which the formula is presumably intended to exclude, which apparently it does not exclude. It may be said that if A strikes B, then, so long as B is not debarred from striking A in return, no greater freedom is claimed by the one than by the other; or it may be said that if A has trespassed on B's property, the requirement of the formula has not been broken so long as B can trespass on A's property. Such interpretations, however, mistake the essential meaning of the formula. . . . It does not countenance a superfluous interference with another's life, committed on the ground that an equal interference may balance it. . . .¹

Now this will hardly do. If a formula does not in fact countenance actions that it does countenance on its face, then it has not been satisfactorily formulated. It is not a satisfactory rule or guide to policy, and it must be revised or rejected. It must clearly exclude aggression against or harm to others.

But it must also carefully delimit the nature of the "aggression" or "harm." If A and B are applying for the same job or courting the same girl, and A is the successful competitor, the prospects of B may be correspondingly damaged. But

as long as A “played fair,” and did not resort to violence or fraud, no one would consider that B had any just cause for complaint. There are many similar cases, but there are also borderline cases. If A and B have neighboring properties and A puts up an ugly house that B considers an eyesore threatening his property value, has B just cause for suit? If A puts up a fire hazard or a chemical factory that pollutes B’s air or water, nearly everyone would consider B’s case much stronger. It is problems like these that legislators and courts have to try to solve by passing scores of laws and making thousands of decisions in individual cases.

More a Formula for Liberty Than for Justice

Spencer’s formula strikes me more as an attempted definition of liberty than as a maxim of justice. And if it is so, then I much prefer the formula of John Locke in 1690: “Freedom of men under government is to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not: and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man.”²

Montesquieu stated essentially the same formula more briefly in 1748: “Liberty is the right to do what the laws allow. If a citizen had a right to do what they forbid it would no longer be liberty, for everyone else would have the same right.”³

So all practicable liberty is liberty under law. But the shortcoming of both Locke’s and Montesquieu’s formulas is that they fail to state explicitly that the restraints that the laws impose must be just, definite, and minimal. But even a formula that embodied these specifications would again fall

short unless it spelled out what these just and minimal restraints would be. This is the dilemma that confronts all efforts to frame a concise definition of either justice or liberty.

The nearest to a good, short specification that I can at present remember is Thomas Jefferson's call for "a wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned."⁴

But I have perhaps allowed myself to be carried too far astray on this point. Spencer's case for the minimal state does not rest solely or even mainly on his own "formula for justice." Though he does not embrace the doctrine of Natural Law, he does believe that man has certain inherent rights which we recognize by "a priori intuition" or "a priori cognition." He proceeds to write a series of ten chapters on The Right to Physical Integrity, The Rights to Free Motion and Locomotion, to the Uses of Natural Media, The Right of Property, of Incorporeal Property, of Gift and Bequest, of Free Exchange and Free Contract, to Free Industry, of Free Belief and Worship, and of Free Speech and Publication. No government, he argues, has any legitimate power to violate or abridge these rights.

A Modern Ring

At the end of Part IV Spencer comes to seven chapters (23 to 29) on the nature, constitution, and duties of the state, and on the limits of state duties. When he discusses the constitution of the state, he might have been writing about one of the chief problems that disturb us today:

If it is true that a generation ago landowners and capitalists so adjusted public arrangements as to ease

themselves and to press unduly upon others, it is no less true that now artisans and laborers, through representatives who are obliged to do their bidding, are fast remolding our social system in ways which achieve their own gain through others' loss. Year after year more public agencies are established to give what seem gratis benefits, at the expense of those who pay taxes, local and general, and the mass of the people, receiving the benefits and relieved from the cost of maintaining the public agencies, advocate the multiplication of them.

It is not true, then, that the possession of political power by all ensures justice to all. Contrariwise, experience makes obvious that which should have been obvious without experience, that with a universal distribution of votes the larger class will inevitably profit at the expense of the smaller class. Those higher earnings which more efficient actions bring to the superior, will not be all allowed to remain with them, but part will be drafted off in some indirect way to eke out the lower earnings of the less diligent or the less capable; and insofar as this is done, the law of equal freedom must be broken.⁵

He sums up:

One conclusion, however, is clear. State burdens, however proportioned among citizens, should be borne by all. Every one who receives the benefits which government gives should pay some share of the costs of government and should directly and not indirectly pay it. . . .

Had each citizen to pay in a visible and tangible

form his proportion of taxes, the sum would be so large that all would insist on economy in the performance of necessary functions and would resist the assumption of unnecessary functions, whereas at present, offered as each citizen is certain benefits for which he is unconscious of paying, he is tempted to approve of extravagance; and is prompted to take the course, unknowingly if not knowingly dishonest, of obtaining benefits at other men's expense.

During the days when extensions of the franchise were in agitation, a maxim perpetually repeated was—"Taxation without representation is robbery." Experience has since made it clear that, on the other hand, representation without taxation entails robbery.⁶

A Duty to Protect

In his chapter on "The Duties of the State," Spencer concludes that there is in effect just one: to protect the citizenry against external and internal aggression—against foreign enemies and against its lawbreakers. And in the following chapter on "The Limits of State Duties," he asserts:

The question of limits becomes the question whether, beyond maintaining justice, the state can do anything else without transgressing justice. On consideration we shall find that it cannot. . . .

If justice asserts the liberty of each limited only by the like liberties of all, then the imposing of any further limit is unjust; no matter whether the power imposing it be one man or a million of men. . . . We do not commonly see in a tax a diminution of freedom; and yet it clearly is one. The money taken represents

so much labor gone through, and the product of that labor being taken away. . . . "Thus much of your work shall be devoted, not to your own purposes, but to our purposes," say the authorities to the citizens; and to whatever extent this is carried, to that extent the citizens become slaves of the government.⁷

Examples Galore

Though Spencer insisted constantly on the priority and necessity of deductive reasoning, few political writers have been so industrious and specific in citing and piling up concrete examples of the bungling, contradictions, and abuses of power in carrying out the multitudinous functions that governments have taken on. Long before he got to *The Principles of Ethics*, he had detailed scores of these not only in *Social Statics*, but in such essays as "Over-Legislation," "State Tamperings with Money and Banks," "The Collective Wisdom," and many others.

So in the *Principles* he continued to cite case after specific case. Of drafting laws, for example:

"The judges themselves exclaim against the bungling legislation they have to interpret: one judge saying of a clause that he 'did not believe its meaning was comprehended either by the draftsman who drew it' or 'the parliament that adopted it,' and another declaring that 'it was impossible for human skill to find words more calculated to puzzle everybody.' As a natural consequence we have every day appeals and again appeals—decisions being reversed and re-reversed."⁸ One would think Spencer was writing of conditions in America today, rather than those of England in 1890.

Of the coinage: "In this we have frequent changes where changes are undesirable. We have mixed systems: decimal,

duodecimal, and nondescript. Until recently we had two scarcely distinguishable pieces for threepence and fourpence” etc.⁹

Socialistic Legislation

In a discussion on “socialistic legislation,” Spencer excoriates the then Prime Minister, Lord Salisbury, for sneering at basic principles and saying: “We ought first to discuss every subject on its own merits.” This is the method, comments Spencer,

which has been followed by those legislators who, throughout past thousands of years, have increased human miseries in multitudinous ways and immeasurable degrees by mischievous laws. Regard for “the merits of the case” guided Diocletian when he fixed the prices of articles and wages of workers, and similarly guided rulers of all European nations who, century after century, in innumerable cases, have decided how much commodity shall be given for so much money, and in our own country guided those who, after the Black Death, framed the Statute of Labourers [to hold down wages], and presently caused the peasant revolt. The countless acts which, here and abroad, prescribed qualities and modes of manufacture, and appointed searchers to see that things were made as directed, were similarly prompted by considerations of “the merits of the case”: evils existed which it was obviously needful to prevent. . . .

Each one of those multitudinous regulations enforced by swarms of officials, which in France nearly

strangled industry, and was a part cause of the French Revolution, seemed to those who established it, a regulation which "the merits of the case" called for; and no less did there seem to be called for the numberless sumptuary laws which, generation after generation, kings and their ministers tried to enforce.¹⁰

The Remarkable Contrast

After citing many more such examples, Spencer sums up the contrast between the amazing accomplishments of free and spontaneous social cooperation and the immense harm wrought by multitudinous government interventions:

The average legislator, equally with the average citizen, has no faith whatever in the beneficent working of social forces, notwithstanding the almost infinite illustrations of this beneficent working. He persists in thinking of a society as a manufacture and not as a growth: blind to the fact that the vast and complex organization by which its life is carried on, has resulted from the spontaneous cooperations of men pursuing their private ends. Though, when he asks how the surface of the earth has been cleared and made fertile, how towns have grown up, how manufactures of all kinds have arisen, how the arts have been developed, how knowledge has been accumulated, how literature has been produced, he is forced to recognize the fact that none of these are of governmental origin, but have many of them suffered from governmental obstruction; yet, ignoring all this, he assumes that if a good is to be achieved or an evil prevented, Parliament

must be invoked. He has unlimited faith in the agency which has achieved multitudinous failures, and has no faith in the agency which has achieved multitudinous successes.¹¹

In expounding these views, Spencer, so far as the bulk of public opinion was concerned, was an isolated figure. Similar ideas were being voiced by a handful of others, notably Auberon Herbert (1838–1906), but the vigorous opposition of Thomas H. Huxley (1825–1895) probably came much nearer to expressing the political philosophy of the great mass of the British public in the 1880s and 1890s, to the extent that they bothered to formulate any philosophy.

1. *Principles of Ethics*, Vol. II (Indianapolis: Liberty Classics), Ch. 6, p. 62.

2. *Two Treatises of Civil Government* (Everyman's: E. P. Dutton), Second Treatise, sec. 21, p. 127.

3. *The Spirit of the Laws*, XI.

4. First Inaugural Address (March 4, 1801).

5. *Principles of Ethics*, II, pp. 212–13.

6. *Ibid.*, pp. 219–20.

7. *Ibid.*, pp. 241–43.

8. *Ibid.*, pp. 252–53.

9. *Ibid.*, p. 253.

10. *Ibid.*, pp. 260–61.

11. *Ibid.*, pp. 266–67.

Thomas H. Huxley*

Thomas Henry Huxley was primarily a biologist, second only in eminence in the nineteenth century to Charles Darwin, whose theories of evolution he defended with such pertinacity and effectiveness that he was popularly known as "Darwin's bulldog." He also wrote on a wide range of other subjects, including scientific method, philosophy, education, religion (he called himself an "agnostic," and invented the term)—and politics.

His views on the proper sphere of government are principally set forth in two essays: "Administrative Nihilism" (1871), and "Government: Anarchy or Regimentation?" (1890).

In the first of these essays, he begins with an unsympathetic description of the opponents of wide-ranging state powers:

To these opponents, the Education Act is only one of a number of pieces of legislation to which they object on principle; and they include under like condemnation the Vaccination Act, the Contagious Diseases Act, and all other sanitary Acts; all attempts on the part of the State to prevent adulteration, or to regulate injurious trades; all legislative interference with anything that bears directly or indirectly on commerce, such as

*From the October 1980 issue of *The Freeman*.

shipping, harbors, railways, roads, cab-fares, and the carriage of letters; and all attempts to promote the spread of knowledge by the establishment of teaching bodies. . . . According to their views, not a shilling of public money must be bestowed upon a public park or pleasure ground; not sixpence upon the relief of starvation, or the cure of disease. Those who hold these views support them by two lines of argument. They enforce them deductively by arguing from an assumed axiom, that the State has no right to do anything but protect its subjects from aggression. The State is simply a policeman, and its duty is neither more nor less than to prevent robbery and murder and enforce contracts. . . . On the other hand these views are supported a posteriori, by an induction from observation, which professes to show that whatever is done by a Government beyond these negative limits, is not only sure to be done badly, but to be done much worse than private enterprise would have done the same thing.

Huxley declares that he is unconvinced by these arguments, or by that "great negative commandment—"Thou shalt not allow any man to interfere with the liberty of any other man." He goes on:

If my next-door neighbor chooses to have his drain in such a state as to create a poisonous atmosphere, which I breathe at the risk of typhoid and diphtheria, he restricts my just freedom to live just as much as if he went about with a pistol, threatening my life; if he is allowed to let his children go unvaccinated, he might as well be allowed to leave strychnine lozenges about in the way of mine; and if he brings them up untaught

and untrained to earn their living, he is doing his best to restrict my freedom, by the burden of taxation for the support of jails and workhouses, which I have to pay.

Huxley dismisses offhand the argument that, "If the right of the State to step beyond the assigned limits is admitted at all, there is no stopping." And he blandly concludes: "The Government, being nothing but the corporate reason of the community, will find out when State interference has been carried far enough."

No Fixed Limits as to Extent of Government Action

It is not only modern libertarians who will rub their eyes today at this argument, but the great majority who write on political affairs. It is naive to identify the politicians in office with the community, or to conclude that those who gain political powers can be safely trusted to decide the proper limits of those powers. But Huxley does not hesitate to carry this assertion to its logical conclusion, and to tell us: "I do not see how any limit whatever can be laid down as to the extent to which, under some circumstances, the action of Government may be rightfully carried. . . . The question where to draw the line between those things with which the State ought, and those with which it ought not, to interfere, then, is one which must be left to be decided separately for each individual case."

So we are back to "the merits of the case" argument that Spencer had so eloquently derided—an argument which could be finally used to justify the totalitarian state.

Huxley returned to the subject of the proper sphere of state power in two other essays, both published in 1890. The first of these was "Natural Rights and Political Rights." I com-

mend it to anyone who still takes Natural Law or Natural Rights doctrines seriously. Huxley regards such doctrines as the product of “the vicious method of a priori political speculation.” Their plausibility depends upon a confusion between two senses of the word “right”—right as might, the “natural right” of tigers, for example, to attack and devour men—and *moral* right, which is utterly different. Huxley’s essay is, incidentally, a devastating analysis of the theories of Henry George’s *Progress and Poverty*.

But some of Huxley’s own deductions combine truth with error. For example: “It is a necessary condition of social existence that men should renounce some of their freedom of action; and the question of how much is one that can by no possibility be determined a priori.” The first part of that sentence is almost a truism; the part after the semicolon is a contention that, as we shall see, no freedom-loving democracy today has been willing to concede.

Anarchy or Regimentation

The second 1890 essay by Huxley to which I earlier referred, “Government: Anarchy or Regimentation?” bore directly on the question of the proper province of the state.

In this essay Huxley undertook to examine in turn the answer to this question of practically all the great political philosophers of modern times, up to 1890. Specifically mentioned and dealt with were Hobbes, Locke, Morelly, Mably, Rousseau, Humboldt, Dunoyer, J. S. Mill, Stirner, and Auberon Herbert. And he rejected all of them alike (with the exception of Dunoyer) for building their case on abstract a priori assumptions regarding a previous “state of nature” and a subsequent “social contract.” Huxley pointed out, however, that this had led them into two opposite camps: on the one

hand, that espoused by Hobbes, Morelly, Mably, and Rousseau, which justified "Regimentation" (the description suggested by Huxley) and the absolute power of the state; and, on the other hand, "Individualism," which Huxley condemned as equivalent to anarchy. He summed up:

Thus the whole fabric of a priori political speculation which we have had under consideration is built upon the quicksand of fictitious history. So far as this method of establishing their claims is concerned, *Regimentation* and *Individualism*—enforced Socialism and Anarchy—are alike out of court.

And what, then, is Huxley's own conclusion? One would expect him to come back once more to the conclusion of his "Administrative Nihilism" essay of 1871, that "the question of where to draw the line between those things which the State ought, and those with which it ought not, to interfere . . . is one which must be left to be decided separately for each individual case." Perhaps he considers this conclusion implicit, but he does not draw it explicitly. Instead, he is content to tell us that the task which he set before himself was "simply a destructive criticism of a priori political philosophy, whether regimental or individualistic"; and if he has done this successfully, he implies, he has done all that a reader is entitled to ask of one essay.

He goes on to declare: "The political problem of problems is how to deal with overpopulation, and it faces us on all sides." But whether or not this is true, or seemed true at the time he wrote it, it is irrelevant to the problem—the proper province of government—that his essay started out to discuss. No matter what the "problem of problems" is, the question before him was *who* shall have the power to decide it.

Now let us ask whether Huxley did in fact prove that there is no room for “a priori assumptions” or deductive reasoning in political philosophy.

It is quite true that Locke’s assumptions, for example, do seem to rest in part on fictitious history. Huxley’s sarcasm makes the most of this:

“To listen to Locke, one would imagine that a general meeting of men living in the state of nature having been called to consider the ‘defects’ of their condition, and somebody being voted to the tree (in the presumable absence of chairs), this earliest example of a constituent assembly resolved to form a governmental company, with strictly limited liability, for the purpose of defending liberty and property,” and so forth.

Individualism Attacked

All this is good fun, but it does not prove that Locke was wrong in assuming that “no one ought to harm another in his life, liberty, or possessions”; that it is the province of government to ensure this state of affairs, and that this was a sufficient task to give any one agency the power to carry out.

Huxley certainly carried his attack on “Individualism” and “Liberalism” too far. “Liberalism,” he declared, “tended to the adoption of Locke’s definition of the limits of State action, *and to consider persistence in letting alone as a definition of the whole duty of a statesman.*” (My italics.)

I can think of no eminent Liberal of the nineteenth century, and certainly none holding political office, who ever propounded such a view of his duties as that laid down in the clause I have italicized. Liberals deprecated the piling up of legal prohibitions and compulsions, burdensome taxation, government efforts to redistribute wealth and income, and

other specific interventions in economic life, but they believed in enforcing a fundamental framework of law to protect their citizens against fraud, theft, and violence, internal or external. This in itself, if done well, is a tremendous assignment.

Today it is not done well anywhere; because—arguing from “the merits of the case”—too many other assignments are loaded onto the state, designed to save at least some of us all effort and risk. Once we assume that it is a legitimate function of the state to redistribute income, for example, we practically guarantee that the majority of politicians running for office will be charlatans and demagogues, outpromising each other concerning the largess they can provide to the nonproductive part of the population at the expense of the productive.

To return to Huxley’s argument: No doubt some of the leading political philosophers did base their theories on fictitious history, or on basic assumptions that were not justified. But Huxley seems to reject all “a prioristic” thinking in politics, which would mean that he rejected any attempt in advance to put any constitutional limits whatever on the sphere and power of the state. He apparently would have been satisfied with a constitution which read, simply: “The government may pass and enforce any law it sees fit, guided only by what it regards as the merits of the individual case; and no part of any citizen’s freedom or property shall be respected if a majority of 51 percent or more decide otherwise.”

In his thinking in the physical sciences Huxley was a professed empiricist, and suspicious of all mere deduction. Nevertheless, in his book on Hume, we find him writing with approval: “. . . [T]he form of the crest of every wave that breaks, wind-driven, on the sea-shore, and the direction of every particle of foam that flies before the gale, are the exact

effects of definite causes; and, as such, must be capable of being determined, deductively, from the laws of motion and the properties of air and water.”¹

The scientific belief in the law of universal causation is based on something more than frequent observance of it in particular cases, plus no certain knowledge of contrary cases. The concept of universal causation is built into our thinking. We can hardly conceive of an effect without a cause. In any case, its prior assumption is necessary for all rational deduction and all rational action.

Established Principles of Law to Prevent Arbitrary Abuse

Perhaps our basic political, legal, or moral principles can never enjoy the same type of definitude and certainty as the laws of physics. But the discovery and adoption of such basic principles seem no less necessary as guides in our political, legal, and moral life than the laws of physics in our physical scientific reasoning. We do not leave it to an individual judge, for example, to decide the punishment for each case of fraud, theft, assault, or murder—or to decide what actions he is entitled to punish at all—simply in accordance with his own judgment of the individual iniquity of each act. The law has already sought to define and categorize each type of offense and to prescribe minimum and maximum penalties. The principles and definitions of law have been worked out over the centuries, by careful reasoning and respect for precedent, precisely to limit or prevent any capricious or arbitrary exercise of police or judicial power.

The same thing has happened in the evolution of constitutional law. In the United States, neither a city, a state, nor our federal government can enact or enforce any law it sees fit, guided only by “the merits of the individual case.” The Consti-

tution, adopted in 1787, assigned the Congress, the President, and the judiciary only *enumerated* powers. And then, two years later, to nail things down, a Bill of Rights was adopted, beginning with the First Amendment: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble. . ." And so on through nine other amendments.

Huxley should have remembered that. And he should have remembered, also, that though not all modern democratic governments have written constitutions, and England still does not, the English Constitution was even in his own day—one might say especially in his own day—a very real and unmistakable protection against government arbitrariness or tyranny. No less than our own it protected the citizen's freedom of speech, freedom from arbitrary arrest, freedom of religion, and freedom of association.

The English Constitution exists in no single document. It is made up of Magna Carta, the Petition of Right act, the Habeas Corpus act, the Bill of Rights, and the Act of Settlement. But in addition to all these, it consists of innumerable statutes, a mass of custom and convention, hundreds of judicial decisions and precedents, and even, as the *Encyclopedia Britannica* has suggested, of "textbooks, lawbooks, the writings of historians and political theorists, the biographies and autobiographies of statesmen," and so on.

If Huxley had remembered all this, he would not so disdainfully have dismissed all the proposals of the older political philosophers as "mere apriorism." That all political power tends to be abused, and that absolute power is certain to be abused, might reasonably have been suspected in advance. But even so it is no mere a priori conclusion. It has been forced on us by bitter and endlessly repeated experience.

Exactly where the boundaries of state power should be

drawn, is one of the two great problems to which this series of articles is addressed, and which we have still to try to solve. But that they must be drawn by constitutional limitation somewhere, and unmistakably, is one conclusion no longer open to debate. What we have discovered, rather, is that in not a single country today have the existing constitutional limits on government power and interference in the lives of the citizens proved sufficient to prevent untold mischief.

1. *Hume*, Ch. VI, "Propositions Concerning Necessary Truths."

Popular Government*

All students of politics owe a debt of gratitude to Liberty Classics for bringing Sir Henry Maine's *Popular Government* back into print. First published in 1885, with several early reprintings, the book has been out of print for many years. Yet this work deserves to rank with John Stuart Mill's *Representative Government* and Tocqueville's *Democracy in America*. Maine's *Ancient Law* is accorded such a rank; but *Popular Government* is usually passed over in embarrassed silence.

It is not difficult to account for this neglect. Maine questioned the virtues and inevitability of democracy when it was approaching the apex of its prestige. That prestige, it is true, had not yet reached the height it was to reach in 1917, when Woodrow Wilson took the United States into war "to make the world safe for democracy." The word "Fascist" did not yet exist to throw at anyone who expressed the slightest misgivings about the complete wisdom of all existing democratic institutions. But it was already almost fatal to the election of any politician, or even to the reputation of any political philosopher, to question the contention that *vox populi* was practically *vox Dei*.

Yet a closer study than was apparently accorded it on its original appearance reveals that Sir Henry Maine's book is by no means the sweeping condemnation of democracy it was long assumed to be. He several times remarks that "the best Constitutions are those in which there is a large popular element."¹ But he did contend that: "Of all forms of government,

*From the October 1977 issue of *The Freeman*.

Democracy is the most difficult."² And he argued also that it was "characterized by an extreme fragility."³

Though regarded by most others as "propelled in a continuous progress by an irresistible force," Maine saw democracy as "the product of a whole series of accidents."⁴ Historically, "from the reign of Augustus Caesar to the establishment of the United States, it was Democracy which was always, as a rule, on the decline, nor was the decline arrested till the American Federal Government was founded."⁵ As an example of the fragility of democratic government, he cited the experience in Latin America, and was able to point out, as early as 1884, that "out of fourteen Presidents of the Bolivian Republic, thirteen have died assassinated or in exile."⁶

What, apart from its instability, did Maine see as the chief vices of democracy? He deplored the kind of men it tended to bring to the top, and quoted Sir James Stephen: "In a pure democracy, the ruling men will be the Wire-pullers and their friends. . . . In some ages, a powerful character, in others cunning, in others power of transacting business, in others eloquence, in others a good hold upon commonplaces and a facility of applying them to practical purposes, will enable a man to climb on his neighbors' shoulders and direct them this way or that."⁷ To which Maine adds his own comment: The democratic Hero is "debarred by his position from the full practice of the great virtues of veracity, justice, and moral intrepidity."⁸

"Universal suffrage," Maine thought, had it existed at the time, "would certainly have prohibited the spinning-jenny and the power-loom. It would certainly have forbidden the threshing-machine."⁹

The "beneficent prosperity" in America in his own day, he held, reposed "on the sacredness of contract and the stability of private property."¹⁰ Fortunately, he added, "The Americans

[of 1884] are still of opinion that more is to be got for human happiness by private energy than by public legislation.”¹¹

“It is perfectly possible,” however, he wrote at another point,

to revive even in our day the fiscal tyranny which once left even European populations in doubt whether it was worth while preserving life by thrift and toil. You have only to tempt a portion of the population into temporary idleness by promising them a share in a fictitious hoard lying (as Mill puts it) in an imaginary strong box which is supposed to contain all human wealth. You have only to take the heart out of those who would willingly labor and save, by taxing them *ad misericordiam* for the most laudable philanthropic objects. . . . Here then is the great question about democratic legislation, when carried to more than a moderate length.¹²

And he remarks at still another point that “there are two kinds of bribery. It can be carried out by promising or giving to expectant partisans places paid out of the taxes, or it may consist in the directer process of legislating away the property of one class and transferring it to another.”¹³

A still further tendency of democracy to which Maine called attention was the overlegislation that it seemed inevitably to breed.

It is not often recognized how excessively rare in the world was sustained legislative activity till rather more than fifty years ago. . . . A Revolution is regarded as doing all its work at once. Legislation, however, is

contemplated as never-ending. . . .¹⁴ It is rapidly becoming the practice for parties to outbid one another in the length of the tale of legislation to which they pledge themselves in successive Royal Speeches. . . . Neither experience nor probability affords any ground for thinking that there may be an infinity of legislative innovation, at once safe and beneficent.¹⁵

Can we honestly say today that Maine's fears of more than ninety years ago have proved unwarranted? Or that his picture of the typical democratic leader is not disquietingly recognizable?

His fears, in fact, fell short of today's actualities. Practically every country in the world is now suffering from monetary inflation. Balanced budgets are the exception, not the rule. Taxes have reached near-confiscatory levels nearly everywhere. Politicians do not dare to raise them further for fear revenues will actually decrease. Congress today turns out an average of 500 new laws a year—new prohibitions, new changes of the rules, the creation of new crimes. In the 94th Congress, there were 3,899 bills introduced in the Senate and 15,863 introduced in the House. The record of many state legislatures is far worse.

But with all his distrust of democracy, what has Maine to suggest in its place? His answer, to the extent that he offers any, is far from clear. Of the three possible forms of rule—of the Many, the Few, or the One, he proposes neither of the latter. In fact, at one point he tells us that “whenever government of the Many had been tried, it had ultimately produced monstrous and morbid forms of government by the One, or of government by the Few.”¹⁶

What Maine does do is to insist on the necessity of the erection of safeguards to the unrestricted rule of the Many. Of

the four essays that make up this book, the entire last one is devoted to praise of the American Constitution and to its explicit separation and limitation of powers. He contrasts this constantly with what he sees as the capricious and unchecked power of the British Cabinet. He distrusts the very "flexibility" so admired by Bagehot, and he quotes in the original French and adds his own italics to the remark of Tocqueville that: "In England, the Constitution can change constantly; or rather, it doesn't exist."¹⁷

What he did not foresee is that many of the safeguards set up in the original American Constitution would be in time removed or ignored. Instead of the appointment of senators by their respective state legislatures, which he admired, direct election would be substituted. The central government would assume increasingly powers left by the original Constitution to the individual states. The qualifications required for voters—property ownership, tax payment, education, literacy, a minimum age of 21—would be successively removed.

But a much wider question emerges from this book, never explicitly mentioned by Maine. Is the real problem that confronts us merely that of democratic government? Or is it not rather that of *all* government? And isn't this the problem that has so far proved intractable? Writers from time immemorial have tried to solve it with facile and question-begging phrases. Aristocracy must be the best form of government, because it means government by the wisest and the best. Ah yes; but how do you get the people to recognize and choose and put into power the wisest and the best? Well then, in any case, the government, however chosen, should be given only very limited powers, so it cannot abuse them. Ah yes, again. But what powers? Can we draw a precise line around them? Can we get enough people to agree on that line? And even if we can once draw such a line, giving neither too little nor too much,

how can we prevent whoever the government is from using whatever powers it already has, to extend its powers still further?

We come back to a fundamental dilemma: To prevent chaos, violence, rapine, or rule by the gangsters, somebody must be trusted with some power; but nobody can be completely trusted with much power.

Perhaps the political problem is not insoluble. But where and when in human history has it been for any long period satisfactorily solved?

1. *Popular Government*, into. George W. Carey (Indianapolis: Liberty Classics, 1976), p. 182.

2. *Ibid.*, p. 103.

3. *Ibid.*, p. 90.

4. *Ibid.*, p. 99.

5. *Ibid.*, p. 98.

6. *Ibid.*, p. 44.

7. *Ibid.*, p. 53.

8. *Ibid.*, p. 58.

9. *Ibid.*

10. *Ibid.*, p. 71.

11. *Ibid.*

12. *Ibid.*, p. 69.

13. *Ibid.*, p. 119.

14. *Ibid.*, p. 140.

15. *Ibid.*, p. 157.

16. *Ibid.*, p. 204.

17. *Ibid.*, p. 236.

From Spencer's 1884 to Orwell's 1984*

In 1884, Herbert Spencer wrote what quickly became a celebrated book, *The Man Versus the State*. The book is seldom referred to now, and gathers dust on library shelves—if, in fact, it is still stocked by many libraries. Spencer's political views are regarded by most present-day writers, who bother to mention him at all, as “extreme *laissez faire*,” and hence “discredited.”

But any open-minded person who takes the trouble today to read or reread *The Man Versus the State* will probably be startled by two things. The first is the uncanny clairvoyance with which Spencer foresaw what the future encroachments of the state were likely to be on individual liberty, above all in the economic realm. The second is the extent to which these encroachments had already occurred in 1884, the year in which he was writing.

The present generation has been brought up to believe that government concern for “social justice” and for the plight of the needy was something that did not even exist until the New Deal came along in 1933. The ages prior to that have been pictured as periods when no one “cared,” when *laissez faire* was rampant, when everybody who did not succeed in the cutthroat competition that was euphemistically called free enterprise—but was simply a system of dog-eat-dog and the-devil-take-the-hindmost—was allowed to starve. And if the present generation thinks this is true even of the 1920s, it

*From the February 1969 issue of *The Freeman*.

is absolutely sure that it was so in the 1880s, which it would probably regard as the very peak of the prevalence of *laissez faire*.

The Seeds of Change

Yet the new reader's initial astonishment when he starts Spencer's book may begin to wear off before he is halfway through, because one cause for surprise explains the other. All that Spencer was doing was to project or extrapolate the legislative tendencies existing in the 1880s into the future. It was because he was so clear-sightedly appalled by these tendencies that he recognized them so much more sharply than his contemporaries, and saw so much more clearly where they would lead if left unchecked.

Even in his Preface to *The Man Versus the State* he pointed out how "increase in freedom on form" was being followed by "decrease of freedom in fact. . . ."

Regulations have been made in yearly growing numbers, restraining the citizen in directions where his actions were previously unchecked, and compelling actions which previously he might perform or not as he liked; and at the same time heavier public burdens . . . have further restricted his freedom, by lessening that portion of his earnings which he can spend as he pleases, and augmenting the portion taken from him to be spent as public agents please.

In his first chapter, "The New Toryism," Spencer contends that "most of those who now pass as Liberals, are Tories of a new type." The Liberals of his own day, he points out, had already "lost sight of the truth that in past times Liberalism

habitually stood for individual freedom versus State-coercion."

So the complete Anglo-American switch of reference, by which a "liberal" today has come to mean primarily a state-interventionist, had already begun in 1884. Already "plausible proposals" were being made "that there should be organized a system of compulsory insurance, by which men during their early lives shall be forced to provide for the time when they will be incapacitated." Here is already the seed of the American Social Security Act of 1935.

Spencer also pays his respects to the anti-libertarian implications of an increasing tax burden. Those who impose additional taxes are saying in effect: "Hitherto you have been free to spend this portion of your earnings in any way which pleased you; hereafter you shall not be free to spend it, but we will spend it for the general benefit."

Spencer next turns to the compulsions that labor unions were even then imposing on their members, and asks: "If men use their liberty in such a way as to surrender their liberty, are they thereafter any the less slaves?"

In his second chapter, "The Coming Slavery," Spencer draws attention to the existence of what he calls "political momentum"—the tendency of state interventions and similar political measures to increase and accelerate in the direction in which they have already been set going. Americans have become only too familiar with this momentum in the last few years.

Spencer illustrates: "The blank form of an inquiry daily made is—'We have already done this; why should we not do that?'" "The buying and working of telegraphs by the State" [which already existed in England when he wrote], he continued, "is made a reason for urging that the State should buy and work the railways." And he went on to quote the demands

of one group that the state should take possession of the railways, "with or without compensation."

The British State did not buy and work the railways until 64 years later, in 1948, but it did get around to it, precisely as Spencer feared.

It is not only precedent that prompts the constant spread of interventionist measures, Spencer points out, "but also the necessity which arises for supplementing ineffective measures, and for dealing with the artificial evils continually caused. Failure does not destroy faith in the agencies employed, but merely suggests more stringent use of such agencies or wider ramifications of them." One illustration he gives is how "the evils produced by compulsory charity are now proposed to be met by compulsory insurance." Today, in America, one could point to scores of examples (from measures to cure "the deficit in the balance of payments" to the constant multiplication of measures to fight the government's "war on poverty") of interventions mainly designed to remove the artificial evils brought about by previous interventions.

One Turn Deserves Another

Everywhere, Spencer goes on, the tacit assumption is that "government should step in whenever anything is not going right. . . . The more numerous governmental interventions become . . . the more loud and perpetual the demands for intervention." Every additional relief measure raises hopes of further ones:

The more numerous public instrumentalities become, the more is there generated in citizens the notion that everything is to be done for them, and nothing by them. Every generation is made less famil-

iar with the attainment of desired ends by individual actions or private agencies; until, eventually, governmental agencies come to be thought of as the only available agencies.

Forms of Slavery

“All socialism,” Spencer concludes, “involves slavery. . . . That which fundamentally distinguishes the slave is that he labors under coercion to satisfy another’s desires.” The relation admits of many gradations. Oppressive taxation is a form of slavery of the individual to the community as a whole. “The essential question is—How much is he compelled to labor for other benefit than his own, and how much can he labor for his own benefit?”

Even Spencer would probably have regarded with incredulity a prediction that in less than two generations England would have rates of income tax rising above 90 percent, and that many an energetic and ambitious man, in England and the United States, would be forced to spend more than half his time and labor working for the support of the community, and allowed less than half his time and labor to provide for his family and himself.

Today’s progressive income tax provides a quantitative measurement of the relative extent of a man’s economic liberty and servitude.

Those who think that public housing is an entirely new development will be startled to hear that the beginnings of it—as well as some of its harmful consequences—were already present in 1884:

Where municipal bodies turn housebuilders [wrote Spencer], they inevitably lower the values of houses

otherwise built, and check the supply of more. . . . The multiplication of houses, and especially small houses, being increasingly checked, there must come an increasing demand upon the local authority to make up for the deficient supply. . . . And then when in towns this process has gone so far as to make the local authority the chief owner of houses, there will be a good precedent for publicly providing houses for the rural population, as proposed in the Radical program, and as urged by the Democratic Federation [which insists on] the compulsory construction of healthy artisans' and agricultural laborers' dwellings in proportion to the population.

One state intervention Spencer did not foresee was the future imposition of rent controls, which make it unprofitable for private persons to own, repair, or renovate old rental housing or to put up new. The consequences of rent control provoke the indignant charge that "private enterprise is simply not doing the job" of providing enough housing. The conclusion is that therefore the government must step in and take over that job.

What Spencer did expressly fear, in another field, was that public education, providing gratis what private schools had to charge for, would in time destroy the private schools. What, of course, he did not foresee was that eventually the government would provide free tuition even in tax-supported *colleges* and universities, thus more and more threatening the continuance of private colleges and universities—and so tending more and more to produce a uniform conformist education, with college faculties ultimately dependent for their jobs on the government, and so developing an economic interest in professing and teaching a statist, pro-government and socialist ideology.

The tendency of government-supported education must be finally to achieve a government monopoly of education.

Ancient Roots of Tyranny

As the "liberal" readers of 1969 may be shocked to learn that the recent state interventions which they regard as the latest expressions of advanced and compassionate thought were anticipated in 1884, so the statist readers of Spencer's day must have been shocked to learn from him how many of the latest state interventions of 1884 were anticipated in Roman times and in the Middle Ages. For Spencer reminded them, quoting an historian, that in Gaul, during the decline of the Roman Empire, "so numerous were the receivers in comparison with the payers, and so enormous the weight of taxation, that the laborer broke down, the plains became deserts, and woods grew where the plough had been."

Spencer reminded his readers also of the usury laws under Louis XV in France, which raised the rate of interest "from five to six when intending to reduce it to four." He reminded them of the laws against "forestalling" (buying up goods in advance for later resale), also in early France. The effect of such laws was to prevent anyone from buying "more than two bushels of wheat at market," which prevented traders and dealers from equalizing supplies over time, thereby intensifying scarcities. He reminded his readers also of the measure which, in 1315, to diminish the pressure of famine, prescribed the prices of foods, but which was later repealed after it had caused the entire disappearance of various foods from the markets. He reminded them, again, of the many endeavors to fix wages, beginning with the Statute of Laborers under Edward III (1327-77). And still again, of Statute 35 of Edward III, which aimed to keep down the price of herrings (but was soon repealed because it

raised the price). And yet again, of the law of Edward III, under which innkeepers at seaports were sworn to search their guests “to prevent the exportation of money or plate.”

This last example will uneasily remind Americans of the present prohibition of private gold holdings and gold export, and of the Johnson Administration’s attempt to put a punitive tax on foreign travel, as well as the actual punitive tax that it did put on foreign investment. Let us add the still existing prohibitions even by allegedly advanced European nations against taking more than a tiny amount of their local *paper* currency out of the country!

The Federal Bulldozer Then

I come to one last specific parallel between 1884 and the present. This concerns slum clearance and urban renewal. The British government of Spencer’s day responded to the existence of wretched and overcrowded housing by enacting the Artisans’ Dwellings Acts. These gave to local authorities powers to pull down bad houses and provide for the building of good ones:

What have been the results? A summary of the operations of the Metropolitan Board of Works, dated December 21, 1883, shows that up to last September it had, at a cost of a million and a quarter to ratepayers, unhoused 21,000 persons and provided houses for 12,000—the remaining 9,000 to be hereafter provided for, being, meanwhile, left houseless. This is not all. . . . Those displaced . . . form a total of nearly 11,000 artificially made homeless, who have had to find corners for themselves in miserable places that were already overflowing.

Those who are interested in a thorough study of the present-day parallel to this are referred to Professor Martin Anderson's *The Federal Bulldozer* (M.I.T. Press, 1964; McGraw-Hill paperback, 1967). I quote just one short paragraph from his findings:

The federal urban renewal program has actually aggravated the housing shortage for low-income groups. From 1950 to 1960, 126,000 dwelling units, most of them low-rent ones, were destroyed. This study estimates that the number of new dwelling units constructed is less than one-fourth of the number demolished, and that most of the new units are high-rent ones. Contrast the net addition of millions of standard dwelling units to the housing supply by private enterprise with the minute construction effort of the federal urban renewal program. (p. 229)

There is an eloquent paragraph in Spencer's book reminding his readers of the 1880s of what they did *not* owe to the state:

It is not to the State that we owe the multitudinous useful inventions from the spade to the telephone; it is not the State which made possible extended navigation by a developed astronomy; it was not the State which made the discoveries in physics, chemistry, and the rest, which guide modern manufacturers; it was not the State which devised the machinery for producing fabrics of every kind, for transferring men and things from place to place, and for ministering in a thousand ways to our comforts. The world-wide transactions conducted in merchants' offices, the rush of

traffic filling our streets, the retail distributing system which brings everything within easy reach and delivers the necessities of life daily at our doors, are not of governmental origin. All these are results of the spontaneous activities of citizens, separate or grouped.

Aggravated Waste

Our present-day statisticians are busily trying to change all this. They are seizing billions of additional dollars from the taxpayers to turn them over for "scientific research." By this compulsorily subsidized government competition they are discouraging and draining away the funds for private scientific research; and they threaten to make such research, in time, a government monopoly. But whether this will result in more scientific progress in the long run is doubtful. True, enormously more money is being spent on "research," but it is being diverted in questionable directions—in military research; in developing greater and greater superbombs and other weapons of mass destruction and mass annihilation; in planning supersonic passenger airplanes developed on the assumption that civilians must get to their European or Caribbean vacation spots at 1,200 or 1,800 miles an hour, instead of a mere 600, no matter how many eardrums or windows of groundlings are shattered in the process; and finally, in such Buck Rogers stunts as landing men on the moon or on Mars.

It is fairly obvious that all this will involve enormous waste; that government bureaucrats will be able to dictate who gets the research funds and who doesn't, and that this choice will either depend upon fixed arbitrary qualifications like those determined by Civil Service examinations (hardly the way to find the most original minds), or upon the grantees keeping in the good graces of the particular government

appointee in charge of the distribution of grants.

But our welfare statisticians seem determined to put us in a position where we will be dependent on government even for our future scientific and industrial progress—or in a position where they can at least plausibly argue that we are so dependent.

A Denial of Private Property

Spencer next goes on to show that the kind of state intervention he is deploring amounts to not merely an abridgment but a basic rejection of private property: A “confusion of ideas, caused by looking at one face only of the transaction, may be traced throughout all the legislation which forcibly takes the property of this man for the purpose of giving gratis benefits to that man.” The tacit assumption underlying all these acts of redistribution is that:

No man has any claim to his property, not even to that which he has earned by the sweat of his brow, save by the permission of the community; and that the community may cancel the claim to any extent it thinks fit. No defense can be made for this appropriation of A's possessions for the benefit of B, save one which sets out with the postulate that society as a whole has an absolute right over the possessions of each member.

In the final chapter (just preceding a Postscript) Spencer concluded: “The function of Liberalism in the past was that of putting a limit to the powers of kings. The function of true Liberalism in the future will be that of putting a limit to the power of Parliaments.”

In endorsing some of the arguments in Spencer's *The Man*

Versus the State, and in recognizing the penetration of many of his insights and the remarkable accuracy of his predictions of the political future, we need not necessarily subscribe to every position that he took. The very title of Spencer's book was in one respect unfortunate. To speak of "the man versus the State" is to imply that the state, *as such*, is unnecessary and evil. The state, of course, is absolutely indispensable to the preservation of law and order, and the promotion of peace and social cooperation. What is unnecessary and evil, what abridges the liberty and threatens the true welfare of the individual, is the state that has usurped excessive powers and grown beyond its legitimate functions—the superstate, the socialist state, the redistributive state, in brief, the ironically misnamed "welfare state."

But Spencer was certainly right in the main thrust of his argument, which was essentially that of Adam Smith and other classical liberals, that the two indispensable functions of government are first, to protect the nation against aggression from any other nation, and second, to protect the individual citizen from the aggression, injustice, or oppression of any other citizen—and that every extension of the functions of government beyond these two primary duties should be scrutinized with jealous vigilance.

We are deeply indebted to Herbert Spencer for recognizing with a sharper eye than any of his contemporaries, and warning them against, "the coming slavery" toward which the state of their own time was drifting, and toward which we are more swiftly drifting today.

It is more than a grim coincidence that Spencer was warning of the coming slavery in 1884, and that George Orwell, in our time, has predicted that the full consummation of this slavery will be reached in 1984, exactly one century later.

Why Politics Is Insoluble*

Eight years ago, in the Fall 1976 issue of *Modern Age*, an article of mine appeared with the title "Is Politics Insoluble?" Since that time I have only been more deeply convinced that it is. When I used the word "politics" then, I used it as a synonym for so-called "political science." I do so now. Such a "science" must, I think, remain a vain hope.

First let us ask what are the questions that a political science would have to answer. Let us list some of them with a few of the possible answers.

What is the indispensable role of government? How much beyond that should the state undertake? In whose hands should the governing power be placed? Who should decide in whose hands that power should be placed? How much power, and for what periods?

Should "the people" choose the power holders? *What* people? Adults only? Beginning at what age—18, 19, 20, 21? Should power be given to *all* adults, or only some? Who should be excluded? Convicted criminals, the insane, the "ignorant," the "uneducated"? What bodies or officials, how elected or appointed, should make these decisions? And so on and on.

Thousands of disinterested students of politics, and even more thousands of demagogues and agitators, have undertaken to answer these questions. The answers of a few have exercised great influence and commanded deep respect.

But can any of these answers be called "scientific"? Is there any way they can be established as objectively true? Or

*From the Fall 1984 issue of *Modern Age*.

must we regard them merely as the answers that have seemed on the whole “to make most sense,” or “to have worked best in practice”?

Some writers have argued that “political science” deserves that name, though it is only a “normative” science. But few careful thinkers accept the notion that there can be such a thing as “a science of what ought to be.” All conclusions regarding what an ideal state *should* be like must rest on value judgments. Shared values may be indispensable to human harmony and cooperation, but they cannot be called “scientific.”

Is political “science,” then, not at all a study of what political institutions we *should* set up, or of who ought to rule, but merely of what *does* happen, of what institutions *are* set up, and of who *does* rule? This may seem at first glance a more promising approach. But can it in fact be turned into a science, or anything but a mere description of what has happened in the past, or seems most likely to continue to happen in the future?

Let us see where such an approach may lead us.

When we look closely at modern political institutions the first quality that strikes us is their built-in instability. In a typical democracy there are at least two political “parties”—a “majority” party in power, plus one or more “minority” parties daily struggling to rule in its place.

This built-in competitive struggle leads the party in power, and trying to stay there, continually to propose still more “reforms” and new laws, and very seldom to remove laws already on the books. The inherent tendency of all democracies is, therefore, to add more and more economic and social controls, to create more offices and bureaucrats, to pile up more expenditures, and to keep imposing still more taxes to

pay for them. Through a progressive-income tax, the tax-burden is levied mainly on a minority.

This does not mean, however, that the real tax burden falls only upon the rich. The near-confiscatory income-tax rates (they rose as high as 94 percent in the U.S. in World War II and to 98 percent in Great Britain) drive upper income receivers into more and more attempts at evasion. But if the evasion is not successful, or is not resorted to, the high-income receivers tend constantly to diminish in numbers and levels of real income. (This process can be partly hidden by monetary inflation.)

What happens basically is that progressive income taxation most of all destroys the part of personal income that would otherwise go into savings. Its primary effect is to prevent new capital formation. But this is precisely what is indispensable to create new wealth and income. Current income flows more and more into current consumption. Not only do the funds for new investment tend to diminish, but existing machinery and plant are allowed to fall into disrepair and obsolescence. The very sources of wealth production shrink or dry up.

(This process has been fortunately slowed down until now, however, by the fact that corporate taxation in most countries has largely not been at progressive rates, and corporate earnings allocated to maintenance and new investment have not been too heavily taxed—at least not at intentionally punitive levels.)

So modern democracies are inherently unstable. They systematically breed competition between political parties, led by office-seekers proposing rival schemes for more legislation, and proposals to seize still more funds from one group of citizens to give to another—from a group that has produced them

to a group that has not—taking more from the alleged “rich” to give to the alleged “poor.” This procedure tends to go on as long as there are any remaining “rich” from whom something remains to be taken.

This political process, though constantly at work, is often obscured because the progress of science and invention, bringing continuously more productive equipment, leads, other things equal, to constantly higher production of wealth and standards of living. It remains to see how long this factor can continue to offset the impoverishing effects of political intervention and the mania for redistributing the wealth.

The repressive and destructive tendencies of pure democracy are obvious. They have been recognized by political thinkers since the days of Aristotle. And that is why the builders of precedents and the drafters of constitutions have sought since ancient times to limit or restrain these tendencies. The most famous modern example of when this was attempted in a single convention and in a single document is, of course, the drafting of the United States Constitution of 1787 (e.g., through the First Amendment): “Congress shall make no law respecting the establishing of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances,” etc.

But experience has shown that even such documents, over the years, can be circumvented or disregarded—either interpreted away by judicial decisions, or simply ignored.

The alternative to democracy or majority rule is of course one-man or clique rule. This probably long antedated any explicit democracy.

One-man rule, in turn, has taken many forms. The

longest-lasting has been monarchy—one-man rule by peaceful succession, most commonly by family inheritance. This has often, in individual countries, been preserved for centuries. It has been accepted for such long periods because it does usually achieve at least one very important goal: It keeps the peace; it prevents continuous wars of succession.

Otherwise monarchy can hardly be called a “solution” of most major political problems. It provides government; but it does not ensure good government. The typical king, as Walter Bagehot has reminded us, is “a spoiled common man.” He can be much worse than that—occasionally a fanatic or an idiot.

The admirers of monarchy usually forget this. Their attention tends to focus on the rare exceptions. When H. L. Mencken denounced democracy, as he chronically did, his alternative, when he mentioned it, was monarchy. And when he cited an example, he almost invariably cited just one man—Frederick the Great. Other names did not troop to his pen. When we try to think of “good” kings, we find ourselves thinking in large part of kings—and queens, such as Elizabeth and Victoria of England—who allowed good things to happen, who did not stand in the way of human progress. (I concede, though, that I cannot think of Elizabeth as a monarch possessing merely negative virtues, but she too was only one of the rare exceptions.)

Before the more enduring monarchies were established, they were usually both preceded and interrupted by one-man rule by successive usurpers, by civil war, by wars of succession, by insurrection, or successive assassinations. These seldom brought the best men to the top. The process itself, regardless of the merits or vices of the victors, destroyed peace, production, and often the possibility of progress and prosperity. And yet it is precisely these successive tyrannies

and insurrections that typify what is happening in the so-called Third World today. There the Khomeini government seems to have become the norm.

When we look at the present world to see what “solutions” of the problem of government are being applied, we confront a picture of near-chaos. To classify these solutions under such traditional descriptions as democracies, republics, monarchies, and the like would be rather pointless, because so many dictatorships and tyrannies, military and civilian, call themselves what they clearly are not—“The Union of Socialist Soviet Republics,” etc.

The most helpful grouping I know is that published annually by Freedom House.¹ The essence of its report for 1984 follows:

The population of the world this year is estimated at 4,663 millions residing in 166 sovereign states and 54 related territories, a total of 220 places. The level of political rights and civil liberties as shown comparatively by the Freedom House Survey:

Not-free: 1,917.5 million (41 percent of the world's population), of whom 1,914.4 million reside in 58 nations (35 percent of all the nations) and 3.1 million live in 6 (11 percent) of the related territories.

Partly Free: 1,074.8 million (23 percent), of whom 1,066.7 live in 56 nations (34 percent) and 8.1 million live in 19 (35 percent) of the territories.

Free: 1,670.7 million (36 percent), of whom 1,665.9 million inhabit 52 nations (31 percent) and 4.8 million live in 29 (54 percent) of the territories.

Let us explore one more possible route to building a political science. We begin with the analogy of medicine. Here the ends are given. The patient wants to prolong his life, and to be rid of his disease or pain. The doctor shares these goals, because his financial rewards depend on his reputation for being able to do this. Each person's concern for his own health makes it not too difficult to raise funds for research. As a result, the progress of the science of medicine in the last century—or twenty years, or ten years, or five years—has been miraculous and accelerative.

As we "all" want better government, it may therefore be asked, why can't we learn how to get it as we have got better medicine? [The answer is that] the question is based on a false assumption. We don't "all" want better government, certainly not better government *by others*. Too many of us want to *be* the government.

I shall not try to measure its extent or degree, but there is a passion built into a very large number of men to rule over others. In established democracies this takes the form of candidates for office determined to outbid their rivals in promising handouts or other favors to pressure groups in their districts at the expense of some unnamed minority. In countries already with one-man rule or clique rule, it takes the form of individual army officers or gang leaders or even patriotic rebels trying to seize power by force.

This process leads to instability, violence, and frequent change, but it is not necessarily evil in all respects. Bad rulers may be displaced by better, as well as the other way round. Nor is the result merely an endless cycle. Political techniques and institutions are developed which tend to bring better leaders to the top as well as more peaceful and less disruptive changes of power, and these institutions tend to persist. The British parliamentary system, for example, has brought, on

the whole, a higher quality of leadership, and more compromise and conciliation, than the American presidential system. The presidential system, transplanted to Latin America, has worked badly and often disastrously. It has led to military dictatorships which a parliamentary system could have avoided.

Yet a parliamentary system itself is only a virtue to the extent that public opinion is sound. It is the most efficient technical instrument yet devised for reflecting and enacting public opinion. When public opinion is corrupted, it most promptly enacts the corruption. So the parliamentary systems of Great Britain and West European countries enacted the welfare state, which attempted to provide security for everybody from cradle to grave, and in that attempt brought government improvidence, deficits, onerous taxes, inflation, capital consumption and destruction, and reduced liberties and living standards.

On the other side, however, all civilized countries have built up through the centuries a body of law and legal precedents protecting the rights of the individual. These have continued to be respected through many changes of governments. Such legal protections have gone far to preserve or restore social peace and order.

So while we may doubt that a truly "ideal" government will ever be designed, or "scientific" political institutions ever developed, we need not abandon the effort to improve them. But we must be prepared for setbacks and discouragements for as far ahead as we can see.

1. *Freedom at Issue* (New York: Freedom House, 1984).

The Task Confronting Libertarians*

From time to time over the last thirty years, after I have talked or written about some new restriction on human liberty in the economic field, some new attack on private enterprise, I have been asked in person or received a letter asking, "What can *I* do"—to fight the inflationist or socialist trend? Other writers or lecturers, I find, are often asked the same question.

The answer is seldom an easy one. For it depends on the circumstances and ability of the questioner—who may be a businessman, a housewife, a student, informed or not, intelligent or not, articulate or not. And the answer must vary with these presumed circumstances.

The general answer is easier than the particular answer. So here I want to write about the task now confronting all libertarians considered collectively.

This task has become tremendous, and seems to grow greater every day. A few nations that have already gone completely communist, like Soviet Russia and its satellites, try, as a result of sad experience, to draw back a little from complete centralization, and experiment with one or two quasi-capitalistic techniques; but the world's prevailing drift—in more than 100 out of the 107 nations and mini-nations that are now members of the International Monetary Fund—is in the direction of increasing socialism and controls.

The task of the tiny minority that is trying to combat this socialistic drift seems nearly hopeless. The war must be

*From the March 1968 issue of *The Freeman*.

fought on a thousand fronts, and the true libertarians are grossly outnumbered on practically all these fronts.

In a thousand fields the welfarists, statist, socialists, and interventionists are daily driving for more restrictions on individual liberty; and the libertarians must combat them. But few of us individually have the time, energy, and special knowledge to be able to do this in more than a handful of subjects.

One of our gravest problems is that we find ourselves confronting armies of bureaucrats already controlling us, and with a vested interest in keeping and expanding the controls they were hired to enforce.

A Growing Bureaucracy

Let me try to give you some idea of the size and extent of this bureaucracy in the United States. The Hoover Commission found in 1954 that the federal government embraced no fewer than 2,133 different functioning agencies, bureaus, departments, and divisions. I do not know what the exact count would be today, but the known multiplicity of Great Society agencies would justify our rounding out that figure at least to 2,200.

We do know that the full-time permanent employees in the federal government now number about 2,615,000.

And we know, to take a few specific examples, that of these bureaucrats 15,400 administer the programs of the Department of Housing and Urban Development, 100,000 the programs (including Social Security) of the Department of Health, Education, and Welfare, and 154,000 the programs of the Veterans Administration.

If we want to look at the rate at which parts of this bureaucracy have been growing, let us take the Department of Agriculture. In 1929, before the U. S. government started crop con-

trols and price supports on an extensive scale, there were 24,000 employees in that Department. Today, counting part-time workers, there are 120,000, five times as many, all of them with a vital economic interest—to wit, their own jobs—in proving that the particular controls they were hired to formulate and enforce should be continued and expanded.

What chance does the individual businessman, the occasional disinterested professor of economics, or columnist or editorial writer, have in arguing against the policies and actions of this 120,000-man army, even if he has had time to learn the detailed facts of a particular issue? His criticisms are either ignored or drowned out in the organized counter-statements.

This is only one example out of scores. A few of us may suspect that there is much unjustified or foolish expenditure in the U. S. Social Security program, or that the unfunded liabilities already undertaken by the program (one authoritative estimate of these exceeds a *trillion* dollars) may prove to be unpayable without a gross monetary inflation. A handful of us may suspect that the whole principle of compulsory government old-age and survivor's insurance is open to question. But there are nearly 100,000 full-time permanent employees in the Department of Health, Education, and Welfare to dismiss all such fears as foolish, and to insist that we are still not doing nearly enough for our older citizens, our sick, and our widows and orphans.

And then there are the millions of those who are already on the receiving end of these payments, who have come to consider them as an earned right, who of course find them inadequate, and who are outraged at the slightest suggestion of a critical re-examination of the subject. The political pressure for constant extension and increase of these benefits is almost irresistible.

And even if there weren't whole armies of government

economists, statisticians, and administrators to answer him, the lone disinterested critic, who hopes to have his criticism heard and respected by other disinterested and thoughtful people, finds himself compelled to keep up with appalling mountains of detail.

Too Many Cases to Follow

The National Labor Relations Board, for example, hands down hundreds of decisions every year in passing on "unfair" labor practices. In the fiscal year 1967 it passed on 803 cases "contested as to the law and the facts." Most of these decisions are strongly biased in favor of the labor unions; many of them pervert the intention of the Taft-Hartley Act that they ostensibly enforce; and in some of them the board arrogates to itself powers that go far beyond those granted by the act. The texts of many of these decisions are very long in their statement of facts or alleged facts and of the Board's conclusions. Yet how is the individual economist or editor to keep abreast of the decisions and to comment informedly and intelligently on those that involve an important principle or public interest?

Or take again such major agencies as the Federal Trade Commission, the Securities and Exchange Commission, the Internal Revenue Service, the Interstate Commerce Commission, the Food and Drug Administration, the Federal Communications Commission. All these agencies engage in quasi-legislative, quasi-judicial, and administrative functions. They issue rules and regulations, grant licenses, issue cease-and-desist orders, award damages, and compel individuals and corporations to do or refrain from many things. They often combine the functions of legislators, prosecutors, judges, juries, and bureaucrats. Their decisions are not always based solely on existing law; and yet when they inflict injury on cor-

porations or individuals, or deprive them of constitutional liberties and legal rights, appeal to the courts is often difficult, costly, or impossible.

Once again, how can the individual economist, student of government, journalist, or anyone interested in defending or preserving liberty, hope to keep abreast of this Niagara of decisions, regulations, and administrative laws? He may sometimes consider himself lucky to be able to master in many months the facts concerning even one of these decisions.

Professor Sylvester Petro of New York University has written a full book on the Kohler strike and another full book on the Kingsport strike, and the public lessons to be learned from them. Professor Martin Anderson has specialized in the follies of urban renewal programs. But how many are there among us libertarians who are willing to—or have the time to—do this specialized and microscopic but indispensable research?

In July 1967, the Federal Communications Commission handed down an extremely harmful decision ordering the American Telephone & Telegraph Company to lower its interstate rates—which were already 20 percent lower than in 1940, though the general price level since that time had gone up 163 percent. In order to write a single editorial or column on this (and to feel confident he had his facts straight), a conscientious journalist had to study, among other material, the text of the decision. That decision consisted of 114 single-spaced typewritten pages.

. . . and Schemes for Reform

We libertarians have our work cut out for us.

In order to indicate further the dimensions of this work, it is not merely the organized bureaucracy that the libertarian

has to answer; it is the individual private zealots. A day never passes without some ardent reformer or group of reformers suggesting some new government intervention, some new statist scheme to fill some alleged "need" or relieve some alleged distress. They accompany their scheme by citing statistics that supposedly prove the need or the distress that they want the taxpayers to relieve. So it comes about that the reputed "experts" on relief, unemployment insurance, social security, medicare, subsidized housing, foreign aid, and the like are precisely the people who are advocating more relief, unemployment insurance, social security, medicare, subsidized housing, foreign aid, and all the rest.

Let us come to some of the lessons we must draw from all this.

Specialists for the Defense

We libertarians cannot content ourselves merely with repeating pious generalities about liberty, free enterprise, and limited government. To assert and repeat these general principles is absolutely necessary, of course, either as prologue or conclusion. But if we hope to be individually or collectively effective, we must individually master a great deal of detailed knowledge, and make ourselves specialists in one or two lines, so that we can show how our libertarian principles apply in special fields, and so that we can convincingly dispute the proponents of statist schemes for public housing, farm subsidies, increased relief, bigger social security benefits, bigger medicare, guaranteed incomes, bigger government spending, bigger taxation, especially more progressive income taxation, higher tariffs or import quotas, restrictions or penalties on foreign investment and foreign travel, price controls, wage controls, rent controls, interest rate controls, more laws for so-

called “consumer protection,” and still tighter regulations and restrictions on business everywhere.

This means, among other things, that libertarians must form and maintain organizations not only to promote their broad principles—as does, for example, The Foundation for Economic Education—but to promote these principles in special fields. I am thinking, for example, of such excellent existing specialized organizations as the Citizens Foreign Aid Committee, the Economists’ National Committee on Monetary Policy, the Tax Foundation, and so on. I am happy to report the very recent formation of Americans for Effective Law Enforcement.

We need not fear that too many of these specialized organizations will be formed. The real danger is the opposite. The private libertarian organizations in the United States are probably outnumbered ten to one by communist, socialist, statist, and other left-wing organizations that have shown themselves to be only too effective.

And I am sorry to report that almost none of the old-line business associations that I am acquainted with are as effective as they could be. It is not merely that they have been timorous or silent where they should have spoken out, or even that they have unwisely compromised. Recently, for fear of being called ultraconservative or reactionary, they have been supporting measures harmful to the very interests they were formed to protect. Several of them, for example, have come out in favor of the Administration’s proposed tax increase on corporations, because they were afraid to say that the Administration ought rather to slash its profligate welfare spending.

The sad fact is that today most of the heads of big businesses in America have become so confused or intimidated that, so far from carrying the argument to the enemy, they fail to defend themselves adequately even when attacked. The

pharmaceutical industry, subjected since 1962 to a discriminatory law that applies questionable and dangerous legal principles that the government has not yet dared to apply in other fields, has been too timid to state its own case effectively. And the automobile makers, attacked by a single zealot for turning out cars "Unsafe at Any Speed," handled the matter with an incredible combination of neglect and ineptitude that brought down on their heads legislation harmful not only to the industry but to the driving public.

The Timidity of Businessmen

It is impossible to tell today where the growing anti-business sentiment in Washington, plus the itch for more government control, is going to strike next. Only within the last few months Congress, with little debate, allowed itself to be stamped into a dubious extension of federal power over intra-state meat sales. When this article appears, or shortly after, Congress may have passed a federal "truth-in-lending" law, forcing lenders to calculate and state interest rates the way federal bureaucrats want them calculated and stated. There is also pending an Administration bill in which government bureaucrats are to prescribe "standards" telling just how surgical devices like bone pins and catheters and even artificial eyes are to be made.

And a few weeks ago the president suddenly announced that he was prohibiting American business from making further direct investments in Europe, that he was restricting them elsewhere, and that he would ask Congress to pass some law restricting Americans from traveling to Europe. Instead of raising a storm of protest against these unprecedented invasions of our liberties, most newspapers and businessmen

deplored their “necessity” and hoped they would be only “temporary.”

The very existence of the business timidity that allows these things to happen is evidence that government controls and power are already excessive.

Why are the heads of big business in America so timid? That is a long story, but I will suggest a few reasons: (1) They may be entirely or largely dependent on government war contracts. (2) They never know when or on what grounds they will be held guilty of violating the antitrust laws. (3) They never know when or on what grounds the National Labor Relations Board will hold them guilty of unfair labor practices. (4) They never know when their personal income tax returns will be hostilely examined, and they are certainly not confident that such an examination, and its findings, will be entirely independent of whether they have been personally friendly or hostile to the administration in power.

It will be noticed that the governmental actions or laws of which businessmen stand in fear are actions or laws that leave a great deal to administrative discretion. Discretionary administrative law should be reduced to a minimum; it breeds bribery and corruption, and is always potentially blackmail or blackjack law.

A Confusion of Interests

Libertarians are learning to their sorrow that big businessmen cannot necessarily be relied upon to be their allies in the battle against extension of governmental encroachments. The reasons are many. Sometimes businessmen will advocate tariffs, import quotas, subsidies, and restrictions of competition, because they think, rightly or wrongly, that these gov-

ernment interventions will be in their personal interest, or in the interest of their companies, and are not concerned whether or not they may be at the expense of the general public. More often, I think, businessmen advocate these interventions because they are honestly confused, because they just don't realize what the actual consequences will be of the particular measures they propose, or perceive the cumulative debilitating effects of growing restrictions of human liberty.

Perhaps most often of all, however, businessmen today acquiesce in new government controls out of sheer timidity.

A generation ago, in his pessimistic book, *Capitalism, Socialism and Democracy* (1942), the late Joseph A. Schumpeter maintained the thesis that "in the capitalistic system there is a tendency toward self-destruction." And as one evidence of this he cited the "cowardice" of big businessmen when facing direct attack:

They talk and plead—or hire people to do it for them; they snatch at every chance of compromise; they are ever ready to give in; they never put up a fight under the flag of their own ideals and interests—in this country there was no real resistance anywhere against the imposition of crushing financial burdens during the last decade or against labor legislation incompatible with the effective management of industry.

So much for the formidable problems facing dedicated libertarians. They find it extremely difficult to defend particular firms and industries from harassment or persecution when those industries will not adequately or competently defend themselves. Yet division of labor is both possible and desirable in the defense of liberty as it is in other fields. And many of us,

who have neither the time nor the specialized knowledge to analyze particular industries or special complex problems, can be nonetheless effective in the libertarian cause by hammering incessantly on some single principle or point until it is driven home.

Basic Principles Upon Which Libertarians May Rely

Is there any single principle or point on which libertarians could most effectively concentrate? Let us look, and we may end by finding several.

One simple truth that could be endlessly reiterated, and effectively applied to nine-tenths of the statist proposals now being put forward or enacted in such profusion, is that the government has nothing to give to anybody that it doesn't first take from somebody else. In other words, all its relief and subsidy schemes are merely ways of robbing Peter to support Paul.

Thus, it can be pointed out that the modern welfare state is merely a complicated arrangement by which nobody pays for the education of his own children, but everybody pays for the education of everybody else's children; by which nobody pays his own medical bills, but everybody pays everybody else's medical bills; by which nobody provides for his own old-age security, but everybody pays for everybody else's old-age security; and so on. Bastiat, with uncanny clairvoyance, exposed the illusive character of all these welfare schemes more than a century ago in his aphorism: "The State is the great fiction by which everybody tries to live at the expense of everybody else."

Another way of showing what is wrong with all the state handout schemes is to keep pointing out that you can't get a quart out of a pint jug. Or, as the state giveaway programs

must all be paid for out of taxation, with each new scheme proposed the libertarian can ask, "*Instead of what?*" Thus, if it is proposed to spend another \$1 billion on getting a man to the moon or developing a supersonic commercial plane, it may be pointed out that this \$1 billion, taken in taxation, will not then be able to meet a million personal needs or wants of the millions of taxpayers from whom it is to be taken.

Of course, some champions of ever-greater governmental power and spending recognize this very well, and like Prof. J. K. Galbraith, for instance, they invent the theory that the taxpayers, left to themselves, spend the money they have earned very foolishly, on all sorts of trivialities and rubbish, and that only the bureaucrats, by first seizing it from them, will know how to spend it wisely.

Knowing the Consequences

Another very important principle to which the libertarian can constantly appeal is to ask the statist to consider the secondary and long-run consequences of their proposals as well as merely their intended direct and immediate consequences. The statist will sometimes admit quite freely, for example, that they have nothing to give to anybody that they must not first take from somebody else. They will admit that they must rob Peter to pay Paul. But their argument is that they are seizing only from rich Peter to support poor Paul. As President Johnson once put it quite frankly in a speech on January 15, 1964: "We are going to try to take all of the money that we think is unnecessarily being spent and take it from the 'haves' and give it to the 'have nots' that need it so much."

Those who have the habit of considering long-run consequences will recognize that all these programs for sharing-the-wealth and guaranteeing incomes must reduce incen-

tives at both ends of the economic scale. They must reduce the incentives both of those who are capable of earning a high income, but find it taken away from them, and those who are capable of earning at least a moderate income, but find themselves supplied with the necessities of life without working.

This vital consideration of incentives is almost systematically overlooked in the proposals of agitators for more and bigger government welfare schemes. We should all rightly be concerned with the plight of the poor and unfortunate. But the hard two-part question that any plan for relieving poverty must answer is: How can we mitigate the penalties of failure and misfortune *without undermining the incentives to effort and success*? Most of our would-be reformers and humanitarians simply ignore the second half of this problem. And when those of us who advocate freedom of enterprise are compelled to reject one of these specious "antipoverty" schemes after another on the ground that it will undermine these incentives and in the long run produce more evil than good, we are accused by the demagogues and the thoughtless of being "negative" and stony-hearted obstructionists. But the libertarian must have the strength not to be intimidated by this.

Finally, the libertarian who wishes to hammer in a few general principles can repeatedly appeal to the enormous advantages of liberty as compared with coercion. But he, too, will have influence and perform his duty properly only if he has arrived at his principles through careful study and thought. "The common people of England," once wrote Adam Smith, "are very jealous of their liberty, but like the common people of most other countries have never rightly understood in what it consists." To arrive at the proper concept and definition of liberty is difficult, not easy. But this is a subject too big to be developed further here.

Legal and Political Aspects

So far, I have talked as if the libertarian's study, thought, and argument need be confined solely to the field of economics. But, of course, liberty cannot be enlarged or preserved unless its necessity is understood in many other fields—and most notably in law and in politics.

We have to ask, for example, whether liberty, economic progress, and political stability can be preserved if we continue to allow the people on relief—the people who are mainly or solely supported by the government and who live at the expense of the taxpayers—to exercise the franchise. The great liberals of the nineteenth and early twentieth centuries expressed the most serious misgivings on this point. John Stuart Mill, writing in his *Representative Government* in 1861, did not equivocate: "I regard it as required by first principles that the receipt of parish relief should be a preemptory disqualification for the franchise. He who cannot by his labor suffice for his own support has no claim to the privilege of helping himself to the money of others." And A. V. Dicey, the eminent British jurist, writing in 1914, also raised the question whether it is wise to allow the recipients of poor relief to retain the right to join in the election of a member of Parliament.

An Honest Currency and an End to Inflation

This brings me, finally, to one more single issue on which all those libertarians who lack the time or background for specialized study can effectively concentrate. This is in demanding that the government provide an honest currency, and that it stop inflating.

This issue has the inherent advantage that it can be made

clear and simple because fundamentally it *is* clear and simple. All inflation is government-made. All inflation is the result of increasing the quantity of money and credit; and the cure is simply to halt the increase.

If libertarians lose on the inflation issue, they are threatened with the loss of every other issue. If libertarians could win the inflation issue, they could come close to winning everything else. If they could succeed in halting the increase in the quantity of money, it would be because they could halt the chronic deficits that force this increase. If they could halt these chronic deficits, it would be because they had halted the rapid increase in welfare spending and all the socialistic schemes that are dependent on welfare spending. If they could halt the constant increase in spending, they could halt the constant increase in government power.

The devaluation of the British pound a few months ago, though it may shake the whole world currency system to its foundations, may as an offset have the longer effect of helping the libertarian cause. It exposes as never before the bankruptcy of the welfare state. It exposes the fragility and complete undependability of the paper-gold international monetary system under which the world has been operating for the last twenty years. There is hardly one of the hundred or more currencies in the International Monetary Fund, with the exception of the dollar, that has not been devalued at least once since the I.M.F. opened its doors for business. There is not a single currency unit—and there is no exception to this statement—that does not buy less today than when the Fund started.

The dollar, to which practically every other currency is tied in the present system, is now in the gravest peril. If liberty is to be preserved, the world must eventually get back to a full gold standard system in which each major country's cur-

rency unit must be convertible into gold on demand, by anybody who holds it, without discrimination. I am aware that some technical defects can be pointed out in the gold standard, but it has one virtue that more than outweighs them all. It is not, like paper money, subject to the day-to-day whims of the politicians; it cannot be printed or otherwise manipulated by the politicians; it frees the individual holder from that form of swindling or expropriation by the politicians; it is an essential safeguard for the preservation, not only of the value of the currency unit itself, but of human liberty. Every libertarian should support it.

I have one last word. In whatever field he specializes, or on whatever principle or issue he elects to take his stand, the libertarian *must* take a stand. He cannot afford to do or say nothing. I have only to remind you of the eloquent call to battle on the final page of Ludwig von Mises's great book on *Socialism*:

Everyone carries a part of society on his shoulders; no one is relieved of his share of responsibility by others. And no one can find a safe way out for himself if society is sweeping toward destruction. Therefore everyone, in his own interests, must thrust himself vigorously into the intellectual battle. None can stand aside with unconcern; the interests of everyone hang on the result. Whether he chooses or not, every man is drawn into the great historical struggle, the decisive battle into which our epoch has plunged us.

Appendix I

August 2, 1978

Henry Hazlitt
Provisional Chapter Outline of
IS POLITICS INSOLUBLE?

1. Is Politics Insoluble?
2. Over-legislation
3. Nozick on government
4. The Principle of Indeterminism
 John Stuart Mill
 Herbert Spencer
 T. H. Huxley
5. Aristotle and Plato
6. The Answer of John Locke
7. The Answer of The Founding Fathers
 (The Federalist Papers)
8. Wilhelm von Humboldt on government
9. James Mill on government
10. Henry Maine's Answer
11. Why government grows
 (Allan H. Meltzer) etc.
12. Why Power is Centralized
13. Democracy vs. Alternatives

14. Causes and Remedies

Limited government: Constitution -
COURTS

Parliamentary System -

Four- or five-year overlapping terms

Indirectly Chosen Senate,
overlapping terms

twice the elected term

Removal for cause, with causes specified

Nobody immediately [to] succeed himself

Appendix II

Placement of Essays in Hazlitt's Outline IS POLITICS INSOLUBLE?

1. Is Politics Insoluble?
[Chapter 1, "Is Politics Insoluble?" *Modern Age*, Fall 1976]
2. Over-legislation
[Chapter 2, "The Torrent of Laws," *The Freeman*, January 1979]
3. Nozick on government
[Chapter 3, "The Case for the Minimal State," *The Freeman*, November 1979]
4. The Principle of Indeterminism
John Stuart Mill
[Chapter 4, "The Sphere of Government—Nineteenth-Century Theories: John Stuart Mill," *The Freeman*, January 1980]
Herbert Spencer
[Chapter 5, "The Sphere of Government—Nineteenth-Century Theories: Herbert Spencer," *The Freeman*, August 1980]
T. H. Huxley
[Chapter 6, "The Sphere of Government—Nineteenth-Century Theories: Thomas H. Huxley," *The Freeman*, October 1980]
5. Aristotle and Plato
6. The Answer of John Locke
7. The Answer of The Founding Fathers
(The Federalist Papers)

8. Wilhelm von Humboldt on government
9. James Mill on government
10. Henry Maine's Answer
[Chapter 7, "Popular Government," *The Freeman*, October 1977]
11. Why government grows
[Chapter 8, "From Spencer's 1884 to Orwell's 1984," *The Freeman*, February 1969]
12. Why Power is Centralized
13. Democracy vs. Alternatives
14. Causes and Remedies
[Chapter 9, "Why Politics Is Insoluble," *Modern Age*, Fall 1984]
[Chapter 10, "The Task Confronting Libertarians," *The Freeman*, March 1968]

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IS POLITICS INSOLUBLE

HENRY HAZLITT

Edited by Felix R. Livingston

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During the ninth decade of a long and productive life, He (1894–1993) made plans to write a treatise on political science. prepared a provisional outline for a book that would have the title *Is Politics Insoluble?* Hazlitt planned to include chapters on legislation, government growth, centralization of power, and alternative forms of government. Other chapters would touch on ideas of prominent political thinkers, including Plato, Aristotle, John Locke, America's Founders, James and John Stuart Mill, Herbert Spencer, T. H. Huxley, Wilhelm von Humboldt, Henry Maine, and Robert Nozick.

In a 1984 letter confirming the donation of his personal library to The Foundation for Economic Education, Hazlitt wrote: "one particular book that I am still planning...is already half written: *Is Politics Insoluble?* The title chapter was published in *Modern Age*, and about four or five additional chapters in *The Freeman*. I hope to do up to perhaps a half dozen more to make a complete book." Unfortunately, Hazlitt never finished the project and eight of the outline's fourteen chapters remained unwritten at the time of his death.

Now, The Foundation for Economic Education is proud to make the six completed essays—along with four other Hazlitt pieces—available in one collection. Edited, and with an incisive introduction by Felix R. Livingston, Hazlitt's essays remind us that just as there were two Greeces in history, constitutional Athens and despotic Sparta, so are there two Americas. The first is bound by the rule of law and upholds the private property order and its attendant obligation of self-reliance and self-discipline. In this America, "every man, whoever he is, can act best and live happily." But there is also a second America. Its laws go far beyond those that are "just, definite and minimal," and its judges twist precedent to transform judicial decision into judicial legislation. In the second America, opportunities to "act best" are narrowed and hopes to "live happily" are dashed. This anthology will help readers understand how the first America can be realized and how dangers inherent in the second America can be diminished.

Felix R. Livingston, Dean of Institutional Research at Washington & Jefferson College in Washington, Pennsylvania, was Vice President of The Foundation for Economic Education from 1994 to 1997.

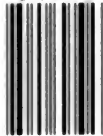
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