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OF

DOROTHY ANN VIRGINIA McDONALD

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POLITICAL EQUALITY IN ANGLO - AMERICAN NATURAL RIGHTS THEORY:

AN ANALYSIS OF THE IS/UGHT RELATION IN POLITICAL ARGUMENT

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POLITICAL EQUALITY IN ANGLO - AMERICAN NATURAL RIGHTS THEORY:

An Analysis of the Is/Ought Relation in Political Argument

(Summary)

This thesis examines the problem of relating the apparently logically separate domains of 'ought' and 'is'. A logical gulf has not always separated evaluation and description. In stable periods 'oughts' tend to be spelled out in publicly accepted rules of behaviour. Morals and mores are one. But in periods of instability this reduction of 'ought' to conventional mores may be challenged by men who claim to base "true" morality on man's essential nature. This "true" morality may come to be actualised only to be challenged in turn as the cycle continues.

This study is limited to an historical analysis of the 'is'/'ought' relation in liberal society. The study examines the development of political equality in the Anglo-American world from the Protestant Reformation and the beginnings of secular egalitarianism. Liberal-democratic society, the product of four centuries of individualism, finds an inherent tension in its normative discourse between the claim to the autonomy of the moral agent and the claim to publicly accepted rules of behaviour. The autonomy of the moral agent, tending to moral solipsism and political chaos, was historically contained by grafting it to certain "normal" ways of judging. Individualistic men began by founding consensus on the natural right to freedom, articulated first by the Levellers, conceptualised by Locke, and actualised in America through Jefferson. This formula in time became identified with an outdated social structure and men found a new objective criterion in Bentham's utility principle. This in turn came to be regarded as a defence of middle class interests and men turned to Green's common good as the moral glue to bind them in a new community of discourse. With Green political equality, always implicit in the egalitarian perspective, became an unequivocal demand.

Natural rights, utility, and the common good are seen as sub-paradigms of the liberal egalitarian paradigm. Men view their political worlds through paradigms, "normal" and "extraordinary". The normal serve as explanations and justifications of established modes of life; the extraordinary as critiques of such life. This thesis traces the development of the sub-paradigms of this egalitarian paradigm which, from the seventeenth century on, guided individualistic men in their critiques of the normal non-egalitarian paradigms of their day. In confronting these normal paradigms egalitarian spokesmen still found themselves limited by their time, place and socio-economic milieu. These limitations often blinded them to the practical assertions which might reasonably be expected to follow from their egalitarian perspective.

This analysis of liberal-democratic normative discourse reveals the complexity of the dimensions of the 'is' which impinge on the 'ought'. A logical interdependence is seen to exist between 'ought' and 'is' in these ways. 1) Ought implies agreed right ways of doing things. 2) It is grounded in the "brute facts" of man's nature, his limitations, capacities, and interests, and his commitment to certain values and rules. 3) It implies

a set of facts judged significant and relevant within political paradigms. 4) And it finds in viable social organizations a minimum set of particular norms. It is in transitional phases when 'oughts' are cast adrift from the old rules of behaviour and have not yet found a new footing in established right ways of doing things that 'oughts' are seen to be independent of such factual moorings. Committed to the autonomy of the moral agent, liberal-democratic man denied the identification of 'ought' and 'is' in terms of any finalised specific right way of doing things. But he would continue to remake mores in accordance with his 'oughts' through a political process dedicated to an equal consideration of the opinions and claims of all citizens.

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P O L I T I C A L E Q U A L I T Y

in

ANGLO-AMERICAN NATURAL RIGHTS THEORY

An Analysis of the Is/Ought Relation in Political Argument

by

(MRS.) DOROTHY ANN VIRGINIA MCDONALD

Department of Political Economy

A Thesis submitted in conformity with the requirements
for the Degree of Doctor of Philosophy in the
University of Toronto

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P O L I T I C A L E Q U A L I T Y

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A N G L O - A M E R I C A N

N A T U R A L R I G H T S T H E O R Y

An Analysis of the Is/Ought Relation in Political Argument

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Chapter

I

I N T R O D U C T I O N

Setting the Scene

Political and social thought are now but have not always been confronted with the problem of joining or relating two logically separate domains: the world of 'ought' and the world of 'is'. In stable societies to say a man was a 'good' man conveyed a set of descriptive characteristics that a good man had. This is particularly marked in status-bound societies:

The society reflected in the Homeric poems is one in which the most important judgments that can be passed upon a man concern the way in which he discharges his allotted social function The word agathos, ancestor of our good, is originally a predicate specifically attached to the role of a Homeric nobleman To call a man agathos is to tell your hearers what sort of conduct they can expect of him¹

A man is agathos if he has the [virtue] of his particular and specific function.²

As MacIntyre points out there are in such situations no logical gulfs between factual and evaluative language:

Now assertions as to how a man has behaved are certainly in the ordinary sense factual; and

the Homeric use of agathos is certainly in the ordinary sense evaluative. The alleged logical gulf between fact and appraisal is not so much one that has been bridged in Homer. It has never been dug. Nor is it clear that there is any ground in which to dig.³

Even within our rapidly changing world of today, we can find islands of stability within the confused array of moral standards. There are ". . . the language and the concepts of those people who have continued to live within a tolerably well-established framework with a tolerably well-established moral vocabulary Members of this type of social group possess a list of what they take to be the virtues and vices They do . . . belong to a single homogeneous moral community with a shared language and shared concepts."⁴

It is in periods of crisis or of rapid social and economic change that men find their evaluative language cast adrift from its factual moorings, suspended in a void until new consensus evolves for attaching specific criteria and specific characteristics to evaluative words. For example, prior to the industrial revolution, i.e. from about 1688 to 1750, English society constituted a relatively stable community of moral discourse. But with the urbanization of the Industrial Revolution [came] . . . the destruction of the older forms

of community, in many cases rapidly . . . There is first of all the loss of the background of a given and largely unalterable natural order within whose limits men of different social rank all have to live. There is secondly the disappearance of the relative continuity and stability of social order . . . There is thirdly an end to the existence of shared and established norms, common to all ranks in the community, in the light of which everyone stands either vindicated or convicted by their own conduct⁵

. . . the changing structure of society makes it only too obvious to all parties that the alleged authoritative norms to which appeal is made are in fact man-made, and that they are not the norms of the whole community to which in their own way men of every rank are equally subject.⁶

We in the twentieth century liberal-democratic societies, backed up as we are by four centuries of individualism, carried along at bewildering speed into an ever more rapidly changing social and technological age, will probably never again find ourselves in the comfortable stable world of a finalised fusion of the 'ought' and the 'is'. This does not permit us, however, to escape the onus of choice and responsibility for reorganising actuality in conformity with our 'oughts', in conformity with our ideal pictures of our time and place as reflections of humanised social and political existence.

It is my intention to examine the political unfolding of these centuries of individualism, beginning with the

political implications of the Protestant Reformation, out of which arose the first stirrings of secular egalitarianism. As Lakoff has observed, new values were announced by Luther, Calvin and Muntzer which were to be given secular adaptation and application. Under their direction "Equality now [stood] as the ultimate and immediate goal of modern Western man."⁷ Yet the concept of equality was not to be given a single universal meaning. It was to express itself in three main streams, which Lakoff has identified as the liberal, conservative and socialist concepts of equality. Lakoff identifies the liberal stream with Luther's spiritual equality of all Christians, the conservative stream with Calvin's stress on the equal depravity of all men, and the socialist stream with Muntzer's Community of the Perfect. Summing up the liberal, conservative and socialist perspectives on man and society, Lakoff writes:

In describing human nature, the Liberal stresses the capacity for reason and the will to autonomy; the Socialist stresses common humanity, identical needs, and the inclination to productive labor; the Conservative stresses the power of the anti-social passions. For society, the Liberal advocates individualism, the Socialist, collectivism; the Conservative poses the choice of anarchy or absolutism whenever graded hierarchy is ruled out.⁸

It is my intention to follow the unravelling of the liberal egalitarian perspective within the Anglo-American tradition. In the process I shall note in the representative spokesmen of that perspective not the clear-cut distinctions Lakoff has delineated above but a tendency to recognise something of importance in the egalitarian perspectives of socialist and conservative as well - the value of community as well as of individuality, the potential rationality of all men but, equally, their potentiality for partiality, their basic moral and intellectual fallibility. As Lakoff has pointed out: "More pluralistic personalities may well feel that all three traditions stand for values which, in one degree or another, a good society must take into account . . ." ⁹ Malwyn, Jefferson and Green are such pluralistic personalities.

Within the Anglo-American tradition I have limited myself to the immediate social, historical and intellectual atmosphere in which these personalities developed their formative perspectives. Unfortunately, the demands imposed by an already formidable array of documentation within these confines precluded the exploration of the wider

historical, social and intellectual context which nurtured and influenced in so many ways the development of that Anglo-American tradition.

The liberal egalitarian perspective asserted the logical and moral primacy of individual conscience and reason. Man was from then on faced with an inherent tension between his claim to the autonomy of his moral self and his need for and claim to an objective standard or criterion to which any other equally reasonable moral agent would accede. Breaking loose from an identification of the 'ought' with the 'is' of conventional mores, the "masterless" man grounded his claims to validity for his moral utterances in a more fundamental realm of reality, the very constitution and condition of man as man. An examination of what is specifically human would reveal a dimension of brute fact about man. Not only does man have certain common characteristics as a biological species. Considered as a human being, he has a common core of values and rules in terms of which he thinks and acts as man.

This historical analysis of the 'ought' in liberal-democratic society will bring out its relation to three different dimensions of the 'is': 1) the 'is' of

conventional mores; 2) the 'is' of man's constitution and condition; and 3) the 'is' of the limitations of time, place and socio-economic milieu. The 'ought' is first identifiable with conventional mores. Morals and mores are one. But as men come to question the established mores the 'ought' breaks loose from such identification. Men come to ground the 'ought' in what they believe is a more fundamental reality, in the 'is' of the basic fabric and constitution of man as man. But man's view of man as man is in large part a reflection of his way of looking at the world and himself, his ideal picture of his time and place. And this ideal picture may be distorted or compromised by the limitations of his time and place and socio-economic milieu in the practical assertions that he makes as reflections of that ideal. His ideal picture may become actualised in part in the political, social and economic institutions of his society. Once more the 'ought' becomes identified with the conventional, the 'is' of established mores. But the autonomous moral agent turns away from this identification and once again constructs new ideal pictures of his time and place as critique of the conventionalised ideal of his day. Thus the 'ought' confronts the 'is' of conventional mores, the 'is' of man's

constitution and condition, and the 'is' of the limitations of time, place and socio-economic milieu of its advocate.

Guided by the yardstick of the intrinsic equality of man, the individualist man of the seventeenth century found landmarks by which to move from one practical assertion to another as expressions of that perspective: the equal right to religious freedom; the equal right before the law; the equal right to have his interests and claims heard, considered and satisfied; the equal right to establish, control and participate in his political system.

The autonomy of the free moral agent with its tendency to moral solipsism and political chaos was contained by grafting it to certain common intuitions, certain agreed "normal" ways of judging. Men resolved the tension between their autonomy and the claim to public, ascertainable criteria first through consensus on the natural right of man to freedom as expressed in the Lockean model. Thus anchored in consensus, Americans could find their way in mapping out a political society for equal, free, rational, moral agents; Lockean Englishmen after the Revolution of 1688 found a focus of identity and community. But this model in turn became identified in England not with the facts of natural, normative man but, in Blackstone's

ormulation, with an entrenched establishment, with an outdated and iniquitous legal, political and social structure. Once more the autonomous individual broke loose from his factual moorings and sought a new objective criterion, the principle of utility, upon which to build a community of discourse. In turn this formula became suspect as the bulwark for defence of middle class interests, and men looked to Green's concept of the common good as the moral glue to bind them once again in a new community of discourse.

With Green came the final unfolding of the political implications of this egalitarian perspective, political equality, the demand for and gradual recognition of universal manhood suffrage. Yet Green's common good no more than Bentham's utility principle or Jefferson's natural rights formula was able to contain the autonomous moral agent of twentieth century liberal-democratic society. In face of the frustrations of seeking a common objective standard, a finalised vision of the truth, amid the confusing array of objective criteria advanced, liberal-democratic man is taking a new look at rationality. He is coming to realise that provided one keeps anchored in the "moral point of view", an equal respect for the

worth and dignity of each man, the only viable way to achieve publicly ascertainable standards to guide such men is the democratic process of discussion. In an atmosphere of empathy men can communicate their experiences, their feelings and their beliefs, and resolve their common problems together.

The Rationality of Normative Discourse

Our political recommendations both express and give direction to our views of what it is to be a man. Here we find ourselves involved with concepts that defy a neat dichotomy of evaluation and description. For words like 'man' are packed with evaluative significance. Being human ourselves we are naturally interested in human beings, in what sustains and enriches human existence. This positive attitude tends to remain constant while our descriptive contents of man change:

'Man' does carry a charge of evaluation; . . . we are generally in favour of the existence of human beings, and 'man' carries with it that implication of a positive attitude, as well as descriptive implications of two-leggedness, rationality, or whatever else. Indeed, the positive attitude . . . is strong and constant, while the range of human qualities to which it may refer is large and various. It follows that if . . . we associate 'man' with one of its

various descriptive meanings in particular . . . we shall be tacitly approving and commending certain human qualities above the others, and in a powerful way.¹⁰

Some of the descriptive content of 'man' seems intrinsic to the very way in which we think. Berlin expands upon his evaluative/descriptive concept 'man':

The basic categories (with their corresponding concepts) in terms of which we define men - such notions as society, freedom, sense of time and change, suffering, happiness, productivity, good and bad, right and wrong, choice, effort, truth, illusion (to take them wholly at random) - are not matters of induction and hypothesis. To think of someone as a human being is ipso facto to bring all these notions into play: so that to say of someone that he is a man, but that choice, or the notion of truth, means nothing to him would be eccentric: it would clash with what we mean by 'man' not as a matter of verbal definition (which is alterable at will), but as intrinsic to the way in which we think, and (as a matter of 'brute' fact) evidently cannot but think.

This will hold of values too (among them political ones) in terms of which men are defined
 . . . if I find a man to whom it literally makes no difference whether he kicks a pebble or kills his family, since either would be an antidote to ennui or inactivity, I shall . . . begin to speak of insanity and inhumanity . . . It is cases of this kind, which seem to make it clear that ability to recognize universal - or almost universal - values, enters into our analysis of such fundamental concepts as 'man', 'rational', 'sane', 'natural', etc. - which are usually thought of as descriptive and not evaluative - that lie at the basis of modern translations into empirical terms of the kernel of truth in the old a priori Natural Law doctrines. It is considerations such as these, urged by the Neo-Aristotelians and the followers

of the later doctrines of Wittgenstein, that have shaken the faith of some devoted empiricists in the complete logical gulf between descriptive statements and statements of value, and have cast doubt on the celebrated distinction derived from Hume.¹¹

Some of the rules we have seen also intrinsic to man, given his constitution and condition: "My attempt to find some meaning in the notion of a universally valid, unpromulgated moral rule thus comes to rest with the notion of a rule which is essential to social life in roughly the way that the laws of logic are essential to the life of science or discourse. It rests upon the drawing of a cognitive-moral parallel and the suggestion that 'appropriate' and 'self-defeating' or 'absurd' are primitive notions basic to, and shared by, both domains. The belief in natural law becomes the belief that there are, for the life of the body politic, certain rules whose denial entails the frustration of the enterprise; or . . . that political life rests upon certain moral presuppositions' or universally valid moral rules - rules whose denial is self-defeating."¹² Underlying all discussion of social and human organisation is the assumption that men want to live, that survival is worthwhile and that survival is only possible within some social organisation. As Hart has pointed out:

. . . our concern is with social arrangements for continued existence, not with those of a suicide club. We wish to know whether, among these social arrangements, there are some which may illuminatingly be ranked as natural laws discoverable by reason and what their relation is to human law and morality. To raise this or any other question concerning how men should live together, we must assume that their aim, generally speaking, is to live. From this point the argument is a simple one. Reflection on some very obvious generalizations - indeed truisms - concerning human nature and the world in which men live, shows that as long as these hold good, there are certain rules of conduct which any social organization must contain if it is to be viable Such universally recognized principles of conduct which have a basis in elementary truths concerning human beings, their natural environment, and aims, may be considered the minimum content of Natural Law¹³

Hart outlines five such truisms: human vulnerability, approximate equality, limited altruism, limited resources, limited understanding and strength of will. Hart argues that "in each case the facts mentioned afford a reason why, given survival as an aim, law and morals should include a specific content".¹⁴ He insists that any political organisation must reflect these truths:

For it is a truth of some importance that for the adequate description not only of law but of many other social institutions, a place must be reserved, besides definitions and ordinary statements of fact, for a third category of statements: those the truth of which is contingent on human beings and the world they live in retaining the salient characteristics which they have.¹⁵

If we consider what we are about when using evaluative language we find that we argue and defend our recommendations and prescriptions. We point to the consequences of pursuing this 'ought' instead of that, we show the relevance of our 'oughts' to the satisfaction of human needs, wants, interests and desires. Any elaboration of what interests, needs, desires, are to count as relevant and significant to normative discourse can be challenged. This need not lead to a denial of the relevance and significance of human interests, needs, desires, as such to moral and political recommendation. I can, in other words, acknowledge that human interests, needs, desires as such are relevant to normative discourse without conceding that any particular combination of these is what we ought to satisfy.

In the very uttering of an 'ought', in the offering of a moral commendation or political recommendation, we invite argument. For terms like 'ought', 'right', 'good', imply a realm of discourse beyond mere likes, dislikes, and inclinations:

. . . when I use moral concepts I do at least try to make a claim which goes beyond the expression of my own choices and feelings. If I tell you that 'You ought to do this' . . . I present to you a claim which by the very use of

these words implies a greater authority behind it than the expression of my feelings or choices could ever give it. I claim, that is, that I could point to a criterion in virtue of which you too ought to recognize the authority of the standard presented. It is obvious that this activity of appealing to impersonal and independent criteria only makes sense within a community of discourse in which such criteria are established, are shared There being an agreed right way of doing things is logically prior to the acceptance of authority as to how to do things.¹⁶

Contextually, I imply certain things in saying 'I ought to do this': a) that I approve of what I am commending or recommending; b) that I have good reasons for doing so; c) that anyone else in my situation would do the same; and d) that in the end it is I, the free, rational, moral agent who must decide whether this is my moral or political obligation. (b) and (c) imply that what I am advancing is a position that any other rational moral agent would accept in view of the community of standards, principles, and rules we share. I must make good this claim by convincing others to whom my remark is addressed that we do or at least, can, operate within such a community of discourse. (a) and (d) have not always been contextually implied in normative discourse. This total complex of implication is the unravelling of the "moral point of view" as seen from the perspective of liberal-democratic society. It is the culmination of four

centuries of individualism, of the natural rights theory of moral and political thought. Yet despite the autonomy of the individualist moral agent, there is still the unapplied claim that what he prescribes, his 'oughts', are grounded or can be grounded in the 'is' of publicly ascertainable rules, principles and criteria.

To understand the contextual background of any particular normative discourse requires the historical backdrop, a consideration of the way in which value words have changed their meanings and uses through time. A broad historical sweep enables us to recognise that there is no single language of morals. Such language varies with historical setting. Thus in a stable, status-bound society, moral words tend to have fixed descriptive meanings. In such a society the way to behave is generally agreed upon. There is no questioning, no argument, and thus no emphasis upon choice. But with the breakdown of stability and consensus, value words become dislodged from their descriptions. In periods of social upheaval, some cling to the old descriptions, others demand new criteria for applying value terms. Men move beyond the reduction of morality to the conventional, the 'is', and begin to contrast the conventional morality unfavourably with the

'natural' or 'true' morality. The moral becomes a term void of content or filled by a confusing array of contents until, if stability returns, new generally acknowledged criteria are established for the application of value words.

And 'good' and 'bad' themselves will carry at first [a] conservative suggestion, being taken as convenient short names for the established mode of life. But they . . . have a demon in them By 'good' we can approve of anything . . . ; and so there has entered into life the capacity to look at every habit, situation, or belief, no matter how natural it may seem, and wonder whether it might not be better than it is Forthwith, the whole array of words in which our accepted values are embodied . . . are cast off from their factual moorings By having been gradually purged of descriptive meaning until they are no longer tied in any way to any feature of the world, 'good' and 'bad' ['ought' and 'ought not'] enable us to contemplate as possibilities an infinite variety of values, an infinite array of schemes of life.¹⁷

This "demon" in evaluative terms, this tendency to shake off their identification with any specific way of life, led to an inherent tension in the normative claims of liberal-democratic man. The claim to the autonomy of the moral agent, his ultimate responsibility to choose his values, to make them his own by an act of commitment was in tension with the claim to the rationality of that commitment, that those values would be the choice of any other rational,

ee, moral agent. If that claim to rationality could not be sustained, the concept of value would lose its meaning. Attitudes of approval and disapproval would tend to fit the analysis of moral language as the mere venting of the speaker's inclinations, likes, dislikes, whims, and caprices.

Rationality as a shared community of values, principles and criteria, includes as well the concept of "good reasons" - for opting for this rather than for that. Such reasons are seen as in some way bound up with the facts of human nature and the world we live in and our beliefs about them. This implication has not gone unchallenged. As of the eighteenth century, philosophy grew conscious of a logical gulf between the 'ought' and the 'is'. It was logically impossible, it was argued, to deduce an 'ought' from solely factual premises (violation of the so-called "Humean Law"). Hume's celebrated passage in the Treatise spelled out the nature of that "law":

In every system of morality, which I have hitherto met with, I have always remark'd that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this

ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it should be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it. But as authors do not commonly use this precaution, I shall presume to recommend it to the readers; and am persuaded that this small attention wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason.¹⁸

Hume seems from this passage to be casting serious doubt on the possibility of inferring from the existence of anything, be it God or the existence of any state of human affairs, that we ought to do anything. Yet this interpretation of Hume's meaning would be inconsistent with his stress on the importance of the connection between morality, human happiness and approval. MacIntyre¹⁹ argues that in fact Hume denies the autonomy of morals and spends the following sections of the Treatise doing so. Hume, MacIntyre contends, bridges the apparent gulf between 'is' and 'ought' through the important emphasis he places on human needs, feelings and aspirations.

In the section following the is/ought passage, "Moral Distinctions Deriv'd from a Moral Sense", Hume offers his analyses of 'good' and 'ought'. Moral distinctions, he contends, are grounded on feeling, or

sentiment and not on reason. But this moral sentiment "of a peculiar kind" such that it is sharply distinguished from mere personal liking or inclination. This sentiment is caused "only when a character is considered in general, without reference to our particular interest".²⁰ A moral judgment is not limited in its meaning to the presence of such disinterested approval. It is a judgment directed as well at the intrinsic value of an act or person or at the tendency of an act to produce human happiness. Thus moral judgments for Hume are corrigible. We can be mistaken as to the intrinsic worth of a thing or person or as to an action's tendency to produce human happiness, and we can err in the perspective from which we survey the situation.

Hume cannot, I believe, be classed with the naturalists. He does not define moral words in terms of the approval of this, that or the other man. His moral approval is that of the ideal man, the disinterested, benevolent spectator who can transcend considerations of private interest and examine acts, etc., in the light of their effect on human happiness for those directly or indirectly affected by such acts. Though he appears to ground morality on matter of fact, on objects of feeling,

ose feelings are not the feelings we have necessarily here and now but the feelings we should have when making moral judgments. His stress on feeling, on the importance of human sentiment and aspiration ties him closely, I think, to ethical writers who see the close relationship of morality to human ends and purposes.

Kantian morality, on the other hand, building on the is/ought issue raised by Hume, offered a clearcut distinction between the world of fact and the world of 'ought', the world of our interests, wants, desires, needs and purposes, and our moral wills. The autonomy of morals demanded its logical independence not only of this or that factual mooring but of any factual mooring. A logical gulf separated the 'ought' from the 'is'. With twentieth century philosophy a new logical impossibility was noted. It was not only shown to be logically impossible to deduce an 'ought' from solely factual premises. It was logically impossible to define evaluative terms in descriptive language (the "naturalistic" fallacy).

Twentieth century moral philosophy serves as a footnote to Hume's celebrated passage on the is/ought relation. Value terms are seen to have "something extra" which cannot be eliminated by the mere description of whatever we call good. Following up this insight, the

motivist school denied that in normative discourse we are describing anything. The "something extra" in evaluative language is the mere evincing of our likes and dislikes, manipulated by us to persuade others to have similar likes and dislikes. A more sophisticated and authentic view of this "something extra" came with the analysis of evaluative terms as evaluative rather than motive. Value words were now seen as having both descriptive and evaluative aspects but the latter was the key aspect. Evaluation came to be seen as commending and approving which in turn brought out the close link between evaluation and choice, guidance and advice, decision and action.

With a new stress on language-in-use, concern became centered on the contextual background of moral discourse. Getting out from this ordinary language, morals-in-use perspective, philosophers became aware not only of the importance of attitudes of approval and disapproval but of the implied claims behind such attitudes - that there are good reasons for such approval and disapproval, reasons that could appeal not only to the agent himself but to any agent faced with a similar situation.

Philosophers grew aware of the relation of "good reasons" for moral choices to our interests and aspirations as

members of a political and social community. They came to recognise that reasoning is not limited to a single level. There are different modes of reasoning available for different interests and activities. "Reasons for" rather than "premises in" an argument was seen as a more rewarding analysis of argumentation both in science and in moral discourse at the ultimate level of paradigms of explanation, ways of looking at the world and ways of living and behaving in that world. They further recognised that such ways of life are ultimately based on the facts of the human condition as validating conditions for the realisation of ways of life and as justifications for opting for such ways of life. They came to see that such ways of life and the norms they advocate have a history. If stabilised and accepted, the rules of such ways of life tend to acquire a purely descriptive meaning. The distinction between meaning and criteria in normative discourse tends to become blurred. 'Thoughts' come to be spelled out into publicly accepted criteria, principles and rules of behaviour. Morals and norms become one. But when challenged by new ways of life such descriptive meaning evaporates as rules lose their meaning and significance for a society. At this stage

moral becomes dislodged from and a critique of the
of the established mores.

Let us grant that no 'ought' can logically be
aced from an 'is'. We need not concede the further
nt that therefore 'ought' cannot, outside the confines
educibility, be grounded in facts. Let us grant that
ds like 'good' and 'ought' carry important evaluative
ning that enables us to use them for choosing, guiding
advising and that this function is lost if we tend to
fine such general words of commendation and recommendation
descriptive terms. We need not then jump to the
nclusion that such evaluative words have no relation to
e world of fact, description and reality.

However, in defending our normative positions by
peal to facts we are engaged in a treacherous game. For
cts are vague, variable. In the "bloomin', buzzin'
nfusion" of the world around us there is a multiplicity
'facts'. Which are we to choose as relevant?
gnificant?

It is misleading to speak of 'the facts of a
situation' in such a way as to suggest that
there must be a closed set of propositions
which, once established, precisely determine
the situation. . . . the situation is
given, but not 'the facts of the situation';
to state the facts is to analyse and interpret
the situation . . . Situations do not pre-
sent themselves with their labels attached
to them . . . -

the crux is in the labelling, or the decision depends on how we see the situation.²¹

Whether we are engaged in normative reasoning, wondering what we ought to do, what kind of life to follow, or in scientific reasoning, wondering how this empirical generalisation fits the facts, whether it corresponds to reality, we cannot even begin to ask these questions without first "labelling the situation". We must look at the multiplicity of facts from this perspective rather than from that, and choose this perspective rather than that, because it helps us in solving our problem of living a more satisfactory, a better life, of understanding and controlling the world around us.

Our interpretation of the situation comes in response to what our particular purposes, interests and activities may be. Thus, if we are concerned to understand the world around us and to control it for human ends, we must first step back from a concentration upon the scientist at work in the accumulation of facts and the formulation of empirical generalisations from these facts. We must pose the key questions - why did he pick those facts as significant instead of these? what determines his concepts of significance and relevance? And we find that the whole

scientific enterprise is held together by paradigms of explanation, ways of looking at the world that provide focus and relevance for the investigation of the multiplicity and variability of the world of facts. The choice of this paradigm as opposed to that is not arbitrary:

A theory maintains its hold over its practitioners, not because it has resisted falsification or because it fits the facts as a glove fits the hand, but because the scientific community agrees that the theory fits the facts 'better' when the facts are viewed from the perspective of that theory.²²

New paradigms appear when the relation between the accepted paradigm and the 'facts' becomes so distorted that the facts no longer present puzzles to be solved but anomalies that defy solution. The new paradigm "proposes somewhat different rules for inquiry, a different problem-field, as well as different notions of significance and of what constitutes a solution".²³

Taking up Wolin's fruitful suggestion that we look at political theories as paradigms, as ways of looking at the political world that help us to understand and grasp what we are about in a political context, we find they offer guidelines for determining what is significant and relevant for an appreciation of that world. The great political theorists were rarely engaged in offering

perspectives that correspond with the facts. Most of their work was stimulated by crises in their political worlds:

In each instance the theorist's response was not to offer a theory that would correspond to the facts . . . Derangement in the world signified that the facts were skewed theories were offered as symbolic representations of what society would be like if it could be reordered.²⁴

These paradigms of explanation require creative acts of imagination, the capacity to evolve comprehensive wholes, total ways of looking, a coherence rather than a correspondence theory of truth. And our decision to accept this political paradigm as opposed to that is determined by asking ourselves whether the one is more illuminating, more in accord with what we experience as actors in the political arena:

The ultimate test of the adequacy of the basic patterns by which we think and act is the only test that common sense or the sciences afford, namely, whether it fits in with the general lines on which we think and communicate; and if some among these in turn are called into question, then the final measure is, as it always must be, direct confrontation with the concrete data of observation and introspection which these concepts and categories and habits order and render intelligible. In this sense, political theory, like any other form of thought that deals with the real world, rests on empirical experience²⁵

What is it that turns us against a particular paradigm?

[1:] . . . seems to those who reject it to ignore something that they know directly of human nature and thereby to do violence to what we are, or what we know . . .²⁶

In the light of these considerations we can move away from a sterile concern for establishing a clearcut separation of the evaluative and descriptive. We can now see that human discourse abounds with terms that fuse the evaluative/descriptive, among which are many of the links in our chain of thought and understanding: 'sane', 'rational', 'reasonable', 'real', 'man', 'human being'. We can now see that our ways of looking in a political context, our political paradigms, are a fusion of a multiplicity of categories, descriptive, evaluative, and a hybrid of both, which defy separation in thought and in practice. And we can now see that these political paradigms, in the final analysis, are set within and are an expression of our views of human nature and the human condition, which in turn involve an evaluative/descriptive fusion of characteristics, values and rules.

The Ideal of Equality as Political Paradigm

Locke offers, in Wolin's terminology, an

extraordinary" paradigm of natural law, natural rights, these basic concepts, equality and freedom, operate, Pett suggests:

. . . like that of such abstract concepts as mechanism or atomism in scientific explanation. To say that the world is a machine, or is composed of irreducible particles . . . is . . . to be committed to a general programme of research, to an ideal of what would constitute a satisfactory explanation Such schemes of scientific thought . . . are landmarks which give us our bearing as we advance from one particular assertion to another, without being themselves particular assertions or axioms from which particular assertions can be deduced.²⁷

to see in the utterance "all men are equal" a trivial tautology or a patent falsehood is to do violence to the spirit behind it. Only when, through an act of creative imagination, we view it as the basic concept in a new way of looking at men in social and political relationships, when we grasp the total complex of values, interests and claims that lie behind it.

Though 'equality' is an abstract term it does not lack, as 'good' does, specific descriptive content. "To believe in equality is to believe, roughly, that people ought to be treated alike, especially by the state, in certain respects in which they are, or tend to be, treated differently . . ." ²⁸ The very abstractness of its

descriptive meaning is also its strength: "If, by virtue of this abstractness, the word can be used to commend very different things in different contexts, it can also be used to maintain a fundamental consistency of thought over great distances of space and time."²⁹

Equality, seen as a revolutionary liberal paradigm, focusing on the value of human personality, allows us to detect "a fundamental consistency of thought over great distances of space and time", a landmark giving men their bearings in moving from one practical assertion to another and enabling us to recognise in the following meaning of democracy a recognisable practical assertion within that tradition.

We have taken "democracy" to mean not merely a set of political institutions like universal suffrage, parliamentary government, and decisions by majority procedure, but also a set of principles which such institutions tend to realize The principle of universal suffrage is a way of giving practical recognition to the moral value of every man as a source of claims; it is also a way of providing that governors will attend to them. Again, the principle "one man, one vote" . . . is an expression of the prima facie equality which is basic to the idea of justice. And without the freedoms of discussion and association, there is no way of ensuring that a man will have the chance to state a claim, and no hope that it will receive impartial consideration.³⁰

We shall trace the gradual unfolding of this political dimension of the liberal equality paradigm. We

all find an inherent tension between this normative paradigm and the worlds in which men sought to articulate and actualise it. And we shall find this overall equality paradigm expressed in three sub-paradigms: natural rights, utility, and the common good.

Thus, we shall find that in America the validating conditions were operative for the realisation of the normative rendering of society in a natural rights idiom.

When one's ultimate values are accepted wherever one turns, the absolute language of self-evidence comes easily enough.³¹

For the Levellers, the self-evidence was limited to the confines of the dissenting religious community; for Locke's Englishmen it would require study and development to grasp such self-evidence, and not all would apply to themselves. The Lockean Englishman became the accepted norm, following the Revolution of 1688. But in the hands of Blackstone the original revolutionary, innovatory function of the natural rights theory was transformed into conservative support for the status quo which increasingly could not cope with the anomalous facts of a rapidly changing social and economic milieu. Paradoxically, in the year 1776 when Americans were proclaiming their act of independence and basing "their claims on a philosophic

synthesis of Anglo-American legal history and the reason
of natural law", with "Blackstone . . . [as the] rock on
which they relied",³² Bentham published his attack on
that same Blackstone and that same natural law as inimical
to any extension of the claims to equality and freedom of
the as yet politically unrepresented bourgeoisie. The
past had been good to the Americans and they knew it. For
they had been able to build what they wanted on the
American heritage. The past, for Bentham, on the other
hand, was shackling England with an outdated, obscure and
arbitrary legal, political and social structure. Thus
it sharply accentuated the interdependence of political
ideology and political reality, and political
ideology could be observed as expressive of a normative
ideal and as conditioned by the political reality of time
and place. Unable to serve the rising demands for equality
and freedom of an articulate middle class, natural rights
were replaced by a new innovative formula, utilitarianism.
In turn gave place to Green's common good as utility
became identified as the symbol of an entrenched
bourgeoisie.

The basic paradigm, the ideal of equality, remains.
The sub-paradigms expressive of that ideal change as

which in turn becomes identified with entrenched and favoured classes and so loses its capacity to carry through the practical assertions that time and place demand as a reflection of that ideal. Beginning with natural rights theory, equality is conceived as the equal right to free life. But in the face of a mounting reaction to revolution and violence with which that theory became associated; in the face of the obvious reactionary perversion of it as supportive of an entrenched establishment; with the theological framework crumbling in the face of the obvious manipulation of religion in support of the status quo, a common intuition dies as a community dies. A new formula for equality is required, utility, the equal right of all interests to be heard and considered, a forum in which men may mould a common discourse in a society of strangers. In turn utility becomes suspect as it reinforces the interests of the established bourgeoisie. It is replaced by a new equality theory, the common good, the equal right to full self-development of all men. Political equality is progressively demanded as an expression of this ideal of equality: first, as government by consent, the expression of equal freedom; then as a specific democratic organisation of society as the best

assurance that all interests will be equally considered; and finally, as a democratic process providing the best avenue for the full self-development of all men as first class citizens.

The Rise and Fall of Three Sub-Paradigms

I shall follow the historical development of the liberal equality paradigm through its sub-paradigms - natural rights, utility and the common good. The natural rights theory found its first articulation in the Levellers, its conceptualisation in Locke, and its actualisation in America. It was replaced by new theories, utility and the common good, as it became captive of reaction and the status quo. Beginning with the Levellers reminds us that the concept of liberal equality, in its formal and substantive dimension, finds its ultimate rationale within an ideal of equality, a respect and consideration for the dignity and worth of persons as such:

The theory of natural rights is simply the logical outgrowth of the Protestant revolt against the authority of tradition, the logical outgrowth of the Protestant appeal to private judgment, i.e. to the reason and conscience of the individual.³³

In the process of the adaptation of this equality paradigm new ways of looking at rationality develop. Through time those committed to the ideal of equality revised their views of the objective standard to which appeal should be made in reaching and reconciling moral positions. First grounded in God's rational will, new grounds were found in self-evidence, in utility, and finally, in the full development of human personality. But these criteria in turn were challenged. How does one interpret God's will and whose interpretation accords most with His will? How can we point to self-evidence when there seems so little consensus? If happiness be our standard, in what does it consist? If self-development, in what does this consist? Thus in the very unravelling of the paradigm of equality liberal-democratic man confronted the inherent tension between his demand for autonomy and his demand for established standards of rationality. In time men realised that perhaps their view of rationality was itself suspect. To be reasonable and to arrive at reasonable decisions in matters of conduct did not require the search for and achievement of rationality as a final vision of the truth, a set of unchanging, eternal verities. The clue to a new way of

ooking at rationality could be found in the first
 learning for the achievement of human equality and
 freedom in the priesthood of all believers, in the
 community of dissenting church and Cromwellian ranks, in
 the American democratic experiment, and culminating in
 Green's community of first class citizens. They came to

ee

. . . the life of reason as it is, in which
 doubt and vagueness, incompleteness and
 disagreement, are just as much the inspiration
 of our thinking as they are its flaws; . . . in
 which each of us finds his own security not in a
 final system of conclusions to which others must
 accede, but in an endless process of investigation
 in which all can join³⁴

. . . . The claim to a complete and final vision
 of the lot of man, which seemed to make sense when
 groups were relatively isolated from each other
 and relatively stable in their circumstances,
 cease[d] to make sense The moral
 attitude [became] that of consideration and
 regard [They came] to think of values as
 proposals for common action rather than as self-
 evident principles, divine laws, or historical
 necessities³⁵

Jefferson's dictum held firm. The only unchanging element
 is the inalienable rights of man, the moral point of view,
 respect for the dignity and value of human personality.
 political process that allows for an equal consideration
 of the opinions and claims of others becomes the avenue to
 reasonable and humane social existence.

Yet this description of the "liberal" or "liberal-democratic" way of life can be challenged in the face of the telling critiques of the contradictions and inconsistencies inherent in that tradition as it has developed within the capitalist ethos. Macpherson's critique of that ideology is justified. A liberal defence of equal freedom, of equal self-realisation, fits ill with a defence of the economic freedom of capitalism which denies to most the operational necessities for realising such goals.

Admittedly, equality and capitalism, equal full self-development and a market society, are contradictions in terms - now. But they were not always seen to be so. For Lilburne or Locke or Bentham equal freedom in every aspect of life was demanded. Even Green at the height of the worst abuses of the capitalist system found the sources of those abuses in the habit of servitude andopathy generated by an outgoing landed aristocracy. Of the theorists we shall examine only Jefferson perceived the inequalities inherent in the capitalist ethos and its threat to the dignity of human personality. Locke sincerely held that all men should have equal freedom, equal right to life without realising that an emphasis on

the equal right to unlimited accumulation would frustrate the realisation of the former ideals. Yet as Macpherson points out: "Locke could not have been conscious that the individuality he championed was at the same time a denial of individuality. Such consciousness was not to be found in men who were just beginning to grasp the great possibilities of individual freedom that lay in the advancement of capitalist society."³⁶

Thus in Locke and even before him, in the Lilburnian rendering of the Leveller position, begins the undermining of the spiritual and moral truths of liberalism as it sprang from the religious and moral protests of protestantism. One can even argue that the whole liberal philosophy degenerated into mere bourgeois freedom, i.e. economic freedom, until Mill and Green sought to restore the spiritual foundations of liberalism. But because of the self-contradiction which has evolved between these types of freedom must we throw out the spiritual message that was, and still is, there? What was that message? That men qua men have intrinsic worth, that interference with their capacities to choose and mould values, ends, goals, must be justified, reasons must be given.

Within the limitations of their time and place

natural rights theorists and their successors, Bentham and Green, sought to reconcile their rhetoric with reality, to remove the actual inequalities of their time and place that made a mockery of the equal rights of men. Guided by a fundamental consistency through their commitment to the ideal of equality, they challenged their own age to reconcile the facts of their time and place with that ideal. This can be seen in the Levellers' attack on religious, political and military tyranny in all the multiple forms in which they confronted them in that turbulent age; in their equally vehement attack on the vast inequalities between rich and poor and their demand for the amelioration of the condition of beggars and paupers. It can be seen in Locke's demand for religious toleration and his spirited attack on arbitrary political rule. He remained blind, however, to the tyranny of the relationship between employer and wage-earner and held the complacent belief that contemporary virtual representation was a genuine rendering of government by consent. In Jefferson we find the fullest and most profound grappling with the implications of the equality principle in every facet of man's relationship with man. But even here political wisdom is identified with men of Jefferson's

social milieu and women are never conceived as part of the concept 'man'. In Bentham we find invective hurled at the inequalities of condition that made a mockery of equality before the law and a concerted attack on the myth of virtual representation and a demand for genuine representation. Yet he showed a marked willingness to limit the extension of such representation to the bourgeoisie.* In Green we find a redefinition of the moral and spiritual premises of the liberal equality paradigm, an unqualified demand for universal manhood suffrage, and a redefinition of freedom in positive as opposed to negative terms as essential to genuine self-development of all men. Yet, with the exception of Jefferson, there was no recognition of possible frustration of their ultimate values in face of the gross

* His penchant for a householder franchise persisted even into his later democratic phase. Thus in Radicalism Not Dangerous which Bowring dates from November 1819 to the middle of 1820, Bentham writes: "In regard to extent, I for my part, if it depended on me, would gladly compound for householder suffrage; but I do not see how those who on this plan would be excluded from the right of suffrage, and also would perhaps constitute a majority of male adults, should be satisfied with such exclusion . . ." J. Bentham, The Works of Jeremy Bentham, ed. J. Bowring (1838-1843) (reissued, 1962; New York: Russell & Russell, 1962), III, 599.

inequalities of wealth bred by unfettered economic freedom. Marx and his successors have exposed these contradictions and we are even yet struggling to resolve their antinomies in conformity with the ultimate paradigm of equality. Thus we find men limited not only by the perspective of time and place but by the perspective of their social and economic milieu.

We have discovered certain 'facts' of particular relevance to political recommendation. There are, first of all, certain 'brute facts' about human nature and the human condition. Berlin has noted certain basic categories in terms of which we think of man. We think of men as sane or insane, rational or irrational. We think of their actions as right or wrong. We think of their qualities as good or bad. We think of their assertions as true or false. Some of the categories in terms of which we think of men are purely descriptive - for example, their sense of time and change. Others are obviously evaluative - for example, the notions of good and bad, right and wrong. And still others are descriptive/evaluative - for example, sane and insane, rational and irrational. Berlin has observed that there are certain common values which are implied in our very understanding of what it is to be

"sane" or "human". Thus we find ourselves thinking in terms of insanity or inhumanity when we confront a man who finds in the killing of his family as good a way of counteracting boredom as any other form of activity. Such common values as pleasure and survival are fused descriptive/evaluative notions. We desire and value at the same time the avoidance of pain. Thus pain is for us a descriptive/evaluative notion. This is equally so in our attitude to "survival". We desire it and value it at the same time. Hart has shown that given this fact about human beings that they want to survive and that they find survival worthwhile, and given certain features of man's constitution and condition - his vulnerability, approximate equality, limited understanding and strength of will, etc. - any social organisation as such will express certain common rules such as those against violence and theft.

These facts of the human constitution and condition are "discovered". They are aspects of the human condition independent of human convention and prescription (though the form in which they are expressed is of course a matter of human convention and custom). Being discoverable they tend to fall logically into the classification of 'facts'

as we ordinarily understand the term. For they appear to be verifiable, observable, "out there" to be confirmed and pointed to in much the way common sense points to the facts in an existential sense.

We have encountered another category of facts in an extended sense of the ordinary meaning of that term. The "seeing" of these facts can be thought of as an act of "recognition" rather than as an act of "discovery". Thus we have spoken of the facts focused on as significant and relevant within the context of some one normal or extraordinary paradigm, what one "recognises" within a conceptual framework. We tend, when committed to such perspectives, to "feel" psychologically that the facts they emphasise are facts in an existential sense - existing out there as part of reality, whether we like it or not. But what our examination of paradigms has shown is that facts in this sense are "real" in the sense of being significant and relevant within that paradigm. They find their significance as elements within such logical constructs. Thus the facts recognised through paradigms are facts not as existents but as convictions in the minds of those committed to the paradigm. In many cases they are such firm convictions that they have all the

psychological earmarks of facts as existents, as just being there, as part of the very structure of the universe. Such deep commitment can lead men to verify their convictions by making them part of reality, part of the mores and enforced norms of their society. They thus become facts as existents in a literal sense. But if the brute facts of the human constitution and condition are contingent as Hart admits - man and his world could have been different - the facts within paradigms are even more contingent. Their correspondence to reality as established and enforced mores is a tenuous one. The facts of other political paradigms clash with such mores. In many cases the facts of different paradigms never meet since from the perspective of one paradigm the facts of the other paradigms simply are not facts. The paradigm through which one "sees" the world may "blind" one to facts "seen" by other paradigms. As Kuhn has noted in regard to scientific paradigm:

A paradigm can, for that matter, even insulate the [scientific] community from those socially important problems that are not reducible to the puzzle form, because they cannot be stated in terms of the conceptual and instrumental tools the paradigm supplies.³⁷

Yet changing circumstances and experience can lead one to remove the "blinkers" shutting out such facts, to cast

aside as now irrelevant what hitherto were facts and to recognise new facts as one orientates oneself to new conceptual frameworks. Thus the relevant and significant facts recognised from the perspective of time and place and one's socio-economic milieu may vie with the facts viewed as relevant and significant from the perspective of a new "extraordinary" political paradigm. And when the facts of one's socio-economic milieu tend to prevail over one's ideal paradigm Marx's analysis of political evaluation and recommendation as mere rationalisation seems to ring true.

We must be wary, however, of assuming that the perceptual process, unlike our "seeing" through paradigms, involves a mere receipt of "commonsensical facts" from the real world, of assuming a model of the perceptual process as the mere reception of data without patterning or conceptualisation by the perceiver. While it is true that there are certain external, publicly ascertainable means for verifying the truth or falsity of perceptions, it can be argued that, ultimately, political paradigms, for example, can be "verified" by reference to their capacity to satisfy or realise basic human needs, interests, wants and propensities and their capacity to fit in "with

the general lines on which we think and communicate". In this sense, as Berlin has noted, "political theory like any other form of thought that deals with the real world, rests on empirical experience . . ." ³⁸ Referring to a psychological experiment in which persons were shown a series of playing cards in which anomalous cards were mixed with normal ones, Kuhn notes that "the anomalous cards were almost always identified, without apparent hesitation or puzzlement, as normal". "Without any awareness of trouble," he observes, "[an anomalous card] was immediately fitted to one of the conceptual categories prepared by prior experience." ³⁹ Thus man seems unable to see even in the normal sense of that term without prior expectation and conceptualisation which tend to blind him to anomalous, unexpected facts which lie outside his normal expectations and conceptualisations of reality. Kuhn argues that experimental psychological literature "makes one suspect that something like a paradigm is prerequisite to perception itself. What a man sees depends both upon what he looks at and also upon what his previous visual-conceptual experience has taught him to see. In the absence of such training, there can only be, in William James's phrase, 'a bloomin' buzzin' confusion'." ⁴⁰

Kuhn offers a parallel between the gradual observational and conceptual awareness of anomaly in the perceptual process and in scientific research. He notes how this gradual awareness in science leads to discoveries the characteristics of which include "the previous awareness of anomaly, the gradual and simultaneous emergence of both observational and conceptual recognition, and the consequent change of paradigm categories and procedures often accompanied by resistance."⁴¹

It is for us in the present generation to explore critically the tensions between the paradigm of equality to which we still seem committed and the political realities which that paradigm must now confront, alert to limitations of class and status that blind us to the implications of the equality paradigm. Unless we are willing to do this our criticism of the shortcomings of our predecessors rings hollow. It may well be, for example, that equal individual self-development is stifled in our age not simply by its uneasy marriage with capitalism, but by a form of political and social theory that views man in society in mass/elitist terms. As Wolin writes:

The concept of the masses haunts modern

political and social theory
 The mass . . . is undifferentiated, amorphous,
 banal in its tastes, lacking in a defined role
 and conscious purpose . . . "Mass connotes a
 'glob of humanity' . . . "42

Democracy has come to be "redefined in a way more
 consonant with the imperatives of organization and
 elitism The real guarantee of democratic
 responsibility to the membership lies in the close-knit
 solidarity of the elite . . ."43 The question now
 becomes: "how much democracy can organization endure?
 - never the reverse."44

Jack L. Walker expresses my concern:

By extending general participation in decision-
 making the classical theorists hoped to increase
 the citizen's awareness of his moral and social
 responsibilities, reduce the danger of tyranny,
 and improve the quality of government
 The concept of an active, informed, democratic
 citizenry, the most distinctive feature of the
 traditional theory, is the principal object of
 attack At the heart of the elitist
 theory is a clear presumption of the average
 person's inadequacy . . . The political system
 is divided into two groups: the elite . . .
 who possess ideological commitments and mani-
 pulative skills; and the citizens at large,
 the mass, or the 'apolitical clay' . . . a
 much larger class of passive, inert followers
 who have little knowledge of public affairs
 and even less interest.⁴⁵

That disturbing mass/elitist tendencies are prevalent
 in western industrial societies cannot be denied. What

is to be deplored is not the fact alone but a tendency among certain political and social theorists to accept the fact. This trend is apparent among those political theorists with a penchant for reducing or "elevating" political life and thought to a scientific discipline. We catch the mood in Easton's search for "stable units of analysis", units which ideally would be "repetitious, ubiquitous and uniform, molecular, rather than molar", ". . . the particles out of which all social behaviour is formed."⁴⁶

Stone reminds us that

. . . we should be aware of the importance of this interplay and cross-checking in each generation between theories woven by intellect and the enclaves experienced in social living, and between the past and the present of both of these. And all this spells obviously the likelihood of constant change in men's knowledge of justice, including the risks of backsliding. Without the meanings of past men, to which prevailing theories of justice thus help us to penetrate, inherited enclaves again tend to degenerate into words, gestures and technical procedures of only vestigial import. Yet unless we also go beyond those meanings, to meanings for us in our situations, we must fail at the moments of greatest challenge in the privilege and responsibility of choice in meeting what is before us.

This imperative forces us, still again, to emphasise that both the doing of justice, and its theorisings, challenge our powers of observing and understanding the society around

us, as well as our emotive, speculative and evaluating powers. Part of the hazards which constantly threaten the enclaves of justice held, arise from the endless series of new elements which have to be grasped as we search for the meaning of justice for us in our situation.⁴⁷

In short, is the relation between our political paradigm and the facts of our situation a mere matter of puzzle-solving, or are the anomalies so marked that new paradigms are demanded?

Footnotes

1. A. MacIntyre, A Short History of Ethics: a History of Moral Philosophy from the Homeric Age to the Twentieth Century (2d printing; New York: Macmillan Company, 1966), pp. 5-6.
2. ibid., p. 8.
3. ibid., p. 7.
4. A. MacIntyre, Secularization and Moral Change (London: Oxford University Press, 1967), pp. 50-51.
5. ibid., p. 12.
6. ibid., p. 14.
7. S. A. Lakoff, Equality in Political Philosophy (Cambridge: Harvard University Press, 1964), p. 59.
8. ibid., p. 238.
9. ibid., p. 241.
10. P. Corbett, Ideologies (London: Hutchinson & Co. (Publishers) Ltd., 1965), pp. 185-86.
11. Sir I. Berlin, "Does Political Theory Still Exist?", in P. Laslett and W. G. Runciman, eds., Philosophy, Politics and Society (2d Series; 3d printing; Oxford: Basil Blackwell, 1967), pp. 26-27.
12. J. Tussman, Obligation and the Body Politic (4th printing; New York: Oxford University Press, 1965), p. 138.
13. H. L. A. Hart, The Concept of Law (4th edition; Oxford: Clarendon Press, 1967), pp. 188-89.
14. ibid., p. 189.

Footnotes (continued)

15. ibid., p. 195.
16. MacIntyre, Secularization . . ., op. cit., pp. 52-53.
17. Corbett, op. cit., pp. 174-75, 177.
18. D. Hume, A Treatise of Human Nature, in ed. A. MacIntyre, Hume's Ethical Writings: Selections from David Hume (New York: Collier Books; London: Collier-Macmillan Ltd., 1965), Book III, Part One, Section 1, p. 196.
19. A. MacIntyre, "Hume on 'Is' and 'Ought'", in V. C. Chappell, ed., Hume: a Collection of Critical Essays (New York: Doubleday and Company Inc., 1966), pp. 240-64.
20. Hume, op.cit., p. 198.
21. S. Hampshire, "Fallacies in Moral Philosophy", in R. E. Dewey et al, eds., Problems of Ethics: a Book of Readings (2d printing; New York: Macmillan Company, 1965), pp. 444-45.
22. S. S. Wolin, "Paradigms and Political Theories", in P. King and B. C. Parekh, eds., Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of His Retirement (Cambridge: University Press, 1968), p. 137.
23. ibid., p. 138.
24. ibid., p. 148.
25. Berlin, op. cit., p. 20.
26. ibid., p. 20.
27. Corbett, op. cit., p. 184.
28. ibid., p. 180.

Footnotes (continued)

29. ibid., p. 182.
30. S. I. Benn and R. S. Peters, The Principles of Political Thought: Social Foundations of the Democratic State (2d printing; New York: Macmillan, 1966), p. 420.
31. L. Hartz, The Liberal Tradition in America: an Interpretation of American Political Thought Since the Revolution (New York: Harcourt, Brace & World, Inc., 1955), p. 58.
32. ibid., p. 47.
33. D. G. Ritchie, Natural Rights: a Criticism of Some Political and Ethical Conceptions (1st published, 1894; 5th impression; London: George Allen & Unwin Ltd., 1952), p. 6.
34. Corbett, op. cit., p. 169.
35. ibid., pp. 191-92.
36. C. B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke (3d edition; Oxford: Clarendon Press, 1965), pp. 261-62.
37. T. H. Kuhn, The Structure of Scientific Revolutions (7th edition; Chicago and London: University of Chicago Press, 1969), p. 37.
38. Berlin, op. cit., p. 20.
39. Kuhn, op. cit., p. 63.
40. ibid., p. 112.
41. ibid., p. 62.
42. S. S. Wolin, Politics and Vision: Continuity and Innovation in Western Political Thought (2d printing; Boston and Toronto: Little, Brown and Company, 1960), p. 420.

Footnotes (continued)

43. ibid., pp. 425-26.
44. ibid., p. 425.
45. J. L. Walker, "A Critique of the Elitist Theory of Democracy", The American Political Science Review, LX, no. 2 (June, 1966), 285-86.
46. D. Easton, A Framework for Political Analysis (Englewood Cliffs: Prentice-Hall, Inc., 1965), p. 13, 15.
47. J. Stone, Human Law and Human Justice (Stanford: Stanford University Press, 1965), p. 354.



PART ONE

NATURAL RIGHTS

Chapter

II

N A T U R A L R I G H T S T H E O R Y

AS AN EGALITARIAN SUB-PARADIGM

In view of the considerations raised in the introduction, I believe we can no longer dismiss natural law formulations as mere examples of the naturalistic fallacy and the violation of Hume's Law, or of the confused identification of law and morals, the definition of law in terms of morals and morals grounded in the nature of man and reality. We can now see that Locke's theory cannot, without distortion, be analysed into its separate elements to be examined in isolation from each other. Rather we must see Locke's rendering as a whole, as a comprehensive view of man, his condition and his need for society. We will find it fruitful to see in Locke's analysis of the nature of man what Berlin saw: a complex whole of values, capacities and descriptive characteristics.

Beneath that particular metaphysical way of seeing man and the world we shall find, throughout its historical development, a search for normative man, man guided by considerations of purposes and goals that make

of his and his community's existence a worthwhile human enterprise. Man so viewed, as Berlin and Hart have indicated, is a mix of fundamental rules and values intrinsic to man. No analysis of man in the context of human and social experience can ignore this evaluative, rule-governed aspect of his nature. Natural Law then can be seen "not as something deduced from our concept of normic humanity, but as exactly a characterization of this concept. . . . there are certain kinds of actions, attitudes, and dispositions that normic humans exhibit as matter of fact; and natural law is only a description of that sort of behaviour. That it should also be prescriptive is due to the fact that not every human being in fact always acts that way. But it is a way we may expect them to act, not merely in the sense in which England expects every man to do his duty, but also in the sense in which we expect birds to come forth from eggs: it is an inductive and not merely a moral, expectation."¹

Natural Rights Theory: Its Alleged Confusion of Law

and Morals

Let it be granted that: "There is no contradiction or logical oddity . . . in saying: 'This law is

too iniquitous to be obeyed, but all the same it is the law'.² But any criticism of natural law's tendency to define positive law in terms of natural law must be seen against the following background.

First, natural law must be seen within its historical setting. In the seventeenth and eighteenth centuries there was as yet no clearcut distinction between the common language of justice and the technical language of law. Law and morality were conceived as a total pattern of rules and principles grounded in the authority of God and custom.

Second, the deliberate "confusion" of law and morals must be seen as a tactical manoeuvre both in periods of revolution and reaction. Thus in innovatory phases of natural law, the confusion served as a valuable source of legal development; in reactionary periods it served to elicit criticism of the legal status quo.

At a revolutionary stage natural law tends to assimilate actual institutions to a rational ideal of what those institutions ought to be At a conservative stage natural law tends to assimilate the rational ideal of institutions to the social institutions existing at the time.³

Third, as a reformist pragmatic device, the "confusion" of positive and natural law served as a reminder to the

powers that be, that independent of the question of the logical distinction between law and morals, there remained a practical and moral interdependence of the two realms. It was a reminder that no legal system is self-justifying, that it finds its ultimate claim to allegiance in the prevailing views of justice and the ideal picture of the time and place. "It is a reminder that positive law in the last resort must sustain criticism by other than its own standards, if it is not to degenerate into the commands of naked power."⁴ The Lockean formula focuses on the political process as such and man's place in it and ultimately in the total human drama. Against such a backdrop legitimacy, validity, and authority inevitably embrace wider dimensions than the strictly legal or the strictly political. They are concerned with the fundamental question: to what authority, to which principles am I as man ultimately committed? And so the law of nature cannot be understood except in relation to what man is. Natural law viewed from the perspective of normative man comes to be seen as the boundaries beyond which human law must not step in its treatment of and attitude to human beings.

The conceptions of natural law and natural right remind us that the political is always

in danger of sinking into the 'merely political' and that our political arrangements need to reflect more than whim. They stand, in fact, for the denial of the autonomy of politics and for the subordination of the political to the moral.⁵

Natural Rights Theory: the Fusion of 'Ought' and 'Is'

The "seed-time" of individualism, the natural rights era, did not observe a yawning gap between the 'ought' and the 'is', between the autonomous moral agent and objective standards or ideals. Morality, for them, was concerned with the autonomous moral agent but in a social context. Autonomy and objective criteria were integral parts of the moral dimension. Natural rights theorists, while granting the logical difference between the moral and any given legal and political order, argued that there is and ought to be an actual interdependence of the two realms. The moral, so far as practicable, should be infused into the political/legal dimension. They argued that in fact the very term 'political' connotes, if not denotes, normative concepts such as cooperation, resolution of differences through an authoritative process, as opposed to violence, coercion, anarchy. They argued that the 'legal' equally implies the normative concepts of

impartiality, reasonableness, decisions in accordance with acknowledged standards and procedures. And they further argued that once we move beyond these quasi-neutral terms into the language of justice, legitimacy, happiness, the public good, salus populi suprema lex, we have avowedly placed the political and legal at the bar of standards and guides which demand of society conformity to rules and objectives which give man's existence here on earth an opportunity for significance, reward, satisfaction. They demanded that society heed the injunction that the law was made for man, not man for the law.

The very term 'natural rights' appears a confusion of the is/ought. But for natural rights theorists man's actual condition was normative. Nature reflected an harmonious pattern or design devised by God for the well-being of His creatures:

The framework of the universe, being the workmanship of God, is indeed of an ideal nature, one expressing reason, harmony, and peace.

. . . [Locke was] speaking of what conditions would be like if men lived "according to the law of nature" - because, it is under that law that "all men alike are friends of one another and are bound together by common interests".⁶

the earth was no longer the centre of the universe, if the sun took precedence, this did not destroy the

significance of God's interest in His creatures. Rather than the Newtonian world offered man a new key to an understanding of His wondrous and beautiful order. Newton had discovered the simplicity and beauty of the rules determining the revolution of the heavens. It was for political and social science to reveal the simplicity and beauty of the rules determining men's behaviour here on earth. New avenues to knowledge of God lay now before men. No longer the mere word of God sufficed. His works, nature, would offer new insights into the reason and benevolence of the divine Omniscience. If the world was saturated with value, with the theological 'ought', the world around us, man in his characteristics and behaviour, supplied the necessary adjunct of that 'ought', the 'can'. Man's capacities, man's condition were to be examined as the necessary means to the realisation of the theological goal for man. Given man's place in the great Chain of being, those very capacities which distinguished man from the species below him must have been intended by God for exercise and development for man's understanding of and capacity to live by His laws.

The concentration of natural rights theorists upon the study of man's capacities and limiting conditions

estified to their recognition of the actual, the even
logical inseparability of the 'is' and 'ought' in terms
of the ought/can implication. 'Ought' was not reducible
to the 'can'. But it was logically and actually
impossible to formulate 'ought' without regard to human
capacity. In Warrender's terms, the 'can' provided the
validating conditions for the realisation of the 'ought'
foro externo. Thus their statements about natural law
and natural rights embraced the normative and the factual.
Natural law as a set of rules which were statements of
the basic laws of the universe or of man's constitution or
social and political relationships, blended with natural
law as a set of limitations imposed on man by a superhuman
power and made manifest to him in his natural condition,
blended with natural law as a set of principles of right
which were positively demanded by a divine Creator yet
defied and defied by actual societies. We find further a
frequent "confusion" between rules as norms or standards
and the methods of discovering those standards. Thus laws
'reason' meant both the rules that were reasonable or
rational and the rules recognised by the reasoning faculty.
As moral rules meant both rules conforming to ideal
standards and rules learned through the moral sense.

Modern philosophic analysis is horrified by such logical disorder and seeks to disentangle these varying meanings only to find utter logical confusion. Yet, as Wright has argued:

It has seemed to me that an attempt to separate these two aspects of the various meanings given to 'nature' would be a misleading refinement unwarranted by the usage of the concept.⁷

and it would lose in the process the vital, and to them, logical, interdependence of the 'ought' and the 'can'. They were convinced that any rules framed for man's conduct must be within man's capacity both to understand and to obey.

It may be that "ideas of this character are clearly unprovable by any process of scientific research, analytical discussion, or historical investigation a description of what exists, or has existed, an analysis of the principles embodied in the institutions of the present or the past, and even the most complete investigations of the actual workings of such systems, cannot provide standards or criteria of justice, equity, political right".⁸ And yet natural rights theorists thought they could because of, for them, the close interrelations of 'ought' and 'can'. If political ought is a record of an ideal, it is also a record of

the techniques and conditions for the realisation of
 that ideal. Appeals to precedent, to past experiments,
 were used as claims in support of the possibility of such
 realisation. "This has been done before, this has been
 acknowledged and obeyed before, therefore it can be again."
 The evidence might be circumstantial but if enough were
 amassed it would make an impact. Thus, in the Declaration
 of Independence, for example, we find both the justifica-
 tion of an accomplished fact and the expression of faith
 in certain unchangeable values. Both fact and value are
 backed up by assumptions, yearnings, historical confirma-
 tions, intuitive insights, with evidence from the past,
 here and now, for the sake of a particular future -
 faith confirmed by eye, mind, heart and soul.

Natural Right as Equality: the Search for the
Specifically Human

Historically, expressions of human equality served
 as challenges to authority, as assertions that all men
 may claim certain rights or treatment which are
 being denied them. Hence they form part of a fuller
 argument, a defence of or demand for new ends, new
 attitudes to human relationships. Such arguments are
 reminders to established authority that much of the

inequality so obvious among men is the result not of nature but of convention, the granting of status and power to some, not to others. The challenge then is: let us strip men of these conventional inequalities, let us abstract man from his artificial environment and examine him as he was born. What do we find? We find men with much the same common characteristics. They want life, need food, drink, love. They are bound by the same limiting conditions - by their common fallibility, limited altruism, limited will-power, limited resources, by their common destiny of death and until death, of responsibility for what they make of their lives. If once we strip men of those artificial trappings that blind us to their common human qualities and condition we will see that it is these common characteristics after all that mean most to us. And being common they are what bind us to each other, enable us to identify ourselves in others, enable us to rebuild a society of cooperation and mutual respect, of equal rights and duties, binding us in a new and more humane society. We share not only qualities in common, but common values and common rules. Man as human being takes "the moral point of view":

. . . the principles of the law of nature stand "as an eternal rule to all men" because truth

and the keeping of faith, the preservation of mankind, the not harming of others in life, health, liberty, or possessions - all these . . . are precisely those things which are involved in taking the moral point of view . . .⁹

Such in essence is the message of seventeenth and eighteenth century social contract and natural law theorists. Such assertions as "all men are equal" are then seen as recommendations to look at the world from the perspective of man's common humanity rather than from the traditional perspective of his differences.

Not man as a priest or a soldier, as the member of a guild or an estate, but man as a bare human being, a "masterless man" appeared to be the solid fact The philosophy of natural law, of natural religion, of natural economy was rooted in both the intellectual and social presumptions of the seventeenth century The individual is both logically and ethically prior.¹⁰

and actually prior. For if the Lockean model was primarily a logical device for clarifying the ingredients in the mix of social and political organisation, Locke was tempted to lapse into the empirical mood when directing his thoughts towards America:

In America one not only found a society sufficiently fluid to give a touch of meaning to the individualist norms of Locke, but . . . also . . . letter-perfect replicas of the very images he used. There was a frontier that was a veritable state of nature. There were agreements, such as the Mayflower Compact, that were veritable social contracts. There were new

communities springing up in vacuis locis,
clear evidence that men were using their
Lockian right of emigration
"Thus, in the beginning . . . all the world
was America".¹¹

Footnotes

1. A. C. Danto, "Human Nature and Natural Law", in S. Hook, ed., Law and Philosophy: a Symposium (New York: New York University Press, 1964), p. 197.
2. K. Nielsen, "The Myth of Natural Law", in Hook, op. cit., p. 139.
3. J. Stone, Human Law and Human Justice (Stanford: Stanford University Press, 1965), p. 79.
4. ibid., p. 76.
5. J. Tussman, Obligation and the Body Politic (4th printing; New York: Oxford University Press, 1965), p. 144.
6. R. Ashcraft, "Locke's State of Nature: Historical Fact or Moral Fiction?", The American Political Science Review, LXII, no. 3 (September, 1968), 906.
7. B. F. Wright, Jr., American Interpretations of Natural Law: a Study in the History of Political Thought (1st edition, 1931; reissued, 1962; New York: Russell & Russell, Inc., 1962), p. 333.
8. ibid., p. 344.
9. J. R. Carnes, "Whether There Is a Natural Law", Ethics, LXXVII, (1967), 124.
10. G. H. Sabine, A History of Political Theory (3d edition; New York: Holt, Rinehart and Winston, Inc., 1961), pp. 432-33.
11. L. Hartz, The Liberal Tradition in America: an Interpretation of American Political Thought Since the Revolution (New York: Harcourt, Brace & World, Inc., 1955), pp. 60-1.

Chapter

III

N A T U R A L R I G H T S T H E O R Y
I N T H E P U R I T A N R E V O L U T I O N
I T S F I R S T A R T I C U L A T I O N

For really I think that the poorest he that is in England hath a life to live, as the greatest he; and therefore truly, sir, I think it's clear, that every man that is to live under a government ought first by his own consent to put himself under that government; and I do think that the poorest man in England is not at all bound in a strict sense to that government that he hath not had a voice to put himself under . . .

Colonel Rainborough, The Putney Debates, 1647.¹

The Equality Paradigm in the Puritan Revolution

The equality paradigm found its first secular articulation in a natural rights idiom among the levellers, the radical Left of the Puritan Revolution. Casting aside the preconceptions of the "normal"

paradigm* of their society, the appeal to precedent, to positive law, to property as evidence of man's qualification for human and social status, they offered an "extraordinary", revolutionary paradigm that appealed to justice, reason, conscience, that saw man as entitled to status on the strength of his mere humanity.

In the Putney Debates, the great ideological confrontation of extraordinary and normal paradigm, Levellers deviated in one respect from the practical assertions demanded in their time by their paradigm.

"Servants, while servants, are not included. Then you agree that he that receives alms is to be excluded?"²

Thus did the Levellers qualify the logical implication of their equalitarian perspective. But that qualification was for them a temporary measure. Once the economy was freed from the shackles of governmental interference, once

" . . . one can think in terms of two kinds of paradigms. There is the extraordinary type represented in the major political theories and there is the normal one embodied in the actual arrangements of a political society."

S. S. Wolin, "Paradigms and Political Theories", in P. King and B. C. Parekh, eds., Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of His Retirement (Cambridge: University Press, 1968), p. 151.

free trade and a free market were realised, Levellers were confident that conditions would be such that all men, including paupers and hired labourers, would be able to rise out of their condition of degradation and dependence, to become independent entrepreneurs, self-reliant, masterless men. So transformed, men would be able to withstand the tyrannical tendencies latent in centres of power, economic, political, religious, social, and military.

The confrontation at Putney can be understood only against the backdrop of political, religious and social agitation of that turbulent age. In particular the evolution of Leveller political thought is necessary to an appreciation of the issues at stake in those debates.

Political Equality in the Puritan Revolution: "The poorest he that is in England hath a life to live as the greatest he".

. . . [the fundamental principle of the democratic creed] . . . is not legal, but moral, equality - . . . the equalitarian constitution of the law itself in embodying the equal authority and the equal claims of those who live under the law.³

Political equality is not reducible to the simple formula of universal franchise but is primarily an expression of an underlying attitude of man towards man, a way of "seeing" men that finds beneath or above their multiple differences a core of significance and worth greater than those differences. That attitude evolved and expressed itself in the hearts and minds of Puritans of the Left in the English Civil War. These men, in particular, Lilburne, Overton and Walwyn, represented in different ways aspects of that attitude. They captured the spirit of democracy, in speech, in writing, in sacrifice. Their common message as it evolved and reached its final culmination in the Manifestation and the final Agreement of the People can be summed up in Rainborough's words.

That attitude was fostered and nurtured by two contemporary streams, one secular, the other religious. At first uncertain and ill-defined, that attitude matured in conditions of religious and secular stress and strife. It expressed no mere subjective taste. It was an attitude of approval that sought and found justification at first in the actual established rules of their society and then beyond to a higher level of justification in higher laws

recognised by reason and conscience. Specific limited grievances demanded redress and justification. Seen first as but the complaint of a single man they came to be seen as representative of the complaint of every man; seen first as but an instance of arbitrary, tyrannical treatment, they came to be seen as particular examples of the general evil of the tyranny of bondage, slavery and vassalage imposed by man on man. And hence they moved on to the ultimate questions: Why rulers and ruled? Why ought I or anyone to obey any man? What are the grounds of such obedience?

These men of the seventeenth century offered as their grounds of or reasons for obedience to the state a fusion, which to us seems mere confusion, of legal, moral and political obligation. Hear Overton:

. . . for if right reason be not the only being and boulder of the Law over the corrupt nature of man, that what is rationally (the which injustice and tyranny cannot be) may only and at all times be legall . . .⁴

For him the legal is only legal if rational and moral.

For Coke the rational and the moral is the legal: "for the Laws of England are unwritten laws, but divinely cast into the hearts of men, and built upon the irremovable rock of reason".⁵ The seventeenth and eighteenth

centuries, seeking to shake free from the shackles of a rigid legal order, demanded that the legal order conform to their new ideal of the law of nature, with its conception of the free individual divorced from society but armed with natural, inalienable, moral rights. This moral ideal for them is the ultimate legal basis of validity of the positive legal order. Moral order because it is moral is legal.

Yet they were aware of the gap between legal and moral right. They stressed natural rights to emphasise such rights as being morally justified rather than merely legally recognised. And to Ireton's contention that rights are not effectively guaranteed except by the force of the state they countered that the creation and exercise of such force found its ultimate justification in protecting rights whose justification was independent of such force. They saw the subtle distinctions between rite and right, right and might, mores and morals. Nowhere are these insights more clearly exemplified than in the Putney Debates on legal and political obligation and the extent of the franchise. Men of the seventeenth century knew what they were about: Overton and Lilburne with their reduction of the legal to the moral, Ireton with

his tendency to conflate the 'ought' with the 'is' of positive law and customary right. The former were pragmatically justified by their desire to fill law with a moral content, to challenge law before the tribunal of justice, reason and conscience. The latter was equally pragmatically justified in seeking to hold on to his established rights, guaranteed and acknowledged by the existing constitutional structure and further justified, for him, by the more disinterested appeal to the greater demands of stability and peace.

The Pattern of Justification in the Puritan Revolution

Leveller forms of argument and justification were not new. They were indebted both to Parliamentary and Puritan sources for techniques of argumentation. What was new and revolutionary in their arguments were the substantive changes they made in the old concepts of compact theory, paramount or fundamental law, and the ultimate principle, salus populi suprema lex. These forms and their new contents were at work in many directions, in the relation of King to Parliament, of city commonalty to city government, of church government to church congregation, of private soldier to officer, culminating

with the Putney Debates in a democratic breakthrough in man's attitude towards himself, his government and his fellow citizens.

The new outlook was a way of looking at man and the state not as a relation of dominance, coercion, privilege, property and vassalage, but as one of voluntary association, equality, trust, and accountability. Stripped of the 'is' of manmade, historically conditioned realities, men saw themselves in a new light. So abstracted from such "inventions" they saw in each other a new moral and spiritual dimension which pervaded for some the political, for others, the economic, and for still others, all dimensions of man's relationship with man.

Justification in both old and new perspective followed a set pattern. Justification is first sought in an appeal to fact, the established legal precedents. Then as behaviour and attitudes outstrip the old established modes and precedent can no longer support positions, justification is sought beyond the "puddles of history",⁶ to the "truly legal", the spirit as opposed to the letter of the law. Finally, appeal is made beyond the 'is' of precedent to the abstract 'ought' of "right reason", the boundaries of which are so extensive as to

include God's will, the law and instinct of self-preservation, the law of necessity, the concept of social compact which in turn leads to the final appeal, salus populi suprema lex. The latter principle, traditionally conservative in meaning, i.e. the King and/or Parliament is or speaks for the "people", which in turn are restricted to the classes of property and privilege, in Leveller hands takes on new and dynamic meaning. No one speaks for the people without their individual acts of consent. Any body or individual(s) entrusted with authority to speak for the "betrusters", the people, forfeits such right when it fails to protect their inalienable rights and fails to promote their common good. The people are no longer an amorphous lump, an organic whole whose mood and wishes are communicated to a privileged body, King, Parliament, or Army. They are discrete individuals with strong convictions of what constitutes their individuality and what enhances or detracts from such individuality. Nor are the people the privileged, the propertied, the rich. They are, as well, "old Bellows-Menders, Broom men, Cobblers, Tinkers or Chimney-Sweepers, who are all equally Free borne with the hudget men, and loftiest Anachims in the Land."⁷

Thus out of the thrust and counter-thrust of revolutionary and traditional forms of justification evolves for the radical Left of the Puritan movement, the Levellers, a view of " . . . every particular and individuall man and woman . . . [as] by nature all equall and alike in power, dignity, authority, and majesty, none of them having (by nature) any authority, dominion, or magisteriall power, one over or above another . . . but meerely by institution, or donation, . . . by mutuall agreement or consent . . . for the good benefit and comfort each of other . . . it being unnaturall, irrationall, sinfull, wicked and unjust, for any man . . . to part with so much of [his] power as shall enable any of their Parliament men, Commissioners, Trustees, deputies, Viceroyes, ministers, Officers or servants, to destroy and undoe them therewith . . ."8

Such a way of "seeing" man, foreshadowed in the words, actions and sacrifices of Lilburne and Overton, in the Christian compassion and service of Walwyn, culminated with the Putney Debates in Rainborough's celebrated words. Those words sum up radical agitation of the previous years and provide the ultimate rationale behind the First Agreement of the People debated at Putney which in turn

foreshadowed the evolution and maturation of the concept of the state as "a specifically legal association, created by the sentiment and action of the national Society, and based on a constitution which is of the nature of a contract." That "shift of ideas", as Barker points out,

may be traced in England from the beginning of the Civil War to the Revolution of 1688 and the Hanoverian settlement; which showed itself in North America and France in the last quarter of the eighteenth century; and which spread over Western Europe, South America, and the countries of the British Commonwealth, during the nineteenth century.⁹

It is a way of looking at the state which "does not serve to explain, and is not for a moment meant to explain, the chronological antecedents of the State in general . . ." but "serves only to explain, and is meant only to explain, the logical presuppositions of the State in particular . . ." ¹⁰

It is a theoretical, philosophical, moral and spiritual model of man, society and government, which for Overton and Walwyn, being the embodiment of justice, needs no precedent, for Lilburne finds that precedent in a mythical and idealised and yet partially actualised conception of Anglo-Saxon traditions and the great Charter of English liberties.

Leveller ideas, we have noted, were given form and shape by two forces, Parliamentary and Puritan.

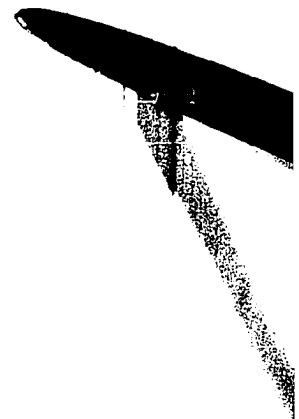
The Common Law for men of the seventeenth as well as for those of the thirteenth century "possesses that mysterious sanctity of prescriptions which no legislator can bestow. The Common Law is pictured invested with a halo of dignity, peculiar to the embodiment of the deepest principles and to the highest expression of human reason and of the law of nature implanted by God in the heart of man Instead of the caprice of the moment, or the changing principles of competing dynastic policies, or the pleasure of some great noble, or the cunning of a usurper, there shall rule in England a system, older than Kings and Parliaments, of immemorial majesty and almost Divine authority. "Law is the breath of God; her voice the harmony of the world".¹¹ Thus when James and his son Charles sought to challenge such a view of the state with their theory of the divine right of kings as absolute and arbitrary authority, Parliament-men could counter with all the weight of the mystical powers of history allied with God and right reason. Coke provided their defence: "Magna Carta is such a Fellow, that he will have no Sovereign."¹²

Parliament soon was undertaking actions which could ill fit appeal to precedent and established law. There was no turning back. To the King's claim to absolute authority to interpret and, in case of necessity, to override fundamental law, Parliament in turn made claim to such a role. From a justification based on established law, through a justification based on identity of such law with equity and justice, they moved to the ultimate justification in the face of revolutionary circumstances and behaviour, the law of necessity, the right of self-preservation and the preservation of the people, salus populi suprema lex. Thus they advanced from concrete fact to abstract right, to a logical and moral justification based on the concept of the state as a compact between rulers and ruled, a compact which, having been broken by the King, was now dissolved. But it was not dissolved into a state of nature and certainly not into a condition of licence whereby every man was to preserve himself. Parliament still stood, in the minds of Henry Parker and others, theoretically garbed not just in the robes of the ruler but the clothes of the people. Ruler and ruled, government and people, were fused. Parliament was ruler and Parliament was people for it stood as their

only true Representative. Yet it represented nothing because in fact it was also the Represented, the people. For Parker it was inconceivable that any conflict could arise between Parliament and people. If it did, such dissension must be crushed as heinous, heretical and treasonous. For to Parker and Pym "Parliament stood 'to the body politic as the rational faculties of the soul to man'. For the people as a mass to challenge Parliament would be like the hand challenging the head; such a challenge is unnatural."¹³

Not everyone was to draw Parker's conclusions. Pease sums up the impact of Parliament's arguments upon the Leveller movement:

. . . the political thinking and political practice of 1640-1645 partly determined the course of the Leveller movement. Those years developed an irritating condition of affairs, and suggested a train of argument for attacking it. Parliament's members had assiduously lectured the kingdom on the existence of fundamental laws and the heinousness of endeavouring to abrogate or evade them. Then, by methods of indirection similar to those that it condemned, Parliament had extended its right of interpreting the fundamental laws till it had interpreted them into nullity. To justify Parliament's action, its supporters had stated a theory of parliamentary absolutism too unblushing for even Parliament to adopt in full. They had based their theory on the postulate that government derived its authority from its compact with the nation; and after their writings had



familiarized men with abstract reasoning of the sort, other books by parliamentary writers had shown that the compact theory could not logically lead to the conclusion that the Houses were above the law. Rather it must lead to a democracy, however narrow and limited [From 1642 to 1645 Englishmen] . . . were reminded that there were excellent arguments against an absolute Parliament - arguments based on the laws of nature and the fundamental laws of the land.¹⁴

Arguments from fundamental law and compact were forthcoming from yet another quarter, Puritanism. Woodhouse has analysed the nature and complexity of the Puritan phenomenon. Beginning with the commonly accepted definition of Puritanism,* he brilliantly delineates the various branches of that common stem into a classification of Right, Centre and Left which is a valuable clue to an understanding of the antinomies of liberty and repression, equality and inequality, democracy and autocracy, within Puritanism. Identifying the Presbyterians as the Party of the Right in the Civil War, he sees in them the most obvious examples of autocracy, inequality and illiberality.

* ". . . I have adopted the popular definition of Puritanism": "to cover all the varied forces generated by the Protestant Reformation and given their opportunity of expression and action by the revolt against the Crown and Church in the first half of the seventeenth century . . ." ¹⁵

In the Centre he places the Independents, whose major clash with the Right centres on the place of individual congregation and national church, with the Independents opting for the former, the Presbyterians for the latter as the seat of ecclesiastical authority. On the Left he places the Levellers and clusters the various and varying sects, Anabaptists, Separatists, Familists, Fifth Monarchy men.

While the concept of the "holy community" is common to all Puritan groups, in Presbyterians its autocratic hierarchical structure robs it of much of that spirit. Among Independents, the democratic forms lack much democratic spirit. Within the sects the democratic atmosphere is pervasive. The "priesthood of all believers" implies the democratic selection of their ministers by the congregation and the congregation's participation in the evolution of Christian truth. Yet despite these internal democratic features, the implication of sectarianism in its relations with the outside world can take undemocratic shape. Thus the priesthood of all believers can be felt as a sense of superiority and privilege as against those who are unregenerate. Woodhouse shows how the sects may therefore be further subdivided into democratic and autocratic

streams depending on whether their common conviction of the necessity of the separation of church and state, of the regenerate or Saints and the unregenerate or non-believers, leads them to a democratic secular or a theocratic, autocratic attitude towards the state. He sees in the Fifth Monarchy men a penchant for resolving the crisis of the state and the relation of church and state by imposing the rule of the Saints upon the secular sphere, thus moving logically by direct inference from the religious to the secular world. On the contrary, the Levellers emphatically deny the right of the magistrate to interfere in matters of the spirit. And yet, as Woodhouse suggests in his illuminating analysis of the sectarian democratic impact on the secular world, by the principle of segregation of church and state and by their further principle of not arguing inferentially but by analogy from their spiritual experience and practices, they suggest in the secular world forms of organisation, behaviour and attitudes similar to those so meaningful to them in the spiritual sphere. Thus, if "there is a spiritual equality in the order of grace: is there not an analogous equality in the order of nature?"¹⁶ Thus the Levellers, in particular Lilburne and Overton, posit a God ruling in

two spheres, the world of grace and the natural world, and ruling by two laws, the law of Christ in the spiritual world, the law of nature in the secular.

Summing up the ramifications of the principle of segregation and analogy, as seized upon by the Levellers, Woodhouse writes:

The conclusions reached . . . by the principle of analogy [are]: natural liberty and equality; a fundamental law of nature and a primitive mode of civil excellence, alike known by reason; a social contract embodying that law and conforming to that model, safeguarding the individual's rights and applying the principle of government by consent; a democratic order of administration and expression with some provision for arriving at truth and agreement through free discussion.¹⁷

Evolution of Leveller Political Thought

We were an heterogenous body, consisting of parts very diverse one from another, settled upon principles inconsistent one with another.¹⁸

Lilburne more than the others symbolises the subsequent development of the close affinity between Puritanism and capitalism. There is his emphatic and persistent defence of *meum and tuum*.^{*} There is his steadfast conviction of his own salvation and his being numbered among God's Elect to fight against sin in all its

* "'yea, take away the declared, unrepealed law, and then where is *meum and tuum*, and liberty and property?'"¹⁹

forms. There is his social arrogance in the face of what he considered his social inferiors.* There is his sneering critique of economic levelling as practised and preached by the Diggers.** There is his initial proposal for representation based on rates.*** There is his naive confidence that the removal of monopoly and the free flow of trade would, together with his legal and political reforms, usher in an age of harmony and progress.

* ". . .he evidently did not want to abolish the inequalities of rank and status; this radical champion of the people's rights proclaimed with pride: 'I am the sonne of a gentleman, and my Friends are of rancke and quality', and during his second trial in 1653 he raised an objection against his judge because of the latter's social inferiority."20

** ". . .in my opinion and judgement this silly conceit of Levelling of propriety and magistracie is so ridiculous and foolish an opinion, as no man of braines reason or ingenuitie can be imagined such a sot as to maintaine such a principle, because it would, if practised, destroy not only all industry in the world and raze the very foundation of generation and subsistence or being of one man by another. For . . .who will take paines for that which when he hath gotten it is not his owne but must equally be shared in by every lazy, simple, dronish sot . . ."21

***"[Lilburne] proposed the House should consist of 500 to 600 members and that each county should 'choose a proportionable number suitable to the rates that county . . . are assessed to pay . . . ' By this definition of the basis of representation he anticipated the Whig doctrine that property and not heads should be counted at elections." Later, however, Brailsford observes, ". . . he makes his demand for the extension of the franchise explicit and general."22

These aspects of his character and attitude, if regarded as representative of Leveller thought as a whole, lend considerable support to the Macpherson thesis of the liberal as opposed to the democratic significance of this movement. Yet we are unable to identify Leveller thought as "Lilburne throughout". There are other strains in that thought, in Overton, but particularly in Walwyn, that militate against such interpretation. Schenk suggests that:

Because of these divergencies any statement about the Levellers as a whole must be treated with great care. Such statements are generally based on Lilburne's writings, but although the vocal Lilburne had many followers, the quieter Walwyn may have had his quiet adherents. Nor is it safe to build too much on the "official" Leveller declarations which, like all similar documents, were arrived at by compromise and destined for a particular political situationthe elusive spirit behind the words and actions was actually or potentially more radical . . . Demands for legal reform or the abolition of tithes, not in themselves revolutionary, could easily become more threatening if they were accompanied by that bitter awareness of a social cleavage . . . or by searching social criticism such as Walwyn's.²³

In Walwyn we find much greater stress on community than on self-assertive individualism, on compassion and love, a persistently bitter denunciation of all Puritanical leanings to outward show, social snobbery, intellectual

and religious arrogance, economic trickery and underhandedness. If Lilburne represents an example of Macpherson's thesis of Leveller thought as a prelude to Lockean justification of bourgeois ideology, and Woodhouse's thesis of the sectarian principle of segregation and the principle of analogy, Walwyn more closely foreshadows a Rousseauan stress on community, on the perfectibility of man, on primitive innocence, on the corrupting influence of such social and manmade "inventions" as private property and social superfluities. He fits ill the Woodhouse pattern. Rather he represents a strain in Puritan thought which Woodhouse does not consider, the sectarianism whose antinomian and humanitarian traits of free justification lead by direct inference from the simple Christian message to a determination to carry such universal brotherhood into the secular sphere in all its aspects, political, social and economic. If Lilburne symbolises and is moved by the liberal political dream of a legal and constitutional order based on reason and self-interest, Walwyn represents more the communitarian stream culminating in the Diggers and concerned with the removal of gross and corrupting

inequalities of wealth. Walwyn's Tyranipocrit* is a searing denunciation of those very aspects of the Puritan/capitalist ethos which Macpherson justifiably condemns:

A reformation that will establish tyranny and slavery, and make the rich richer, and the poore poorer, that is the reformation that the devil would have, but a reformation sine partiality, that would give unto every man alike meanes to live on, and that would cause all able persons to labour according to God's commandement, and agreeable to reason, and that would maintaine and cherish all old, weake, and impotent persons, so well the poor as the rich, etc.²⁴

. . . . And therefore all you which have cast out any old Tyrants, consider seriously what you have yet to doe, and so neere as you can, make and maintaine an equallity of all goods and lands, for that is your dutie, which if you will not perform, you are worse then the old tyrants, because you did pretend a bettering which they did not²⁵

* I am assuming Walwyn's authorship of Tyranipocrit in the light of C. Hill's observation, in his edition of Brailsford's book, that Brailsford had undertaken research which he had hoped, had he lived, to present as an appendix to his work on the Levellers. Unfortunately the data on which Brailsford based this assumption have not been unearthed in his papers. Brailsford writes: "I am assuming here what I have tried to demonstrate in Appendix A, that Walwyn wrote Tyranipocrit." Hill comments: "[This Appendix has not been found. Brailsford assumes Walwyn's authorship of this anonymous tract throughout . . .]" H. N. Brailsford, The Levellers and the English Revolution, edited and prepared for publication by C. Hill (London: The Cresset Press, 1961), p. 71n.

The development of Leveller political thought is most easily observed in Lilburne. Not motivated by an interest in or a capacity for theoretical speculation, his political theory develops out of concrete events that for the most part impinge directly on his own life, liberty and estate. Walwyn and Overton's analyses from the outset are more abstract, more theoretical and a priori, the evolution of political thought out of abstract and idealised conceptions of man and society and focused upon the 'is', the actual circumstances, as an indictment of those circumstances and as a standard for transforming them. Yet at the end of their joint endeavours, their empirical and a priori approaches, the one developed through actual personal suffering and sacrifice, the other through logical analysis of the nature of right relations between man and man in a social and political context, merge and reinforce their deepest convictions of man's yearning for justice and right order and their sincere belief in man's responsibility to his and future generations for doing his part in realising such ideals.

Lilburne's political thought follows closely the pattern of argumentation advanced by Parliament-men against the King's claim to absolute prerogative rule.

There is the same appeal to established known precedent, to the fundamental law understood as the Common Law with Magna Carta as symbol of its fusion of all that is just, good, rational and wise. Here again we find a fusion, a confusion, of temporal and logical priority, legal and moral. Yet this confusion of legal with rational and moral implied a profound understanding of the nature of law in its ideal form which transcends the analytical penchant for the distinction between what law is and what law ought to be. Lilburne captured this truth in Englands Birthright Justified where he contrasts the letter and the spirit of the law:

. . . the Law taken abstract from its original reason and end is made a shell without a kernell, a shadow without a substance and a body without a soul. It is the execution of Laws according to their equity and reason, which . . . is the spirit that gives life to Authority. the [sic] Letter kills.²⁶

Again, in the slow evolution of his political thought on the nature of the contract leading to the Agreement of the People, he tends to confuse temporal and logical priority. But, as Perry observes, if he and his followers tended to confuse history and ethics

Their primary concern was not with the origins of law but with the legitimacy of law. They wanted to say that government is justified by the intrinsic human faculties of reason and

conscience, that there are prior moral principles from which government is deduced, and that there is a happiness of mankind of which government is the instrument.²⁷

And their fusion of logical and temporal priority was pragmatically justified:

The temporal form of presentation also gave a certain dramatic force to the argument. For there will always seem to be a certain presumption in favor of an antecedent state of affairs. Possession is nine-tenths of legitimacy as well as of the law . . . So the priority of that reason and conscience . . . to the institutions which they condemned, could be more effectively argued by claiming that mankind had been deprived of an original enlightenment by a subsequent tyranny and obfuscation.²⁸

However, there was nothing in the old law to which they could turn to justify their constructive programme. And so Lilburne struck on the revolutionary, explosive idea:

" . . . -if Magna Carta- could curb the King or the Parliament, why could not a new document be drawn up embodying their own principles and free from the encumbrances of the old law, which should be binding upon and unalterable by the legislative power? And so we have the trial of a new thing in English history - the written constitution."²⁹

Walwyn was to seize upon the same insight. Never emotionally caught up in the myth and aura of Magna Carta, he saw the concept of the state of nature and

contract not as an historical myth or fact but as a logical and moral model. For him the state of nature "signif[ied] . . . a reading away of all the determinate historical conditions under which men lived, with all their corporate privileges, customary rights and traditional ties" with "all that remained [being] man as a rational creature or what he could claim in virtue of being a man - a claim more compelling than any sanctioned by immemorial custom."³⁰

In July 1646 Overton sketched a revolutionary conception of the "people" and of a democratic representative system in his A Remonstrance of Many Thousand Citizens . . .:

Wee are your Principalls, and you our Agents . . .
 Yee only [the House of Commons] are
 chosen by Us the People and therefore in you
 onely is the Power of binding the whole
 Nation . . .³¹ - (thus erasing the Lords)

. . . whatever our Fore-fathers were; or whatever they did or suffered, or were enforced to yeeld unto; we are the men of the present age, and ought to be absolutely free from all kindes of exorbitancies, molestations or Arbitrary Power.³²
 (thus erasing the past as determinant of the present, of the 'is' as determinant of the 'ought')

Yee know, the Lawes of this Nation are unworthy a Free-People, and deserve from first to last, to be considered, and seriously debated, and reduced to an agreement with common equity, and right reason, which ought to be the Forme and

Life of every Government.³³ (thus foreshadowing the Agreements of the People)

In his An Appeale from the Degenerate Representative Body of the Commons of England . . . to the Body Represented, the free people in Generall . . . and in especiall, to His Excellency, Sir Thomas Fairfax . . . and all the Officers and Soldiers under His Command, July 17, 1647,

Overton offers a brilliant theoretical justification of the nature and grounds of political obligation which defies custom and precedent and which turns on Parliament the very arguments which they had advanced in their unprecedented behaviour against the King. Echoing Lilburne's words he stresses the spirit of the Law:

. . . Reason is [the] very life and spirit [of all just Lawes, presidents and formes of Government] . . . which is the highest kind of Justification and Authority for humaine Actions . . .³⁴

What is the nature of this Right Reason? First, "it is a firme Law and radicall principle in Nature engraven in the tables of the heart by the finger of God in creation for every living moving thing, wherein there is the breath of life to defend, preserve, award and deliver it selfe from all things hurtfull, destructive . . .: Therefore from hence is conveyed to all men in generall, and to every man in particular, an undoubted principle of reason,

by all rationall and iust wayes and meanes possibly he may, to save . . . himselfe from all oppression . . . ; to deny it, is to overture the law of nature, yea, and of Religion too . . ." ³⁵ (Note the revolutionary reinterpretation of the right to resist as given to every man, not just to inferior magistrates).

Second, it is the law of necessity. Third, Right Reason is the equity of the Law which alone is "legally, obligatory and binding". Fourth, Right Reason tells us that "All betruſted powers if forfeit, fall into the hands of the betrusters . . ." and "their Authority ceaseth [if they degenerate from the protection of the people to tyranny] and is only to be found in the fundamentall originall . . . which is the people the body represented . . .". ³⁶ And so the Appeale arrives at the source and being of political authority, the political equality of all men.

For all iust humaine powers are but betruſted, confer'd and conveyed by ioynt and common consent, for to every individuall in nature, is given an individuall propriety by nature, not to be invaded or usurped by any . . . for every one as he is himſelfe hath a ſelfe propriety, else could not be himſelfe, and on this no ſecond may preſume without conſent; and by naturall birth, all men are equal and alike borne to like propriety and freedome, every man by naturall inſtinct aiming at his owne ſafety and weale. ³⁷

Thus Overton comes to the ultimate grounds of democratic political obligation, the synthesis of consent, natural rights and the common good. Insofar as such principles are acknowledged in letter and spirit so are we morally and politically obliged to obey the state.

Thus Overton sums up the culmination of Leveller political thought, an understanding of which is necessary for a full appreciation of what is at stake in the Putney Debates. The arguments are all there, fully matured and synthesised, the progression from empirical justification grounded in custom and precedent to an abstract rational reconstruction of the ideal relationship of men in the political sphere. An ideal is advanced with its ultimate ground in the welfare of the people. The people are no longer identifiable with a particular privileged political organ or class but consist of concrete individuals with unique worth and value transcending the trappings of social distinction. Such a view of man is evolved through the medium of Christian experience. By analogy men are to be granted in the natural sphere the natural characteristics of the spiritual communion of true believers. They have a unique value as existent human beings. They are endowed with natural reason and natural compassion, each

contributing in the natural world fragments of the truth of natural law as in the spiritual communion to the truth of the Christian Gospel, joining in a natural covenant for the preservation and enhancement of their natural capacities as in the spiritual covenant for the preservation of their spiritual capacities.

There is only one variation in the argument as advanced at Putney. No longer do Wildman and Rainborough, in the face of Ireton's closely reasoned analytical attack, equate legality and rationality. Confronted with Ireton's stress on positive right and positive law, with his challenge to the historical soundness of their Anglo-Saxon myth of primitive freedom, Rainborough's argument is not an equation of legal and moral. It transcends the deontic and legalistic position of Ireton. He moves beyond the question, why ought I to obey these legal rules as legal rules? to the question, why ought I morally to obey them or even the constitution from which their authority is derived, and so to the ultimate question, should I obey any system of order as such or ought not that order to accord with right reason, justice, equity, the safety and welfare of the people? Ireton and the Levellers are thus arguing at two different levels

and never meet. Ireton's deontic/legalistic position assumes an acceptance of the system which is in fact challenged and repudiated by the Levellers. Thus do extraordinary and normal political paradigms confront each other with a different set of relevant and significant facts, different lines of inquiry, and different answers to the different questions they pose. Having gained what he wants Ireton inevitably rests his case on what guarantees his satisfaction, the law fundamental as equivalent to the established, accepted constitutional framework of the past that assures to him and his class protection of their privileges and property. Rainborough ironically counters Ireton's supposedly magnanimous gesture - ". . . I will go with you as far as I can [and where I cannot] I will sit down, I will not make any disturbance among you" -

There is a great deal of difference between us two. If a man hath all he doth desire, [he may wish to sit still]; but [if] I think I have nothing at all of what I fought for, I do not think the argument holds that I must desist as well as he.³⁸

Let us turn our attention then to the proceedings of the Putney Debates in which the is/ought relationship is seen as a conflict between two opposing political paradigms, one based on established, known historical precedent and the other on reason, conscience and justice.

It is a conflict between positive right and natural right, positive law and natural law, which resolves itself into the ultimate concern, whether government is to be based on privilege or equality, property or persons.

The Putney Debates: The Clash of 'Is' and 'Ought', of Normal and Extraordinary Paradigm

Events that triggered the Putney Debates revolved around the Army's agitation against and resentment of Parliament's refusal to pay arrears, its attempts to disband the New Model Army and place it under commanders more amenable to its policies. Out of this turmoil a democratic movement swept through the rank and file with private soldiers selecting two agitators* from each regiment to act on their behalf for alleviation of their grievances. Thence arose the gathering of officers and men at Newcastle in June 1647 where, with the Solemn Engagement of the Army, they pledged themselves in covenant with themselves and with the people not to disband until theirs and the people's grievances had been remedied. To this end a General Council was established

* A neutral term in the seventeenth century meaning 'agent'.

consisting of two officers and two agitators of the rank and file from each regiment but heavily weighted in favour of officers with general officers and commanders free to participate as they chose. Wolfe observes:

The idea of the army's mutual engagement formed a precedent for An Agreement of the People; the principle in each was the social contract put into practical operation, with premises and principles first agreed to, then machinery erected to delineate specific patterns of reformation.³⁹

The common soldiers were prepared to move more precipitously than their officers. Wolfe writes:

In his Appeale Overton had stated brilliantly the theoretical justification of an appeal to the populace; in their Engagement the common soldiers had tasted the power of a mutual pact. It was now an easy step to apply the same principle to citizens as well as soldiers. How to begin? The Case of the Army contains the germ of their answer; the first Agreement is its final form.⁴⁰

The argument of the Case is "Leveller throughout" in the form of its justification. Parliament being no longer legal, a "law paramount" is necessary to guarantee successive Parliamentary elections by "all the freeborn at the age of 21 yeares and upwards . . . excepting those that have or shall deprive themselves of that their freedom, either for some yeares, or wholly by delinquency" inasmuch as "all power is originally and essentially in the whole body of the people of this Nation", ". . . all obstructions

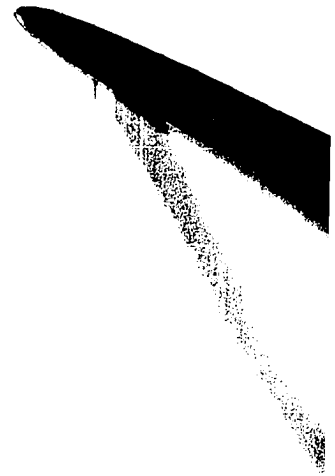
to the freedom and equality of the people's choice of their Representatives, either by Patents, Charters or usurpations, by pretended customs [are to] be removed by these present Commons in Parliament . . ."41

Then follows on November 3, 1647, the first Agreement of the People, the constructive side of their programme. Amazingly brief, its terms provide for more equitable distribution of electoral districts "according to the number of Inhabitants", a fixed date for the dissolution of the present Parliament, biennial Parliaments, the elimination of the negative voices of King and Lords, the Commons as the sole body entrusted with authority by the only ultimate sovereign, the people, limitations upon the extent of even that authorised organ, namely, no control over matters of religion, no right to impress, all persons to be bound alike by the law, all laws to be not only equal but oriented towards the welfare of the people. Such they declare their "native Rights".⁴² Such an abbreviated document seems hardly sufficient to stand as the format for or substance of a written constitution and must be read, as Cromwell and Ireton assumed, together with the Case of the Army Truly Stated.

At this stage in their political development

Leveller soldier and citizen are still groping for the instrument through which to express and sum up their hatred of tyranny in all its forms in a constitutional form of such unalterable perfection and justice as to defy the risk of such tyranny again. The first Agreement is the tentative groping of the Levellers in search of the concepts of constitutional convention and written constitution, the distinction in logic and practice of (to use Eastonian terminology) community, regime and government. They were seeking a community consensus as to the principles and goals which they will live by and wish to achieve, a constitution or regime which would serve as the legal and political embodiment of that consensus, and the government as the agency entrusted with the execution of that constitution and the actualisation of those principles and goals in concrete legislation and other enactments. It would take another two years for that search to culminate with the third Agreement of May 1, 1649, in a genuine constitutional blueprint which would see its actualisation across the Atlantic one hundred and fifty years later.

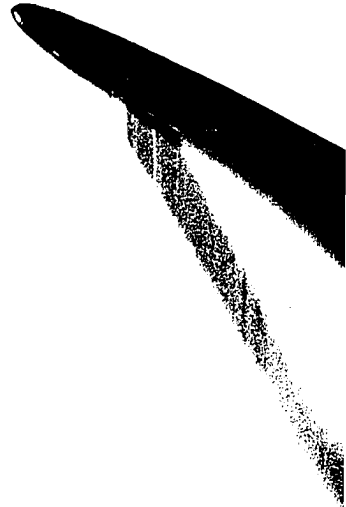
Against this immediate background let us turn to the Putney deliberations. Ireton argues from within the



system. Rainborough repudiates the implications behind that position, that he and the Levellers approve of those rules and the political and social systems they protect. He moves outside the rules and those systems to take up the teleological/moralist/political reformist position, an examination and critique of Ireton's system of rules in the light of reason and conscience, justice and equity.

Ireton and Cromwell cannot and will not follow him to this higher tier of argument not only because it is novel and alien but because it threatens, by its underlying implications of a continual redefinition of society and polity in terms of a society's evolving conceptions of justice, an attack upon their privileges and properties, which they recognise would not meet the tests that Rainborough's level of argument would throw up. They further recognise that Leveller insistence on the present existence of a state of nature would mean the repudiation of the legitimacy and legality of the Army's authority inasmuch as such authority springs from the authority of the existing Parliament.

Ireton's position, an equation of justice with legality, with customary rights, is an almost Hobbesian reduction of 'ought' to the legal. It is through the



positive rulings of the state, he argues, that property is legitimised and guaranteed. "If you will resort only to the Law of Nature . . . you have no more right to this land, or anything else, than I have we are under a contract, we are under an agreement, and that agreement is what a man has for matters of land that he hath received by a tradition from his ancestors, which according to the law does fall upon him to be his right."⁴³

Perry brings out the implications of this stage of the argument:

The distinction between legal and moral rights [which the Levellers are here claiming], and the justification of the first by the second, avoids two errors [to which Ireton is prey]. In the first place, it avoids the error of supposing that rights are the arbitrary creations of the state, and have no meaning save in terms of the power which the state exercises. In the second place, it avoids the error of supposing that a legal right, merely because it is legal, possesses a moral claim of which the beneficiary may not rightly be deprived. Any legal right may or may not possess that moral justification which it claims . . . [but there must be] an appeal beyond the existing institution to the norms of reason and conscience.⁴⁴

That appeal is to be made by Rainborough against Ireton's demand for a property franchise as he persistently prods Ireton to answer his query, what justified their large property holdings in the first place? Ireton refuses to take up the challenge.

Moving beyond an argument regarding the nature and extent of obligation, legal, moral, and political, to the question of the nature and extent of the suffrage, the Debates reveal the same clash of positive and natural right, interest and justice. Ireton challenges at once the implicit demand for universal manhood suffrage in the Agreement and the Case of the Army. Once again his argument is grounded on established custom and privilege:

If it be intended that those that by that constitution that was before the Conquest, . . . beyond memory, such persons that have been before [by] that constitution [the electors] should be [still] the electors, I have no more to say against it.⁴⁵

Rainborough's rejoinder is unequivocal, an expression of faith in the common man and his right to exist and to contribute to the society of which he is an equal member, which we have seen echoed and re-echoed in the words of Lilburne, Overton and Walwyn.

These words are no mere descriptive truism of man's condition. They are a challenge, a prescription, a recommendation, to "see" in men an essential worth and dignity and responsibility that men blinded by artificial manmade trappings fail to see. The total argument finds significance only against the background of moral and spiritual equality which through the principle of analogy

spills over into the natural world as a claim for a natural equality, or by direct inference from an anti-nomian sectarian belief in Christ's love for all mankind into a belief in the religious and moral duty to bring that Christian love into every aspect of human relations. It is an assertion of a new morality, a morality grounded in the concept of the individual's right to be free, to live and unfold the rational and human aspects of his nature, granted to him by God, a morality that challenges all former grounds of obligation to the state with the challenge, "by what right have you to exercise authority over me?" It demands as an answer that alone satisfies, "by my consent, by my authorisation as a member of this society such authority is vested in you and so vested solely for the preservation of my individuality and that of my neighbours".

Perry brings out further aspects of the contextual implications of the Rainborough claim:

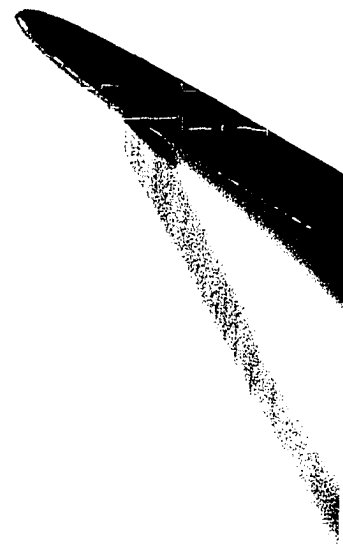
Since [the power of political authority] is so overwhelming, and affects for better or for worse every interest of every man who lives under it, these victims or beneficiaries, as the case may be, are entitled to pass upon its credentials. The stake is too high to justify a blind or even a trusting obedience. It is not reasonable to obey unless one knows for oneself and is oneself persuaded that the authority is beneficial.⁴⁶ [It is a claim for]

moral equality . . . the equalitarian constitution of the law itself in embodying the equal authority and the equal claims of those who live under the law.⁴⁷

Or in Woodhouse's words:

. . . Ireton declares that the Levellers can ground their demands for manhood suffrage only on some plea of natural rights as opposed to the historic rights held forth by the fundamental constitution of the English state. They do not deny the fact It is the law of nature . . . that teaches the individual his rights and their attendant duties, the right and duty of self-preservation and the natural limits of obedience (or the right and duty of resistance to tyrannical rulers). It teaches him what are the ends of government; and it inculcates the basic principles of social life, the principles of natural justice and equity, which dictate the political equality of all men within the state and issue in the maxim 'to do unto others as you would have them do unto you'.⁴⁸

The mask slips, and we find that what the common soldier had fought for in the Civil War, his so-called freedoms and liberties, the birthrights of Englishmen, Christians and man by nature, were never the goals of the leadership. On the contrary, Ireton offers a stark example of the Marxian thesis of class dominated government, candidly acknowledging that the Revolution was fought against the arbitrary actions of a single man who threatened their form of religion, true, but even more so his and his class's purse. The "people", the soldiers now



hear, are "the persons who, taken together, do comprehend the local [and permanent] interest of this kingdom; that is, the persons in whom all land lies, and those in corporations in whom all trading lies."⁴⁹ And they are offered as cynical an interpretation of man's birthright as Locke's interpretation of tacit consent of the governed as evident in a man's mere presence on a highway: "Men may justly have by birthright, by their very being born in England, that we should not seclude them out of England, that we should not refuse to give them air and place and ground, and the freedom of the highways and other things, to live amongst us . . ."⁵⁰ Summing up his position, Ireton declares: ". . . I would have an eye to property".⁵¹

Paraphrasing Ireton's argument, Brailsford writes:

The privileged few . . . felt this grievance of lawless, personal power directly. But it concerned the propertyless majority also, because the laws of England permitted any man to trade, and so he might hope one day to join the privileged minority as a landowner . . .
 . . . Ireton . . . is maintaining that in the England of his day trade opened a door into the governing class.⁵²

Lilburne's stance bears certain startling resemblances to Ireton's, his initial determination of the franchise on the basis of rates, his marked concern for *meum* and *tuum*, his conviction that the removal of monopolies will

usher in a golden age of free trade which will offer to all men an opportunity not necessarily to accumulate vast fortunes but to amass enough to stand free and independent of the wills of other men. It is my contention, to be enlarged upon later, that the qualifications in manhood suffrage allowed by the Levellers are due to Lilburne and reconciled with his egalitarian instincts by his naive belief that all beggars and servants given free trade and hence prosperity will themselves join the independent petite bourgeoisie and thus no longer be dependent upon the will of any man.

But Rainborough's rejoinder fits ill the Lilburnian model. To the spectre of anarchy and economic levelling and the dictatorship of the proletariat, forecast as the dire consequences of manhood suffrage, Rainborough counters with the picture of the rich triumphant enslaving the four-fifths without the suffrage, therefore "answering reductio ad absurdum and ad hominem in kind, combining with scorn and irony an appeal to first principles, crystallizing in a few sallies the culminating democratic implications of the Leveller propaganda".⁵³

Caught off guard at first by Ireton's contention that political equality would inevitably lead to communism and

economic equality, Rainborough offers the existence in the state of nature of natural law, God's law, "thou shalt not steal". But as the debate continues his insight deepens as he returns time after time to the question:

. . . a gentleman . . . hath three or four lordships, as some men have (God knows how they got them) . . .⁵⁴

. . . I would fain know how it comes to be the property [of some men, and not of others] . . .⁵⁵

If it be a property, it is a property by a law [but] . . . I think that the law of the land in that thing is the most tyrannical law under heaven . . .⁵⁶

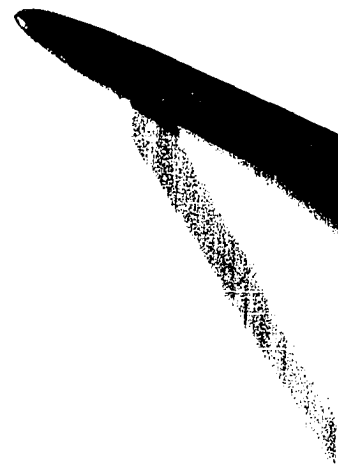
I desire to know how this comes to be a property in some men, and not in others.⁵⁷

Ireton refuses to answer. He will not move beyond the limits of legal right and actual guarantees. Each is stating a half truth, Rainborough that a right is justified qua right by reference to reason and conscience; Ireton, that to be effective a right needs a positive guarantee, usually from the state. But Ireton tends to argue that the guarantee qua guarantee is enough to legitimise the right. Rainborough challenges Ireton to produce a moral justification for the right. This he will not because he cannot do.

These persistent questions posed by Rainborough indicate his closer affinity to Overton and particularly to Walwyn than to Lilburne, to Tyranipocrit, and The Light Shining in Buckinghamshire (considered by Sabine to be a radical Leveller as opposed to Digger pamphlet). He is being drawn to a revolutionary view of "thou shalt not steal", not to evidence of man's duty to protect existing property rights but to a view of property itself as a form of theft unless justified before the bar of justice and equity.

We move now into that climax of the debate on the franchise where the first qualifications to manhood suffrage are advanced by the Levellers. "Servants, while servants, are not included. Then you agree that he that receives alms is to be excluded?"⁵⁸ Around these limitations and others advanced in later Agreements and Leveller pamphlets Macpherson has developed a brilliant analysis of such a restricted suffrage as an index to liberal as opposed to democratic principles of Leveller thought.

Contrary to widespread acceptance among scholars that the Levellers were the first advocates of manhood suffrage, Macpherson argues that they specifically narrowed the



franchise in the Putney Debates to exclude servants and beggars and from then on in all official pronouncements, the second and third Agreements, etc., this limitation is specifically spelled out. Whereas prior to Putney such specific limitations were not made, and many pamphlets and petitions could be read as in favour of manhood suffrage, in fact, on reading back from Putney and subsequent developments in Leveller thought on the suffrage, those limitations could be read into earlier apparent manhood suffrage statements. Such a reinterpretation can be made because of what we know of the basic presuppositions of Leveller thought, namely, that man to be able to exercise his birthright, must not be dependent on the will of other men. As Macpherson points out, Leveller philosophy revolves around the conception of proprietorship of their person, their minds, their souls, their bodies, their labour, a proprietorship which they believe owes nothing to society. They guarantee in their reserve "bill of rights" in the various Agreements against any infringement of their proprietorship over their minds and souls through the protection of civil and religious liberties, which are and remain the birthright of all men, as are economic liberties such as free trade and elimination of monopolies. What is not to be given such

unalterable protection is man's labour. Macpherson rightly points out that this property in man as opposed to his soul and mind is alienable. It is this fact which provides the basis of Macpherson's theory of possessive individualism. Man can sell this birthright by voluntary agreement and hire himself out to others. It is this act of voluntary servitude which, Macpherson argues, places such people in a position of dependence upon the wills of other men and hence in a position where their vote would not be a free and rational one. In short, voluntary servitude in labour is tantamount to selling one's birthright to political equality.

For Macpherson, this assumption has always been behind Leveller thinking. Thus when they are asked to think more deeply about the issue of the franchise that assumption is made explicit in the Putney Debates where Ireton and Cromwell assume that for all present it is accepted that "servants, while servants" and receivers of alms are excluded. And it is this fact of being able to sell one's political birthright through selling one's labour that, for Macpherson, places the Levellers more correctly within the stream of radical liberal as opposed to radical democratic thought.

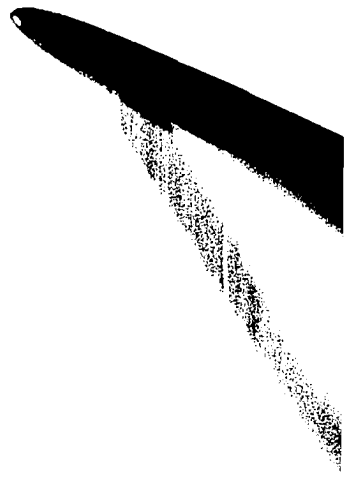
Yet I believe they can equally be placed within the stream of radical democratic thought. For while the Levellers do seem to agree that with voluntary servitude a man forfeits his political rights, they do not, I believe, want such a condition to continue. They are concerned to remove such servitude, to achieve a society in which men will not be economically dependent on others and hence will be in a position to exercise political rights.

This is particularly the case with Walwyn. Whether or not he wrote Tyranipocrit his whole philosophy of practical Christianity can be cited as sympathetic to communism and in favour of equitable economic distribution. It is true that the Levellers deny any communist intentions in the third Agreement and elsewhere. But the preface to that Agreement, A Manifestation, drafted by Walwyn,⁵⁹ seems to reject communism only so long as there is no "'universal assent thereunto from all and everyone of the people'".⁶⁰

We have noted in Rainborough a gradual questioning of the whole system of property relations in his society. Rainborough persistently challenges Ireton about the moral legitimacy of the unequal property distribution guaranteed

by positive law and is obviously deeply troubled by this, leaning in the direction of the radical element in the Leveller movement around Walwyn, towards communism, or, at least, towards claims to equal property. He is impatient with the fears raised by Colonel Rich⁶¹ of a dictatorship established by an enfranchised poor. On the contrary, he retorts that under the present system ". . . the one part [the rich] shall make hewers of wood and drawers of water of the other five, and so the greatest part of the nation be enslaved."⁶² He is concerned to move beyond a debate on a property franchise to consideration of ". . . what shall become of those many [men] that have laid out themselves for the Parliament of England in this present war, that have ruined themselves by fighting, by hazarding all they had? They are Englishmen. They have now nothing to say for themselves."⁶³ Thus he foreshadows Jefferson's contention that a man who has risked his life for his country deserves to be judged to have a "permanent and local" interest in its welfare and hence to be entitled to a vote.

Even Lilburne seems to believe that removal of monopolies and the advent of free trade will enable all men to become small independent entrepreneurs and so free



from the arbitrary will of other men. Granted the validity of the Macpherson thesis that one can sell one's birthright in political equality by selling one's labour, one can also, in Leveller thought, buy back that birthright through becoming a small entrepreneur independent of the will of any other. Just as Ireton assured the common soldier that he, too, through equality of economic opportunity, could gain land and property and so buy himself into the electorate, Lilburne through his campaign against monopolies and for free trade, can be seen as visualising a society of small entrepreneurs thriving in a society of economic freedom and saw those now working for others as apprentices etc. coming to share in this bounty. He may equally have seen such benefits for the beggars whom he believed could be freed from their deplorable condition again through free trade and the opportunities that would open up for their entry into the labour force and even into the petite bourgeoisie. Beggars were in bondage unwillingly; many servants, for Lilburne, were in bondage as apprentices willingly. While so bound, neither servants nor beggars could freely act or express their choice in elections or otherwise and if granted a vote would in fact be adding to the vote of

their masters. But for the Levellers such bondage was not permanent nor can they be associated with the strains of Puritanism which condemned beggary as evidence of unregeneracy and hence requiring no compassion from those more fortunate. On the contrary, the Levellers repeatedly implore the Commons to remove the conditions making such begging a necessity and they appear to believe that the removal of monopolies and the achievement of free trade will provide a golden opportunity for all men to become independent, self-reliant entrepreneurs.

As Gibb points out:

[Lilburne] . . . failed to perceive - and it would be too much, perhaps, to expect [him] to have done so - that in practice the effect of the abolition of the monopolies was to be the creation of . . ."free trade" principles which have led to the monopolistic conditions of modern industrial capitalism.

The fatal weakness of Lilburne's programme . . . was that it postulated a social system which would "stay put", and provided for an epoch of universal small production in town and country which was already beginning to be superseded by that of a capitalist economy increasingly moving towards large-scale production.⁶⁴

If the interpretation I am advancing is correct, then Lilburne was in fact challenging tyrannical forms not only in government, in the law courts, but in economic institutions. If we find the solution naive, the spirit

behind it was fundamentally the same as Walwyn's and Rainborough's, a desire for the realisation of conditions of equality that men might live in an atmosphere conducive to self-respect, and independence of spirit, developing their individuality but doing so within a moral framework of equal respect for the claims and dignity of their neighbour. In short, it is my belief that for Lilburne, who more than any other of the Levellers fits the Macpherson model of possessive individualism, such restrictions on the suffrage would be only temporary. Rather than accepting the economic system he believed that he would, through free trade and elimination of monopolies, restore man's proprietorship over himself as in religion and civil and social life he was to be assured such proprietorship through the protection of his religious and civil liberties.

Whereas Macpherson sees in the concept of proprietorship as delineated by Overton in that famous passage on self-proprietty primarily a liberal economic interpretation, I tend to read it as a concept of self-respect, a concept of an inalienable freedom of man granted to him by God and for this reason independent of society and any agency or individual except through voluntary consent and agreement.

Macpherson points out that the Levellers were not fully captured by possessive individualism. I concur and would further argue that if we give more stress to the influence of Walwyn there is little evidence of such capitulation.

There is a pervasive equalitarianism in the lives, writings and sacrifices of the Levellers that gives credence to the belief that their message was fundamentally one of spiritual, social, economic and political equality. But they were continually forced to compromise by the unexpected and dangerous circumstances of their time. Their greatest conviction was against tyranny in all its forms. Yet their behaviour appears deviant as we attempt to follow their deals, coalitions and secret assignations with Parliament-men, Army leaders, and even, under the Protectorate, with royalists. Such deals could be given a cynical interpretation. Yet measured by their concern to avoid tyranny they can be seen as efforts to retain what they could of freedom and constitutionalism for the English state.

Democratic, equalitarian spirit pervaded their every act, their every thought and spilled over into social, political and economic institutions, stirring democratic

agitation in army, city, companies, countryside. Their dynamism sprang, I believe, from their religious and spiritual experience and communities. Here they learned to respect and love men as fellow believers made in the image of a loving, rational God ruling with compassion and by laws conducive to social, spiritual and personal harmony. Here they learned that each, however mean and socially unimportant, had a contribution to make to the continual unfolding of truth which came in fragments through the free discussion of fallible and imperfect men and women. Here they learned that the Sabbath was made for man, not man for the Sabbath and so, analogically, Parliament and King for the people, not people for Parliament and King.

The interpretation of that Revolution as "Puritan" is no longer fashionable. Witness C. Hill's remarks:

Today, then, the "Puritan Revolution" is in eclipse, though many of its assumptions still haunt our thinking.⁶⁵

I challenge that "eclipse" so far as the motives and actions of the Levellers are concerned. Class conflict was only too evident in their struggle against the propertied classes. But above all theirs was a spiritual and moral crusade. How can we reduce their sacrifices and

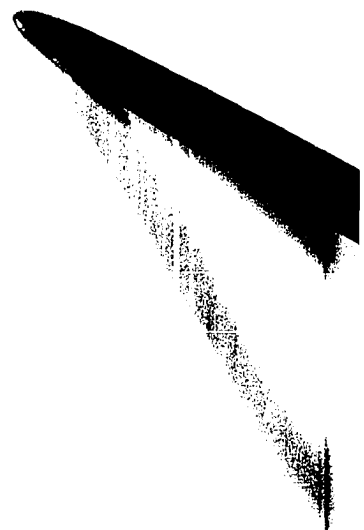
words to the crass slogans of class conflict, self-interest and dissimulation? For those who see in their struggles but economic motives fall themselves prey to the unwarranted assumption of economic man which became the historical legacy of the fusion of Puritanism and capitalism. These men cannot be explained in terms of that fusion. They steadfastly opposed it. As Schenk observes:

The main current of Puritanism . . . was not favourable to Christian equality It is only when worldly success is regarded as a mark of spiritual election that social inequality receives its religious justification The undercurrent of Puritanism described in this study represented a determined protest against this development. Its members . . . were unmistakable Puritans . . . [But] Their sense of community was, on the whole, more acute than their individualism; their beliefs made them more aware of the tension between Judaeo-Christian ethics and the social institutions of the world, and so they were led to suspect many features of social, economic and political life which most of their contemporaries were prepared to accept.⁶⁶

Verging neither to the historically developed pattern of liberalism in its gross economic emphasis nor to the submergence of man's individuality in a total communal commitment, they sought an harmonious balance between dual aspects of man's nature, his need for society and his need for privacy.

Their moral and spiritual legacy is best expressed
in their own words:

Since no man is born for himself only, but obliged by the Laws of Nature (which reaches all) of Christianity (which engages us as Christians) and of Publick Societie and Government, to employ our endeavours for the advancement of a communitive Happiness, of equall concernment to others as ourselves: here have we (according to that measure of understanding God hath dispensed unto us) laboured with much weaknesse indeed, but with integrity of heart, to produce out of the common Calamities, such a proportion of Freedom and good to the Nation, as might somewhat compensate its many grievances and lasting sufferings.⁶⁷

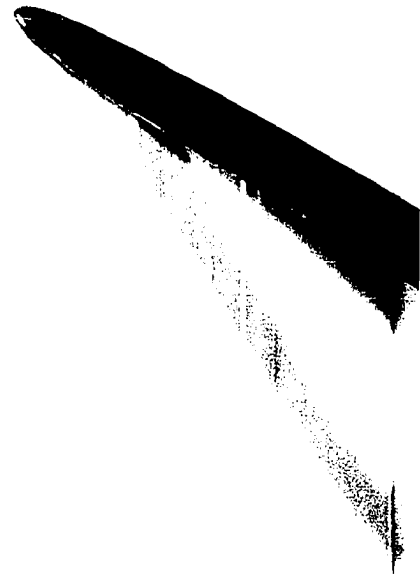


Footnotes

1. A. S. P. Woodhouse, ed., Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents (2d impression; Chicago: University of Chicago Press, 1965), p. 53.
2. ibid., p. 82.
3. R. B. Perry, Puritanism and Democracy (6th printing; New York: The Vanguard Press, 1944), p. 568.
4. R. Overton, An Appeale . . ., quoted in D. M. Wolfe, ed., Leveller Manifestoes of the Puritan Revolution (New York, London: Thomas Nelson and Sons, 1944), p. 159.
5. Quoted in T. C. Pease, The Leveller Movement: a Study in the History and Political Theory of the English Great Civil War (1st edition, 1915; reprinted, 1965; Gloucester: Peter Smith, 1965), p. 137.
6. Independent John Cook as quoted in Woodhouse, (Introduction), op. cit., p. 50.
7. Overton, in Wolfe, op. cit., p. 12.
8. J. Lilburne, Free-mans Freedome Vindicated, in Pease, op. cit., p. 140.
9. E. Barker, Principles of Social and Political Thought (1st published, 1951; Oxford: University Press, 1965), p. 205.
10. ibid., p. 190.
11. Figgis quoted in C. H. McIlwain, The High Court of Parliament and Its Supremacy: an Historical Essay on the Boundaries between Legislation and Adjudication in England (New Haven: Yale University Press; London: Humphrey Milford; Oxford: University Press, 1934), pp. 70-1.

Footnotes (continued)

12. Quoted in McIlwain, ibid., p. 82.
13. D. B. Robertson, The Religious Foundations of Leveller Democracy (New York: Columbia University, King's Cross Press, 1951), p. 67.
14. Pease, op. cit., pp. 42-3.
15. Woodhouse, (Introduction), op. cit., pp. 37, 35-6.
16. (Introduction), ibid., p. 60.
17. (Introduction), ibid., p. 86.
18. Quoted in W. Schenk, The Concern for Social Justice in the Puritan Revolution (London: Longmans Green & Co., 1948), p. 78.
19. Quoted in M. A. Gibb, John Lilburne: a Christian Democrat (London: Lindsay Drummond Ltd., 1947), p. 135.
20. Schenk, op. cit., p. 33.
21. Quoted in D. W. Petegorsky, Left-Wing Democracy in the English Civil War: a Study of the Social Philosophy of Gerrard Winstanley (London: Victor Gollancz, Ltd., 1940), p. 232.
22. H. N. Brailsford, The Levellers and the English Revolution, edited and prepared for publication by C. Hill (London: The Cresset Press, 1961), pp. 115-16, 117.
23. Schenk, op. cit., p. 78.
24. [anon.]. Tyrannipocrit Discovered, in G. Orwell and R. Reynolds, British Pamphleteers (London: A. Wingate, 1948-1951), p. 85.
25. ibid., p. 106.



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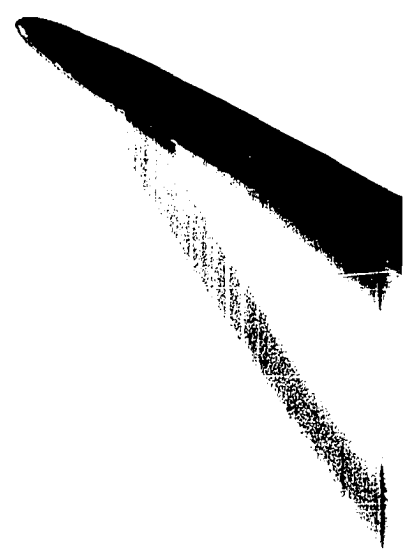
26. Quoted in W. Haller, ed., Tracts on Liberty in the Puritan Revolution, 1638-1647 (1st edition, 1934; reprinted, 1965; New York: Octagon Books, 1965), III, 260.
27. Perry, op. cit., p. 415.
28. ibid., p. 415.
29. McIlwain, op. cit., p. 92.
30. P. Zagorin, A History of Political Thought in the English Revolution (1st published in Great Britain, 1954; New York: The Humanities Press, 1966), p. 28.
31. Quoted in Wolfe, op. cit., p. 113.
32. ibid., p. 114.
33. ibid., p. 124.
34. ibid., p. 158.
35. ibid., pp. 159-60.
36. ibid., pp. 160-62.
37. ibid., p. 162.
38. Woodhouse, op. cit., p. 78.
39. Wolfe, op. cit., p. 142.
40. ibid., p. 197.
41. ibid., p. 198 ff.
42. ibid., pp. 226 ff.
43. Woodhouse, op. cit., p. 26.
44. Perry, op. cit., p. 447.

Footnotes (continued)

45. Woodhouse, op. cit., p. 52.
46. Perry, op. cit., p. 431.
47. ibid., p. 568.
48. Woodhouse, (Introduction), op. cit., p. 91.
49. Woodhouse, op. cit., p. 54.
50. ibid., p. 54.
51. ibid., p. 57.
52. Brailsford, op. cit., p. 278.
53. Wolfe, op. cit., p. 57.
54. Woodhouse, op. cit., p. 59.
55. ibid., pp. 60-1.
56. ibid., p. 61.
57. ibid., p. 63.
58. ibid., p. 82.
59. Brailsford, op. cit., p. 523.
60. ibid., p. 526.
61. Woodhouse, op. cit., pp. 63-4.
62. ibid., p. 67.
63. ibid., p. 67.
64. Gibb, op. cit., pp. 208-9.
65. C. Hill, "Recent Interpretations of the Civil War",
in his Puritanism and Revolution: Studies in

Footnotes (continued)

65. Interpretation of the English Revolution of the 17th Century (2d printing; New York: Schocken Books, 1967), p. 5.
66. Schenk, op. cit., p. 156.
67. Quoted in Wolfe, op. cit., p. 388.



Chapter

IV

NATURAL RIGHTS THEORY IN LOCKE

ITS CONCEPTUALISATION

To understand Political Power right, and derive it from its Original, we must consider what State all Men are naturally in, and that is, a State of perfect Freedom to order their Actions, and dispose of their Possessions, and Persons as they think fit, within the bounds of the Law of Nature, without asking leave, or depending upon the Will of any other Man.

A State also of Equality, wherein all the Power and Jurisdiction is reciprocal . . . there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection . . .*

John Locke, Two Treatises of Government, II, S. 4.

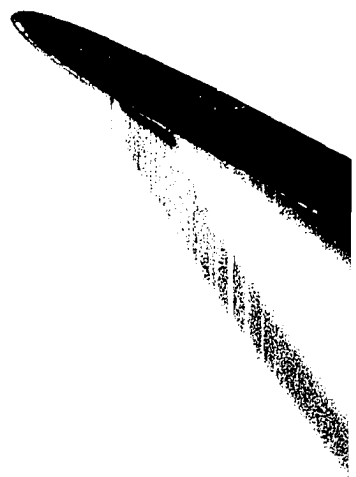
* All references to Locke's Two Treatises from ed. P. Laslett, John Locke: Two Treatises of Government: a Critical Edition with an Introduction and Apparatus Criticus (revised edition; Toronto: The New American Library of Canada Limited, 1965).

The Confrontation of Extraordinary and Normal Paradigm*

Locke's "extraordinary" equality paradigm, grounded in a theological-metaphysical foundation of the spiritual equality of all men, confronted the "normal" nonegalitarian paradigm of his own society and his own socio-economic milieu. We have noted in the case of the Levellers a fairly consistent commitment to the implications of their "extraordinary" paradigm as it faced the 'facts' and norms of their time and place. Even their qualifications to a particular logical implication of their paradigm, manhood suffrage, were, I believe, for them to be of a temporary nature. Not so with Locke. Locke like Ireton, while drawn intellectually and morally to much in the egalitarian perspective of the Levellers, could not draw themselves) himself away from the normative demands made by their own socio-

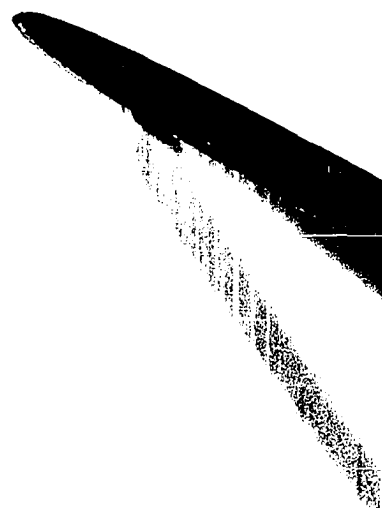
* We may recall the distinction drawn by Wolin between normal and extraordinary paradigm: ". . . one can think in terms of two kinds of paradigms. There is the extraordinary type represented in the major political theories and there is the normal one embodied in the actual arrangements of a political society." S. S. Wolin, "Paradigms and Political Theories", in P. King and B. C. Parekh, eds., Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of His Retirement (Cambridge: University Press, 1968), p. 151.

economic milieu. Where Locke's equality paradigm directly challenged the established paradigm it had to give way to the practical assertions of the settled way of life. Thus we find Locke specifically limiting the election of representatives to men of property. On the other hand, the practical assertions of the equality paradigm regarding the establishment of civil society and opposition to established government never confronted Locke with the inherent contradictions between those assertions and the social and political implications of his day. No Putney Debates, no direct confrontation with the rank and file of militia or people, faced Locke with the need to make those egalitarian assertions square with the facts of the norms of his age and milieu. Locke, like Ireton, assumed that the English people could be united in opposition to arbitrary, absolute government. But unlike Ireton, he was never forced to question or determine who the "people" were because he was never forced to seek their support in a revolutionary defiance of established authority. At the stages of the state of nature and of the establishment of civil society, there is thus for him no direct confrontation between the ideal paradigm and the normal paradigm of his day. Even at the stage of



revolution there is no bitter confrontation for the Whig Revolution was a bloodless revolution. Thus at these stages Locke could allow free play to his creative imagination to unwind the implications of his ideal paradigm.

In Locke we find the practical assertions of each paradigm moving in parallel lines never meant to be and never in fact challenged. It is understandable, therefore, to find recent interpretations of Locke polarised into two extreme interpretations depending on whether one attempts to carry through consistently the significant and relevant facts of the equality paradigm or of the normal paradigm of Locke's own age and socio-economic milieu. Rather than attempting to smooth out the inconsistencies and fit Locke's political theory into a pattern consistent with either paradigm, I suggest we begin and end with these inconsistencies. I suggest that Locke's egalitarian insights, gained from his theological preoccupations, where undisturbed by direct confrontation with the reality principle, could develop further egalitarian implications allowing for a growing awareness of the potential rationality of the "meaner" sort. This unravelling was made possible simply because no direct challenge from the



"meaner" sort forced him to make good those insights in practical social, political and economic assertions.

In Search of an Interpretation

Five stages occur in Locke's reconstruction of political society from the examination of man in his "Original", i.e. in the state of nature: 1) natural equality and natural equal jurisdiction, the state of nature; 2) entering into compact for establishment of civil society; 3) joining an already established civil society as an adult; 4) electing a government; 5) opposing or revolting against an established political system. At which of these stages does egalitarian man give way to inegalitarian man and why?

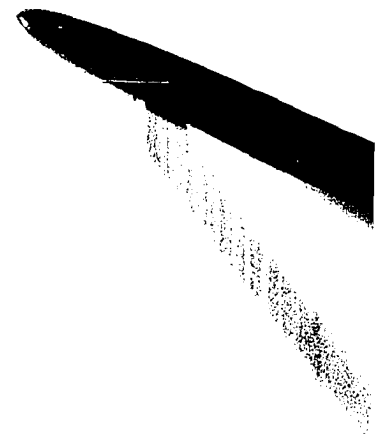
At each of these stages, except stage 4, Locke speaks of every man, all men. His propositions are throughout universal. All men are naturally equal, all men have a right to execute the law of nature, all men join together to form the civil society, the political community, all men agree to have the majority speak for them all, all men at the age of adulthood are free to express their allegiance or emigrate, all men acting on majority decision, participate in the decision as to the type of

regime or government to be established, all men through their majority have a right to revolt in the face of arbitrary and "rebellious" rule. At stage 4 specific qualifications to such universal language stand out boldly and unmistakably. Only those with property are to elect representatives and in proportion to the extent of that property. (II, S. 158)

The crucial cleavage between a liberal/constitutionalist and Marxian interpretation of Locke, the contemporary extremes of interpretation of Locke the political theorist, centres on the question whether in fact we can read back into stages 1, 2, 3 and 5 the same limitation of rights and authority to the men of property. Macpherson's interpretation is compelling, with its reading into the Lockean text of the social implications of his time and place and his own socio-economic milieu, as seen in Locke's attitude to the poor, both unemployed and labourers, and in his society's attitude to labourers as not entitled to political rights, as in fact subhuman or "beasts". If we add to these social implications Locke's political limitations of the equality principle, his rare example of explicit consent as concentrated on such issues as consent to taxation (II, S. 138), and his specific spelling out of

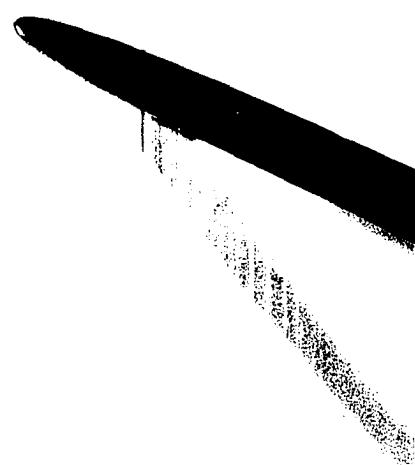
correct electoral reform as consisting of people only having "a right to be distinctly represented . . . in proportion to the assistance which [they] afford to the publick" (II, S. 158), which reflect the social implications of his age, the Macpherson thesis is further reinforced and allows for a convincing rendering of Locke as working with those same assumptions at the establishment of political society through compact, at the coming of age of adults in the political society, and at the time suitable for an "appeal to heaven". We could then start from the obvious certainty of Locke's favourable attitude to property qualifications for voters together with the social implications of Locke and his age and move back from this position to make his whole thesis consistent with this certainty.

It is generally agreed that Locke's initial postulates of man include equality of reason in the sense of the rational faculty by which, together with sense, man gains, through the light of nature, access to the law of nature, the rules of right reason whereby man is meant by God to conduct his life. It is also generally agreed that this rationality in both senses, as the discursive faculty and as "right reason", is mere potentiality until by "study",



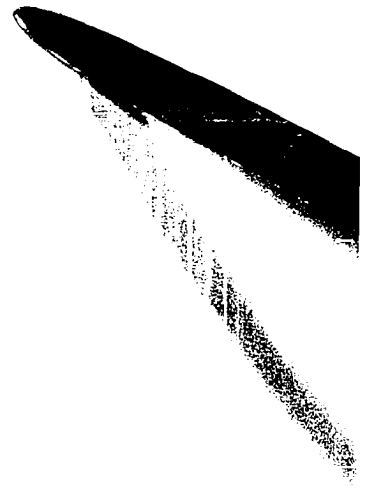
"industry" and application the faculty of reason is developed and with it the capacity to gain knowledge of rationality as right reason. It is further generally acknowledged that for Locke the "greatest part" of mankind are not "Studiers" of the law of nature either through indolence or lack of opportunity or both. Where disagreement develops in interpretation is over the crucial question whether knowledge of natural law sufficient to live by, to conduct oneself in a morally responsible way, is accessible to and generally gained by most people or whether such knowledge requires "full" rationality, i.e. a thorough grasp of the intricacies of the demonstrative science of morals, the intuitive propositions and deductive inferences Locke argues make up a full understanding of the law of nature as a natural as opposed to a divine law.

For Macpherson Locke believes rationality necessary for understanding the law of nature was at first available to all. But Locke, in "Of Property" comes to confine such rationality to those few "rational and industrious" men to whom God has given the use of the earth and who have made profitable use of it with the introduction of money and a commercial economy. They, by their labour, are



entitled to claim that part of the earth they have cultivated and enriched. It was they who, with the introduction of money, and the intelligent use of this for furthering trade, enlarging and increasing the yield of the earth, brought more satisfying subsistence to even the day-labourer than to a king in the wilderness of America.

In time Locke lost his assurance of the possibility or even necessity of full rationality understood as a demonstrative science of morals: "'Human reason unassisted', Locke argues, 'failed men in its great and proper business of morality. It never from unquestionable principles, by clear deductions, made out an entire body of the "law of nature". And he that shall collect all the moral rules of the philosophers, and compare them with those contained in the New Testament, will find them to come short of the morality delivered by our Saviour . . .'. To the repeated insistence of his friend, William Molyneux, that he should write a treatise proving the demonstrability of ethics . . . Locke replies: 'The Gospel contains so perfect a body of ethics, that reason may be excused from that inquiry, since she may find man's duty clearer and easier in revelation than in herself' 'Those



things that every man ought sincerely to inquire into himself, and by meditation, study, search, and his own endeavours, attain the knowledge of, cannot be looked upon as the peculiar profession of any one sort of man.'

. . . . However ignorant he may be of philosophy, or of sophisticated demonstrations of God's existence, simple belief in divine revelation is all that God requires of him."¹

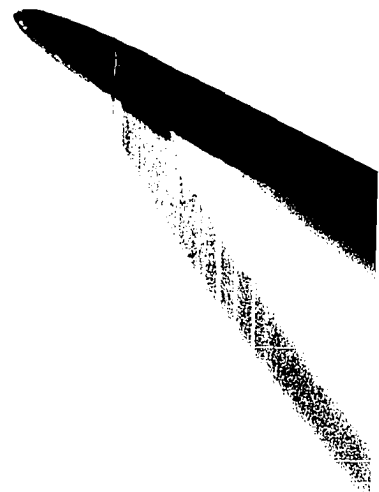
One can, I believe, detect in the temporal development of Locke's work a moral and spiritual development as well, a more humane, tentative, humble awareness of all men's fallibility, of all men's weakness of will in seeking truth and living by it, together with an awareness of a potentiality in all men for rationality, for moral, rational choice. There is a recognition in the Reasonableness of Christianity that if the meanest sort need commands from God through Christ for guidance in moral conduct, so do the wisest, that the "demonstrative ethics" of Christian revelation was vouchsafed first not to the wisest, the richest, the most powerful, but to the meanest and lowest. If the latter could not be expected to understand the superfine distinctions of the schools, they could "feel" and be moved by and recognise the moral

validity of the universal rules of God and Nature as exemplified in the conduct of a Jesus. Note, for example, his recognition in Of the Conduct of the Understanding that "the industrious and rational were to be found among Calvinist peasants in France before the Revocation of the Edict of Nantes":

. . . more might be brought to be rational creatures and Christians . . . if due care were taken of them. For if I mistake not, the peasantry lately in France (a rank of people under a much heavier pressure of want and poverty than the day-labourers in England) of the reformed religion, understood it much better, and could say more for it, than those of a higher condition among us.²

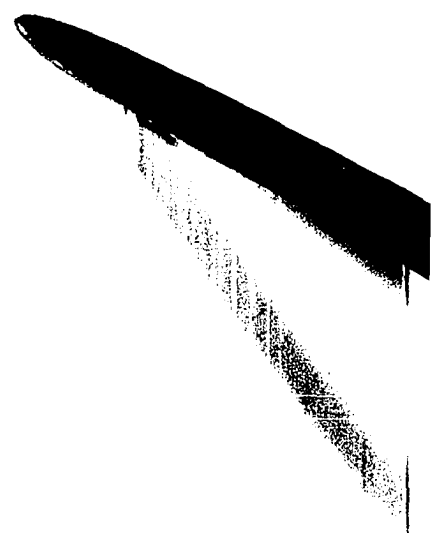
Such knowledge, Locke seems to end by acknowledging is sufficient, is all men need for the guidance of their personal and public lives, including their assessment of the general trend and design of their rulers.

Such rendering of Locke brings him closer to the Levellers' ultimate ground of moral and political thought, the priesthood of all believers. Just as Lilburne moved through an intellectual and moral development, from passive obedience to the state, from the arrogance of divine election to become a fiery defender of the rights of man against arbitrary authority and a believer in religious toleration for all, under the moderating and



humane influence of Walwyn; so too, I believe, we can see in Locke a similar development, through the moderating influence of a Shaftesbury. Locke moved from an authoritarian elitist interpretation of authority and the masses, through a gradual realisation of that new world view of "individuality" that demands from all that they "shift for themselves" not only in assenting to truth, consenting to government on the basis of good reasons achieved through grappling with their own minds and their own souls, but as well in labouring with their own hands to render a parcel of the earth theirs by title of such exercise. And all this, as with Lilburne, for the glory of God.

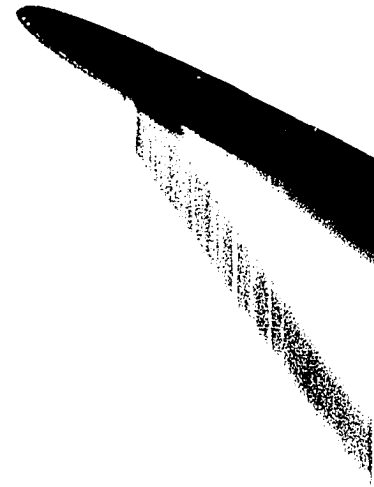
Thus instead of starting my analysis of Locke from his seventeenth century social assumptions and his voter qualifications, and reading back into the state of nature the implications of those assumptions, I start with Locke's state of nature with its initial postulates of equality, freedom, rationality. With the crucial question of voter qualification for the choice of representatives I find Locke confronted with the uncomfortable demands of his own social and political existence and unprepared to sustain the logic of his universal



premises in the face of the reality principle. Dunn finds a similar reluctance. " . . . the most Utopian of the pieces [on 'Labour'] suggests a complete social equality of opportunity for cognitive effort (six hours a day for all), before shifting away in alarm at the egalitarian social implications of the proposal and substituting a distribution which preserved the opportunities of the poor, while reflecting the existing status differences."³ Locke grew aware that all men to whom the Christian message had been made available could, through revelation and sincere searching for that essential spiritual and moral relationship with God, be equipped with all the knowledge of the moral law sufficient to guide their private lives and to judge of and share in the creation of polity. But he was unwilling to see his argument through to its logical outcome, a democratic suffrage. His friend Tyrrell, however, recognised the implications of Locke's political theory:

It was Tyrrell, not Locke, who . . . admitted there was really no stopping place between the ground he and Locke occupied and logical individualism, final democracy, the sharing of political power with women, children and servants.⁴

Others would draw out these implications in defence of



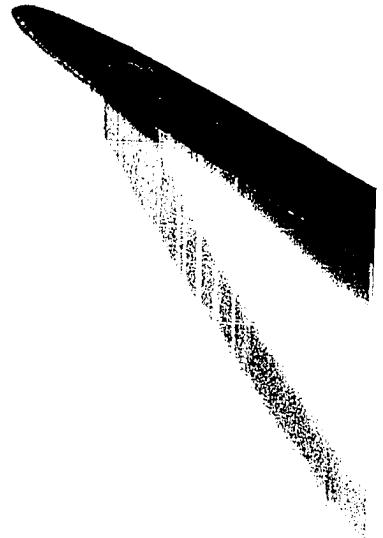
practical demands for electoral reform. Such is evident in the speech of Thos. Erskine in defence of Thos. Hardy, leader of the first British working-class political organisation:

[Locke] . . . considered universal representation to be such an inherent part of the constitution as that the King himself might grant it by his prerogative even without the Lords and Commons . . . The maxim that the King might grant universal representation as a right before inherent in the whole people to be represented stands upon the authority of Mr. Locke . . .⁵

As Macpherson observes:

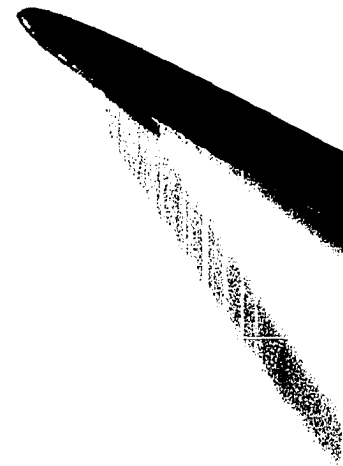
His [Locke's] work invites this treatment, for it seems to have almost everything that could be desired by the modern liberal democrat. Government by consent, majority rule, minority rights, moral supremacy of the individual, sanctity of individual property - all are there, and all are fetched from a first principle of individual natural rights and rationality, a principle both utilitarian and Christian.⁶

But they are all there only if the God's eye view is also there. Only there could be found such egalitarian sentiments in an age of such gross actual inequality. Locke saw in men what God saw, their equal worth, their equal capacity to know Him and His law. Discount as rationalisation or venerate the theological trappings and the theory can well be seen as solely a defence and justification of the new bourgeois values of unlimited



accumulation.

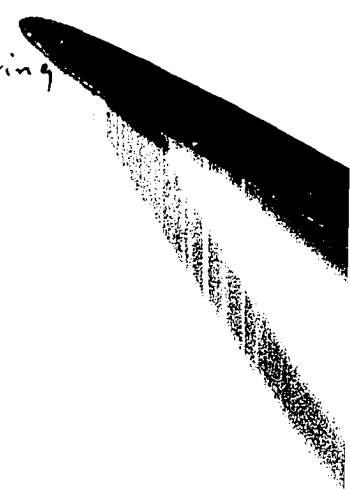
As with the interpretation of "differential rationality" so with "property", the rendering we give reflects our belief in Locke's commitment to his theological presuppositions. Man as master of himself, Proprietor of his life, liberty and estate, divorced from the ultimate Proprietorship over him of His Creator, takes on and will historically acquire the characteristics of the atomic, self-made, individual beholden neither to society nor to any other being or institution, guaranteeing his self-reliance through his capacity for unlimited accumulation. So conceived we should start with the explicit restrictive rendering of property in Sections 138 and 158 of the Second Treatise. When the chips are down what really matters is property as estate. And how vital the control of political power by those with such assets in the light of the seething resentment of those who with covetousness and quarrelsomeness, refuse to accede to the new rules of the game! Bring back the theological underpinnings, the validity and effectiveness of the moral law and its law-giver, and property as estate recedes in importance before the demands of that law-giver to preserve oneself and one's liberty to allow for the means of



realising a subjective knowledge of God and performing the injunctions which He issues.

What prompted the Two Treatises? On the face of it, Sir Robert Filmer's defence of patriarchalism, of the divine right of kings, of absolute, arbitrary power, and, according to Laslett's researches, the efforts of Shaftesbury and the Whigs to persuade Charles II to accept the Exclusion Bill, an effort prompted by a concern for property not as estate but as religious liberty. There were other complaints against Charles's behaviour, against his arbitrary flaunting of Parliament, his refusal to call frequent and ~~regular~~ parliaments, his threat to their property as their purse. The Treatises seem at best only secondarily an harangue against the quarrelsomeness and contentiousness of those resentful of unlimited appropriators. It reverberates with moral indignation against arbitrary despotic rule of will against the divine command to live by law. It resounds with its revolutionary justification of the people's right to appeal to heaven against any such "wild beast or noxious brute" who would seek to establish and justify an absolute monarchy which "is indeed inconsistent with Civil Society, and so can be no Form of Civil Government at all". (II, S. 90).

flouting



Whatever interpretation of Locke's moral and political theory we advance, we face incoherencies and inconsistencies. If we start, as I do, from the universal initial premises, I inevitably face their incompatibility with his acceptance of the patent social and political inequalities of his own age. If we start with those social and political inequalities and trace them back to his initial postulates we face the same contradictions and inconsistencies, of reconciling these particular recommendations with his overall universal propositions. Rather than trying to smooth out the logically and morally jagged edges of the outline by reading back into Locke's initial postulates a mere gloss to hide those actual inequalities, a more sympathetic rendering is one which Macpherson himself offers: "Locke could not have been conscious that the individuality he championed was at the same time a denial of individuality. Such consciousness was not to be found in men who were just beginning to grasp the great possibilities of individual freedom that lay in the advancement of capitalist society."⁷

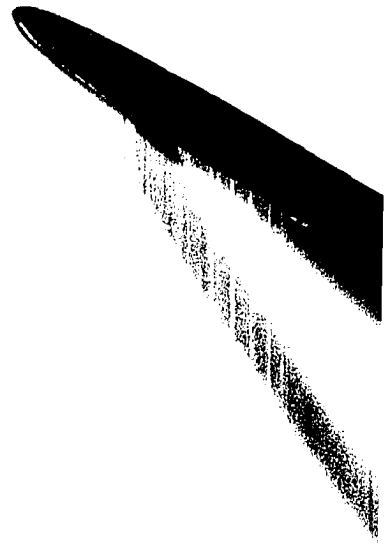
The Law of Nature

No analysis of equality from the state of nature to

the right of revolution can proceed without understanding the law of nature. For that law, the declaration of God's will, permeates and regulates every relationship of man to man, in face-to-face relationships, in group relationships, within the political community. It is the moral framework within which the human drama is played.

For Locke's conception of the law of nature we must look beyond the Two Treatises, since in this work Locke takes for granted a ready understanding among his readers of that term. In his Essays on the Law of Nature, prepared in the early 1660s though never published in his day, we find an exhaustive treatment both of the ways in which this law is made known to us and the way in which it binds. While the whole tenor of Locke's political and moral philosophy made a revolutionary reversal from the publication of the Tracts and the writing of the Essays to the Treatises, from an authoritarian to a constitutionalist analysis of government, his theoretical rendering of the source, obligatory and epistemological nature of this law did not change. The emphasis did shift, however, from deontological to teleological, from voluntaristic and rationalistic to hedonistic aspects of that law.

The law of nature conforms to the standard require-



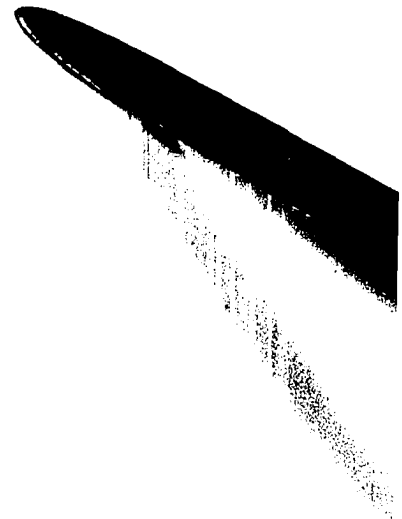
ments of the concept of law for Locke. It is the will of a law-giver, that will is declared. Together these aspects render law binding. Obligation does not guarantee effective obedience. The motivation to obedience stems from man's pursuit of pleasure or the good, more precisely his concern to remove "uneasiness" or the evil of bodily or mental discomfort. The morally good or evil, defined as the sanctions, the rewards and punishments accompanying law, move man to do what mere obligatoriness cannot achieve. The law of nature and its law-giver, God, are known to man through his natural faculties of reason, the discursive faculty, and sense, and the knowledge so gained is as certain and indubitable as that supposedly established by innate knowledge. It is so guaranteed because our Creator, manifesting the attributes of perfect wisdom, beneficence, omnipotence, would not provide us with the human faculties of reason and sense to deceive us, but rather to provide us with the necessary avenues to knowledge of His will, and the declaration of that will, the law of nature, which clearly enjoins us to glorify God, to preserve ourselves, and to love our neighbour.

This perspective, this God's view, was mere common sense to Locke's generation. Nor was it an unscientific

perspective. Boyle, Newton, all the great scientists of Locke's day would readily accept his most persistent argument for God's existence, the argument from design. We find this metaphysical perspective difficult to grasp. Yet what possible "amount of careful empirical observation and bold and fruitful hypothesis will explain to us what those men see who see the state as a divine institution; or what their words mean and how they relate to reality . . ."?⁸ As Berlin points out:

[Philosophical doctrines] are not concerned with specific facts, but with ways of looking at them; they do not consist of first order propositions concerning the world. They are second or higher order statements about whole classes of descriptions of, or responses to, the world and man's activities in it; and these are in turn determined by models, networks of categories, descriptive, evaluative, and hybrids compounded of the two, in which the two functions cannot be disentangled even in thought - categories which if not eternal and universal, are far more stable and widespread than those of the sciences; sufficiently continuous, indeed, to constitute a common world which we share with medieval and classical thinkers.⁹

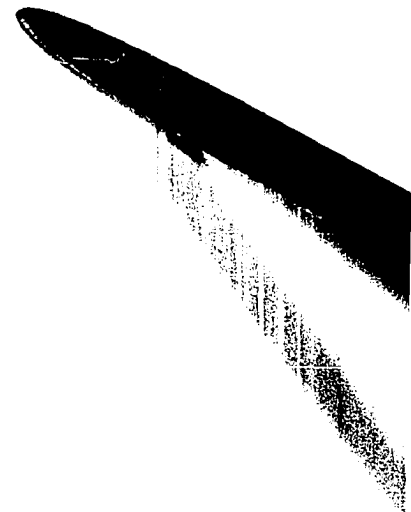
It is this insight we must keep in mind in approaching von Leyden's indictment of Locke's logical errors. Von Leyden tells us that Locke "starts with certain statements of fact, i.e. statements about human nature, containing no judgments of value; he then passes to certain



metaphysical and theological statements which contain no moral words either; from these statements he draws a conclusion about what men ought to do, as if the conclusion of a valid argument could contain anything, e.g. an 'ought', which is not contained in the premises."¹⁰

The cleavage he finds between factual assertions, definitions, metaphysical and theological statements, and moral judgments, all of which he argues Locke looks upon as statements of the same logical type and thus accessible to the same forms of inference, is easy to find if we neglect Berlin's advice, to "see" the theological-metaphysical foundations as a total perspective of man, the world, his creator, a view of man as created by a benevolent, all-wise being who manipulates the raw stuff of the universe to provide for that universe to fit His plan.

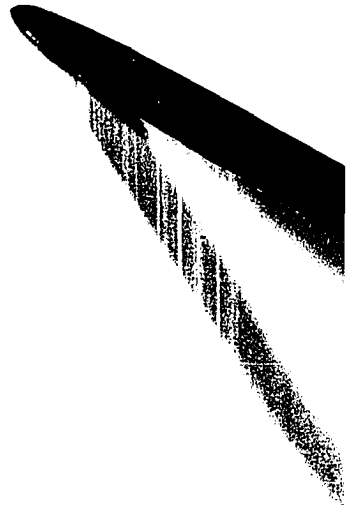
The von Leyden thesis can be challenged at his initial rendering of Locke's statement concerning man's essential nature as being a "merely factual statement". As we noted in the Introduction, the analysis of the "essential nature" of man is more than a descriptive statement. The very term 'essential', like 'truly' and 'really', is, to use the terms of the emotive school,



'persuasive'. They express commitments, preferences, to look at man as truly human only when he does such and such, develops such and such. They are shorthand practical guides or standards for human conduct. As Danto has observed: ". . . I think there is no predicate in our language that does not have, in addition to a descriptive use, a prescriptive or normic use as well . . ." ¹¹ Our language is an expression of what we are, purposive beings, acting with choice and preference and hence with evaluative overtones to everything we do.

To say that "man is rational" is, for Locke, to say: Man has a rational faculty. He is expected to use it and to use it in accordance with certain standards, before he either "assents" to the truth of a proposition, or "consents" to a rule of human behaviour. His whole moral/political/epistemological theory is normative, i.e. this is what man can do, is expected to do, at times does not and yet ought to do. It is also normative in Locke's more extended sense. It is commanded by God, the supreme law-giver, Creator and Sustainer of our being and our happiness. Yolton has summed up concisely Locke's understanding of natural law:

. . . the laws of nature specify the conditions for humanity. To violate these



laws is tantamount to renouncing one's humanity The laws of nature express the will of God and indicate the normative foundation for all subsequent forms of society Society may express these laws well or poorly; it cannot violate them and remain a moral community.¹²

Hart's analysis in The Concept of Law bears a striking resemblance to much in the Hobbesian-Lockean analysis of law as rules of guidance judged essential to bearable social existence, given certain "obvious truisms about human nature and the world we live in".¹³ Those primary rules, Locke's and Hobbes's minimum natural law content - restrictions of the free use of violence, demands for honesty, promise-keeping and truth-telling - are, Hart argues, the essential nucleus of any system of law, given survival as our aim. Hobbes's vision included more than mere survival - survival for commodious living. Locke's went further, demanding of society conditions for the development of a fully human existence. For him that spelled freedom, the opportunity for and expression of rational choice.

Transition from Tracts to Treatises

One cannot examine Locke's mature political work,

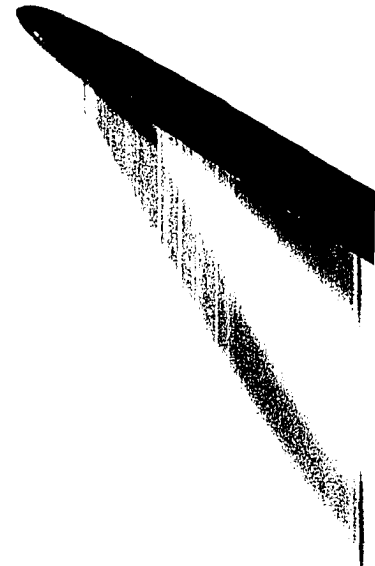
The Two Treatises, with its emphasis on natural equality, without an understanding of his perspective on natural law or without attempting to resolve the glaring contradictions between his earlier political works, Two Tracts on Government, and the Treatises. Commentators on Locke continually raise the question of the inconsistencies and contradictions within his philosophic writings as a whole. Such inconsistencies are evident between the earlier and later political works.

While such inconsistencies are not so marked as some have intimated,* there is a marked contrast between the earlier and later views of the "people". Turning to the Tracts and the Essays on the Law of Nature we are presented with the image of the seething "multitude", prey to every passing whim of greed, passion and depravity, an image of a "tempestuous sea" as ready to break through the flood gates of political and social morality and law at the slightest encouragement of unscrupulous and designing leaders. There is a blistering denunciation of the opinion that the voice of the people is the voice of God.

* See in particular Professor C. B. Macpherson's observations in The Political Theory of Possessive Individualism (Oxford: the Clarendon Press, 1965), pp. 258-61.

How to reconcile these sentiments with those of the Treatises characterised by natural political virtue which "We all possess . . ., both because we are disposed favourably towards each other in our very make-up, our nature, and because, when we co-operate, when we discuss things together, the tendency of what we do and what we say will inevitably be towards the politically efficacious, that which will look out for all of us."¹⁴

Locke begins from a position that a few men have full insight into the law of nature. These few can transcend considerations of self-interest and see what is for the public good in accordance with that law and act on that insight. It is the breakdown of his assurance of this knowledge and of the moral uprightness of the few that destroys the ground of his authoritarianism. That authoritarianism was a reaction to the "indecent" disorder caused by ordinary men in their endless disputes over indifferent things and their consequent tendency to disrupt the fabric of society and government. Locke, prompted by fear of insecurity and a return to the revolutionary religious unrest of his childhood, responds as a Hobbit. Anything for decency and order. And the new Monarch, Charles II, our great Restorer, has the public-



mindedness and knowledge requisite for this commission.

But as Locke matured, under the influence of Shaftesbury, in the atmosphere of British politics, he became aware that kings and magistrates can err, that ignorance, depravity, interest, partiality or party, are ubiquitous. No man, no class escapes them. If the contrast persists between human rational beings and brutes or wild beasts, the latter can no longer be confined to the multitude. For, as Laslett points out, Locke came to believe that " . . . Leviathan, like the royal patriarch, did subordinate all human wills to one will, it made law and government a matter of will, therefore it did treat men as beasts and anyone pretending to its rights and powers could be treated as a beast Charles and James Stuart fit easily enough into the role . . ."15 Add to this his increasing recognition that philosophers, even Locke himself, had not provided and seemed unable to provide a demonstrative ethics comparable to mathematics, through reason alone. If men are to find such a demonstrative ethics, the natural light of reason cannot, unassisted, provide it. Only revelation, faith, the Gospel can do so.

Thus are the gates open for the intrusion of new

insights. Men of the highest wisdom assent to the truths of Christianity made known to them by Christ's apostles, the illiterate ones, the meanest sort. It was they who first grasped the truth of the message and gave it to the wise to which their reason assented. If the whole tenor of the Reasonableness of Christianity stresses the limited capacity of humble, mean men, it equally attests to their ability to grasp the most essential truth, the law of God, the Gospel, the basic rules of natural law, and that more surely and more unquestioningly than the fully rational few.

Had God intended that none but the learned scribe, the disputer or wise of this world, should be Christians, or be saved, thus religion should have been prepared for them, filled with speculations and niceties, obscure terms, and abstract notions. But men of that expectation, men furnished with such acquisitions, the apostle tells us . . . are rather shut out from the simplicity of the Gospel; to make way for those poor, ignorant, illiterate, who heard and believed promises of a Deliverer, and believed Jesus to be him And if the poor had the Gospel preached to them, it was, without doubt, such a Gospel as the poor could understand; plain and intelligible; and so it was . . .¹⁶

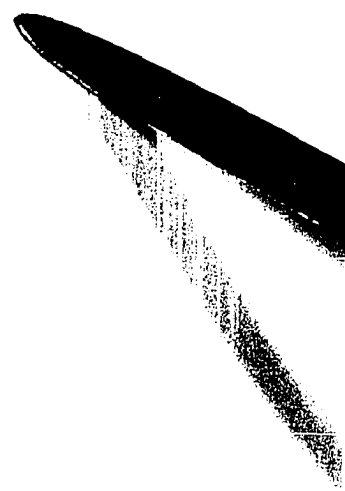
Abrams argues that as a result of these insights Locke ended by building his "philosophy on two cardinal propositions: the immediate fact of partiality and the ultimate

fact of an accessible, rational, God-given order. The actual equality of men in ignorance and self-love had to be complemented by a potential rationality and a potentially accessible rational order If men are by nature partial they are also by nature potentially rational."¹⁷ With Locke's growing belief in the need to supplement and confirm reason by faith and revelation, together with a recognition that it was to the "ignorant and lowly" that Christ's message was first delivered and accepted, Locke's attitude to the multitude softened. Turning to Of the Conduct of the Understanding, we learn that "We are all short-sighted", that "the use and benefit of this touchstone, which is natural reason, is spoiled and lost only by assumed prejudices, overweening presumption, and narrowing our minds.". The "narrow bonds" of perspective is the condition not only of the "day labourer in a country-village", of "porters and cobblers of great cities", but equally and less justifiably of "[a] country gentleman who, leaving Latin and learning in the university, removes thence to his mansion-house, and associates with neighbours of the same strain, who relish nothing but hunting and a bottle" ¹⁸

My interpretation can be challenged. Locke's

Reasonableness of Christianity like so many of his other works is open to considerable variation of interpretation. Thus Macpherson has quoted the following observation by Locke as confirmation of Locke's marked distinction between the greatest part who must be commanded and the few who can know: ". . . 'the day-labourers and tradesmen, the spinsters and dairy-maids, . . . hearing plain commands, is the sure and only course to bring them to obedience and practice. The greatest part cannot know, and therefore they must believe.'"¹⁹ Yet the whole tenor of the Reasonableness . . . seems to me to impress upon all men, the highest and the lowest, that reason unassisted by revelation, reason unassisted by hope of the rewards of a life hereafter, and of the existence of a supreme law-giver, has been and in the nature of the case is unable to offer a plain and intelligible and demonstrative ethic. For Locke continually reiterates that knowledge of and obligation to natural law depend upon belief in and commitment to the existence of a divine legislator. Thus all must be commanded. All must obey. He observes that:

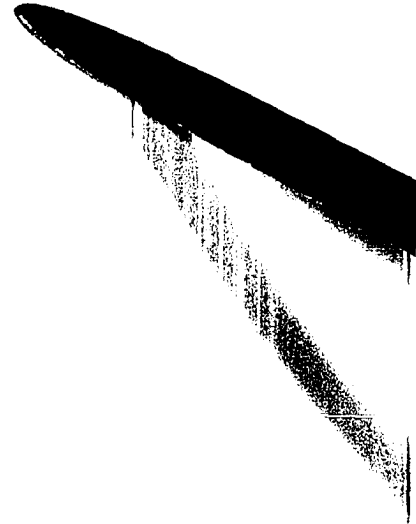
It is not every writer of morality . . . that can thereby be erected into a lawgiver to mankind . . . He, that anyone will pretend to set up in this kind, and have his rules pass for authentic direction, must show, that either he builds his doctrine upon principles of



reason, self-evident in themselves, and that he deduces all the parts of it from thence, by clear and evident demonstration: or must show his commission from heaven, that he comes with authority from God, to deliver his will and commands to the world." (my italics)²⁰

Locke had argued earlier that ". . . human reason unassisted failed men in its great and proper business of morality. It never from unquestionable principles, by clear deductions, made out an entire body of the 'law of nature'."²¹ His conclusion is that reason unassisted never will be able to do so. Plain and intelligible morality is available to all men only through revelation and faith in a divine lawgiver even though once the commands of such a legislator are made known to them the wisest and most rational will come to acknowledge their reasonableness. I believe the following passage reinforces this interpretation of Locke's position that the only effective accessibility of the reasonableness of Christianity to all men, the low and the high, is through belief and faith and submission to divine commands.

To one who is once persuaded that Jesus Christ was sent by God to be a King, and a Saviour of those who do believe in him; all his commands become principles; there needs no other proof for the truth of what he says, but that he said it. And then there needs no more, but to read the inspired books, to be instructed; all the duties of morality lie there clear and plain, and easy to be understood. And here I appeal,



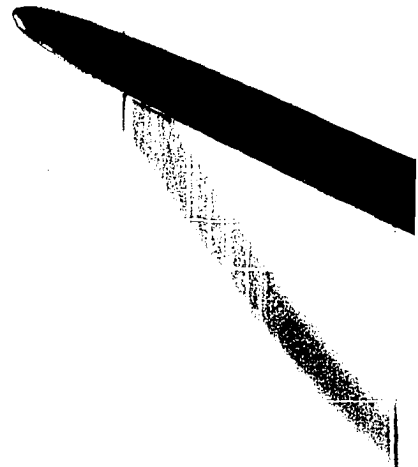
whether this be not the surest, the safest, and most effectual way of teaching: especially if we add this farther consideration, that as it suits the lowest capacities of reasonable creatures, so it reaches and satisfies, nay, enlightens the highest. (my italics) The most elevated understandings cannot but submit to the authority of this doctrine as divine; which coming from the mouths of a company of illiterate men, hath not only the attestation of miracles, but reason to confirm it: since they delivered no precepts but such, as though reason of itself had not already made out, yet it could not but assent to, when thus discovered, and think itself indebted for the discovery. The credit and authority our Saviour and his apostles had over the minds of men, by the miracles they did, tempted them not to mix . . . any conceits, any wrong rules, anything tending to their own by-interest, or that of a party, in their morality It is all pure, all sincere; nothing too much, nothing wanting, but such a complete rule of life, as the wisest men must acknowledge tends to the good of mankind, and that all would be happy, if all would practise it.²²

All men can come then to knowledge of a demonstrative, i.e. plain and intelligible ethic, not through reason, which has failed even the fully rational few, but through faith and revelation, Christ's Gospel. But acceptance of the Gospel must come to man not ready-made by authority, custom, tradition, hearsay, but through seeking. It must be an acceptance which is subjective, made through one's own efforts and must be so gained to be considered a truly religious and moral insight. For Dunn, it is Locke's

awareness of this need for personal search and assent in religion that sets the stage in the Essay on Toleration "for a more subversive politics. The necessary autonomy of individual religious judgement has been proclaimed to the world of politics. The transposition of this theme from theology and epistemology to sociology and politics made each individual man the final judge of how far the society in which he lived had succeeded in avoiding force, the 'way of beasts', the avoidance of which was its sole end."²³ And again: ". . . because the autonomous emotional commitment was a prerequisite for cognitive competence in the most essential elements of the law of reason, no weight of conceptual complexity or sophistication in any other human being could be any sort of surrogate for it. There could be no normative expertise in religious knowledge because the incidence of faith was determined by the grace of God and the individual's experience of faith was a necessary and a sufficient condition for a grasp of religious duty adequate to secure his salvation."²⁴

The Stages of Political Development

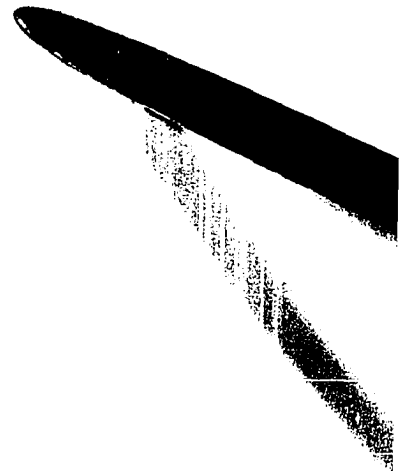
We are now in a position to examine the reconstruction of political society from a consideration of man in his



"Original", natural state. We noted earlier five stages in man's political development, 1) natural equality and natural equal jurisdiction, the state of nature; 2) entering into compact for establishment of civil society; 3) joining an already established civil society as an adult; 4) voting for representatives to act as rulers of the civil society; 5) opposing or revolting against an established political system.

Stage I: The State of Nature

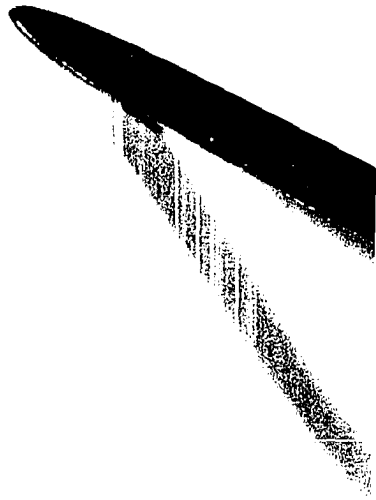
In his initial postulates of man in the state of nature, Locke presents a picture of equal, rational beings, equipped with the same faculties and free to lead their lives and preserve their liberties and possessions, within the bounds of the law of nature, without interference from any man. Our examination of Locke's theological and natural law framework leads us to recognise that Locke's conclusion that "Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection" is not, as von Leyden has argued, in conflict with the Humean law that no 'ought' can logically follow from an 'is'.



Rather we have observed that the theological backdrop renders man's equality and freedom of moral significance. The natural descriptive account of man's faculties supplies the important link between 'ought' and 'can'. These faculties are the means God has provided to enable men to fulfil their moral and jural relationship to Him and His declared will, the law of nature.

Textually, the only explicit limitation on the equality of natural political virtue and hence of equal political rights is provided in stage 4, the election of representatives of the government. Macpherson reads similar implications of inequality back into the other stages of the political condition. So interpreted, Locke becomes the apologist of the propertied, even of a new bourgeois morality. I have seen Locke's theological framework as, for him, of vital importance to morality and hence to political life, and have found that this theological framework in his maturer years rendered his attitude to the meaner sort more egalitarian. Taken from this perspective, the relevancy and sincerity of his theological framework, he becomes a forerunner of liberal constitutionalism and of the egalitarian assumptions of a future democratic society.

For Locke the state of nature is a description both



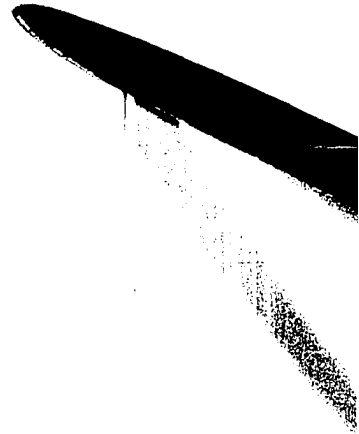
of a theological normative order and of man's sociological and psychological condition, from both of which arise government and the necessary ingredients for the mix of legitimate political organisation. The theological framework is not reducible to a set of propositions about this actual condition of man. The latter merely provides the materials for the possible partial operation of the rules of that normative order in human relationships and even offers a slim possibility of an actualisation of lives lived fully in accordance with these rules. This cannot be achieved by men isolated and apart, but it may be feasible within legitimate political society, for there men in forming a political community create a new moral dimension for themselves. Their perspective shifts in a Rousseauist fashion, from a concern for self-preservation to the preservation of mankind. (cf. II, S. 6, and S. 134 and S. 212).

The state of nature is a jural relationship between man and God's law. It describes a legal-moral order in which all men naturally stand and determines the rules, the standards by which men ought to regulate their relationships with each other. It enjoins that men live together in peace, good will, mutual assistance, recognising

their equal status as the property of the Omnipotent Proprietor, free to conduct their lives, pursue their actions and protect their possessions without the right of any other to interfere with them so long as they act freely, not licentiously, regulating their conduct within the limits prescribed by the law of nature. To act thus is to act humanly. The rule of reason is the rule of man.

The state of war, on the contrary, is a complete repudiation in deed and thought of this normative order and that very repudiation strips man of his humanity. His design to live by force, not law or right, reduces him to the status of inferior creatures, wild beasts that may be enslaved and used as any other lower creatures.

The state of nature as a state of peace and good will describes a jural order, how men ought to and are expected to conduct themselves. And like any other jural order it is a state in which some men in hasty and ill-considered passion periodically violate the law of nature. Hence the need for some body or bodies to punish such infractions. While historical examples are unnecessary to and logically independent of the validity of the state of nature as a normative order, instances of the historical operation of this condition can in fact be cited: states in their

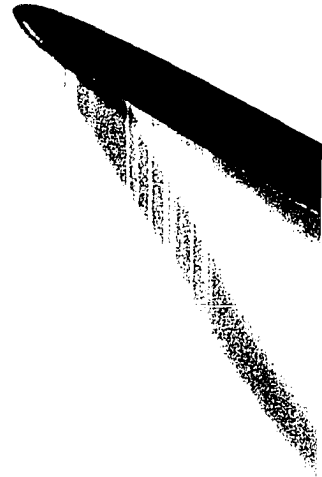


relationships with each other, two men in their relationships with each other on a desert island. While "at best an Argument from what has been, to what should of right be, has no great force" (II, S. 103), Locke uses history "to confirm plain reason":²⁵

. . . what ought to be done will appear the more plausible if it can be shown to have been once done or to be otherwise compatible with factual evidence. On these lines Locke combined his reliance on reason and history.²⁶

In both historical instances deviation from the pattern can be noted. Some states occasionally violate the rules of natural law, as do the two men on the island. Sometimes, their adherence to that normative order breaks down altogether. Force prevails and brings with it the state of war.

If God's jural order is to be a guide for man in his social relations it must be possible for man to aspire and even at times to conform to that order. Otherwise God's order like any legal order loses its point. How men behave is not a criterion of how they ought to behave but it is an index to what they can be expected to live up to, given their actual natural propensities and faculties. And they are all, for Locke in his mature works, a mix of ignorance, party and partiality, but also of potential



reason. On occasion, the latter aspect may predominate to the point where cooperation is so natural that civil society is even unnecessary. At other times their self-interest and corruption seem so great that civil society seems impossible.

At the extreme pole of the state of nature defined as peace, goodwill and cooperation, we find the beginnings of the first form of civil society, that golden age when men's desires were limited by their basic needs for survival. That age was one of patriarchalism in which all the members of the group consented to have one man, the father, execute for them all the law of nature. (II, S. 107).

But in time this idyllic state declined and men tended to move closer to the extreme pole of the state of war (II, S. 94). All men then equally consented to the transformation of their form of government into a collective body of men, in opposition to an arbitrary and absolute Monarch, for they now came to see that absolute power with unlimited prerogative, in the hands of an irresponsible and arbitrary ruler, was worse even than the state of nature men were naturally in. And no man could be judged foolish enough to consent to the establishment of a form

of government in which they supposedly "agreed that all of them but one, should be under the restraint of Laws, but that he should still retain all the Liberty of the State of Nature, increased with Power, and made licentious by Impunity. This is to think that Men are so foolish that they take care to avoid what Mischiefs may be done them by Pole-Cats, or Foxes, but are content, nay think it Safety, to be devoured by Lions." (II, S. 93).

The dividing line for Locke between the first type of political society and the second, the establishment of civil society and its replacement by a more legitimate society, in which political power is vested in a collective body of men, appears to coincide with the change from a society in which possessions were few to a society in which "Government has no other end but the preservation of Property". (II, S. 94). New sociological and psychological factors have intruded. Money has been introduced by tacit consent, men have settled in cities, and trade has flourished. Men have become corrupted by ambition and luxury.

. . . complicated economic transactions gave rise to disputes and controversies among men. Now laws were needed to "settle the properties of those of the same society". "In all collections of men," Locke observes, a

"variety of opinions and contrariety of interests" emerge. The need for some "common superior" to act as "judge" in deciding these "controversies" obviously grew in proportion to the frequency with which men interacted with each other within the same city and between cities.²⁷

With the accrual of material wealth, the Lockean state emerges, with its division of political power, its impartial judges, and a multiplicity of laws.²⁸

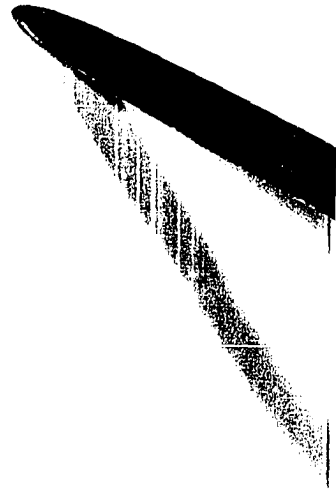
It did so specifically in response to the exorbitancies and abuses of the power granted the monarch. It was the monarch's concupiscence and that of those around him that forced men "to examine more carefully the Original and Rights of Government" (II, S. 111) and to devise the only legitimate political society, that in which the legislature was placed in collective bodies of men whose laws became the public or community laws to which all, including the legislators themselves, were subject.

In this second phase of the state of nature,* with its

* As Ashcraft notes: "It may be objected that what we have labelled the 'second phase' of the state of nature is not that 'natural condition' of man, but the 'early stages' of civil society. But Locke is quite explicit regarding the conditions under which political society comes into being." p. 912. For an illuminating discussion of Locke's shift from historical description to moral prescription in his analysis both of the state of nature and of political society, see R. Ashcraft's article, "Locke's State of Nature: Historical Fact or Moral Fiction?", The American Political Science Review, LXII (September, 1968), 898-915.

introduction of money, trade, and corruption, which brought with it the first actual form of legitimate political organisation, new interpretations of the law of nature aroused dissent, misunderstanding, quarrelsomeness not just between the ruler and ruled but among the people themselves. Yet even here, the introduction of legitimate, i.e. non-arbitrary, civil society, did not arise directly from a state of war. There were the few, the wealthy industrious and rational, who understood (and profited from) the new bourgeois interpretation of natural law. They were called upon to "show the way of reason to the rest and thus supply the remedy for the presence of 'the corruption and vitiousness of degenerate Men' . . .".²⁹ Their task would not be an easy one. The "persuasion" would border on the coercive. Rousseau paints a picture of how such persuasion could be effected:

. . . the rich man . . . conceived at length the profoundest plan that ever entered the mind of man 'Let us join,' said he, 'to guard the weak from oppression, to restrain the ambitious, and secure to every man the possession of what belongs to him; let us institute rules of justice and peace, to which all without exception may be obliged to conform; rules that may in some measure make amends for the caprices of fortune, by subjecting equally the powerful and weak to the observance of reciprocal obligations. Let us, in a word, instead of turning our forces against ourselves, collect them in a supreme



power which may govern us by wise laws, protect and defend all the members of the association, repulse their common enemies, and maintain eternal harmony among us.'

. . . . Such was . . . the origin of society and law, which bound new fetters on the poor, and gave new powers to the rich; which irretrievably destroyed natural liberty, eternally fixed the law of property and inequality, converted clever usurpation into unalterable right, and, for the advantage of a few ambitious individuals, subjected all mankind to perpetual labour, slavery and wretchedness.³⁰

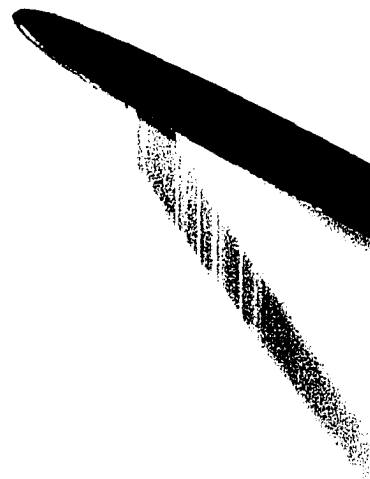
What for Rousseau was the paradigm of an illegitimate civil society was for Locke a paradigm of legitimacy. But like Ireton Locke did not linger over the social implications of his model of a legitimate society. Such implications were not to be allowed to blur the point at issue. As with Ireton, the point to be emphasised was the state of war not of the multitude against the "industrious and rational" few, the unlimited appropriators, but of an arbitrary ruler against his people. Locke like Ireton was blind to forms of arbitrary, tyrannical sway of the will of man over man other than that of immediate concern to himself, the arbitrary rule of an absolute Monarch. Locke's incredible rendering of the wage relationship of compact between the rich and the starving beggar (I, S. 43), bears witness to this insensitivity. And yet on the

issue of the unbridled rule of a royal despot Locke was confident that all men, at least all Englishmen, could be persuaded to join in the appeal to heaven against this beast who lived by no law, who degraded all men "from the common state of Rational Creatures" (II, S. 91). On this issue all men were able to see the violation of the law of nature for it was as plain in this case if not plainer than any rule of positive law.

Here Locke's universal statements may be read as written. All men could be convinced of the violation for all men knew that "he who attempts to get another Man into his Absolute Power, does thereby put himself into a State of War with him; It being to be understood as a Declaration of a Design upon his Life. For I have reason to conclude, that he who would get me into his Power without my consent, would use me as he pleased, when he had got me there, and destroy me too when he had a fancy to it . . ." (II, S. 17)

Seliger sums up well the function of the state of nature in Locke's political theory:

. . . his theory of the state of nature fulfils quite adequately the purpose of showing that men are as capable of political organization as they stand in dire need of it Its specific purpose is to prove



that men need, and are capable of providing, not only a remedy for the inconveniences of a state of nature, but a remedy as well for the inconveniences of government. The theory of the state of nature supplies the basis for resistance to arbitrary rule.³¹

Stage II: Establishment of Civil Society

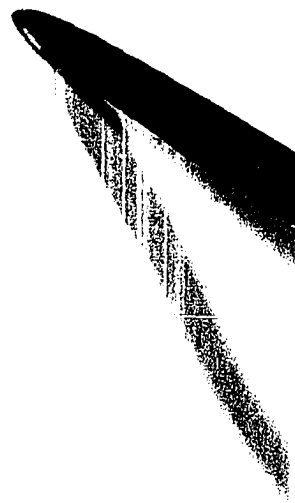
IIa: Consent and Civil Society

Given the pervasive fact of consent in Locke's political theory two crucial questions must be resolved. What does consent mean to Locke? Whose consent is involved?

There is an inherent ambiguity in Locke's analysis of consent. If we take consent in his stronger sense, as free, deliberate, personal choice, democracy alone seems legitimate. If we take it in its weaker sense, any government would appear to be legitimate so long as no one rebels. Yet consent and mere counting of heads are not equivalent. Neither mere expression of will nor submission constitutes consent. A key to Locke's understanding of consent can be found in Rousseau's distinction between the will of all and the general will in the sense that the one is a mere registering of desire, inclination, self-interest, and the other is a normative concept, a will directed to and guided by certain standards and rules. Those

standards and rules for Locke are found in the law of nature, God's declared will. That will is the Supreme Legislative of the universe. We are entrusted with the execution of that will so long as we fulfil the ends which the Supreme Legislative has posited. Those ends for us are the fulfilment of certain duties, to glorify God, to preserve ourselves, and to love our neighbour. It is in relation to His legal and moral order that our status as equal and free rational beings is to be understood. So long as we act and live by that order we are rational beings, members "of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, [and] should also be equal one amongst another without Subordination or Subjection." (II, S. 4).

God grants to all men of such equal status "the Execution of the Law of Nature . . . whereby everyone has a right to punish the transgressors For in that State of perfect Equality, where naturally there is no superiority of jurisdiction of one, over another, what any man may do in Prosecution of that Law, every one must needs have a Right to do." (II, S. 7).
 But "God having made Man such a Creature, that, in his own

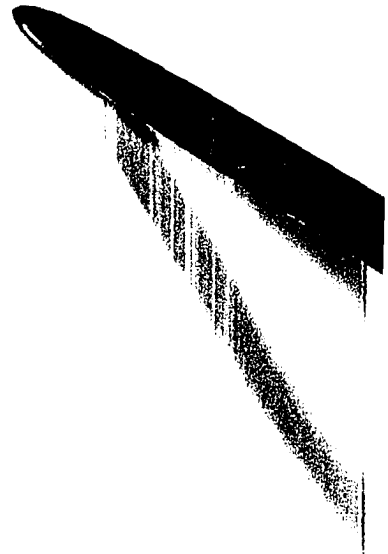


Judgment, it was not good for him to be alone, put him under strong Obligations of Necessity, Convenience, and Inclination to drive him into Society, as well as fitted him with Understanding and Language to continue and enjoy it." (II, S. 77). Thus political obligation is ultimately grounded not on consent but on God's will. Consent is limited by man's natural rights as deducible from the law of nature, in particular the right to live. Arbitrary absolute power is incompatible with such rights for "no body can desire to have me in his Absolute Power, unless it be to compel me by force to that, which is against the Right of my Freedom, i.e. to make me a Slave" (II, S. 17). To be reduced to such a condition is to be deprived of that freedom necessary for fulfilment of his religious and moral duties, a virtual destruction of his humanity, of the work of his Creator.

Stage IIb: The Civil Compact

Political power . . . will not be special in the sense that it is different from the power all men continue to exercise in preserving the law of nature . . . It will be special only in the sense that it is collective . . .³²

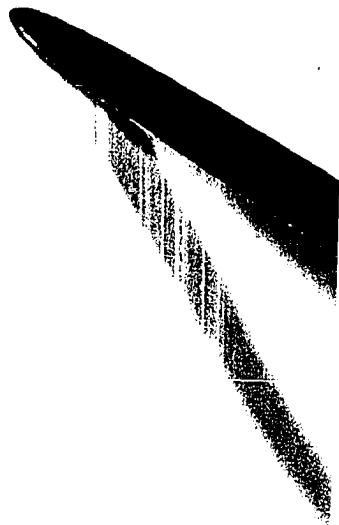
Laslett sees the incorporation of political society as the active participation of all those given by God the execution of the law of nature, and that means all men.



The theological normative legal/moral order against which this executive power of all men must be seen, means "that it must be possible to construe the legitimacy of any set of social arrangements in terms of the will of all adult participants in it, each individual counting for one."³³ Yet "This does not indicate that Locke felt any profound yearning to institute mass democracy . . . to 'poll the whole nation'."³⁴ The political community may decide to entrust the execution of its affairs to one, to a few or to many, depending on the virtue, goodness and wisdom of the men available. The government's task was to be a limited one, a fiduciary one, which meant that irresponsible behaviour on their part deprived them of office.

The crucial focus of the political society is, for Locke, the community, the original compact. This remains intact, undissolved, with the dissolution of government. If trust is the operative term between political community and government it is even more relevant within the community itself. As Laslett points out, trust is a corollary of natural political virtue: "'Some Trust one in another', is an assumption of all who join to make up society."³⁵ But the obligation of one to another within

the political community goes beyond trust. This can be judged a virtual contractual relationship. And Dunn brings out the implications of this contract: ". . . promises . . . are the elementary human moral bonds and, once they have been made, their obligatoriness is almost a logical truth - so much so that they even bind the Almighty."³⁶ This perhaps explains Locke's insistence that once a man has "by actual Agreement, and any express Declaration, given his Consent to be of any Commonweal, is perpetually and indispensably obliged to be and remain unalterably a Subject to it, and can never be again in the liberty of the state of Nature . . ." (II, S. 121). The allegiance here mentioned is to the political community as such, not to the government, the implication being that the political community is bound together in solemn engagement to live by God's law. Locke never considers the dissolution of the political community except by conquest. The implication is that the community is constituted of men of natural political virtue who ". . . disposed favourably towards each other in [their] very make-up, [their] nature, and because, when [they] cooperate, when [they] discuss things together, the tendency of what [they] do and what [they] say will



inevitably be towards the politically efficacious, that which will work out for all of [them]."³⁷

Yet the whole theological moral/jural order as expressed in the state of nature is conveniently removed from the world of actuality when the rule of reason comes in direct conflict with current history. As Dunn points out, in answer to the query, why did Locke not provide adequate machinery for expressions of consent:

The Two Treatises of Government was written not as a set of instructions in how to institute legitimate political societies ab initio, but as an abridgement of [British] constitutionalist thought.

Dunn quotes Locke's letter of February 1689 regarding the meetings of the Convention Parliament:

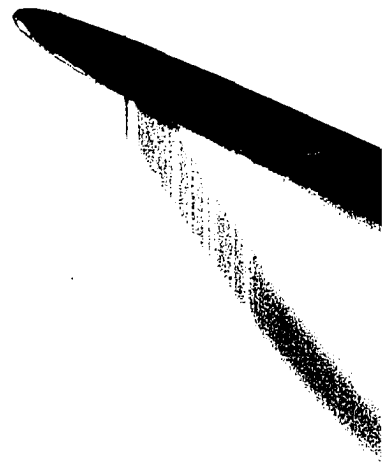
. . . the settlement of the nation upon the sure grounds of peace and security is put into their hands, which can no way so well be done as by restoring our ancient government; the best possible that ever was, if taken and put together all of a piece in its original constitution.³⁸

As reason comes uncomfortably into closer confrontation with history, history, actuality, prevails. It is at this very point that Macpherson's thesis gathers increasing strength. On the suffrage issue Locke is explicit, because it counts. On the right of revolution issue he can, for Seliger, return to his universal assertions for as Seliger

somewhat cynically observes:

In every context in which he refers to the consent of all members and to the will of the majority, their ascertainability turns out to rest on no other than presumptive evidence. It will not do to attribute this to muddled thinking. Only because he would not admit any other evidence did he deem it expedient, and, above all, safe, to invoke the will of the majority at all. This is what underlies his acceptance of the majority's revolutionary umpirage and his rejection of equal suffrage and removes any contradictions between the two. The umpirage is accepted because it is impossible to ascertain with any accuracy the will of the majority in revolution. Suffrage is limited because through it the will of the majority can be accurately ascertained, at least as regards some issues, including the confirmation of a revolutionary change. Locke's intention to legitimize the management of political society by reference to the will of the majority, his mistrust of the majority's judgement, and his realistic appraisal of its power, are part of a consistent line of thought.³⁹

Yet Locke's unwillingness to make history conform to the rule of reason will not deter others. His very universal language, his emphatic declaration that history and precedent are not guides to what ought to be, his insistence that no man is born a natural subject but all are born normatively free, equal, rational beings, obliged to judge the society they live in by the standards of the law of nature and if found wanting, to emigrate or in the last resort to "appeal to heaven"; all this denies



precedent's right to block change and development. And as Schochet observes: "A further escape from genetic reasoning was provided for Locke by his belief that governmental power - despite its patriarchal origins exists only for the benefit of the governed. Political authority could therefore be regarded as part of an on-going process; it is held as a sacred trust for the 'publick Good and Safety'." ⁴⁰

This leads to the next stage in the development of the political process, the coming of age, to the question: "what behavioural criteria must be satisfied for a man to be held a member of a previously existing legitimate community . . .?" ⁴¹

Stage III: Coming of Age or Reaffirmation of Membership in Political Society

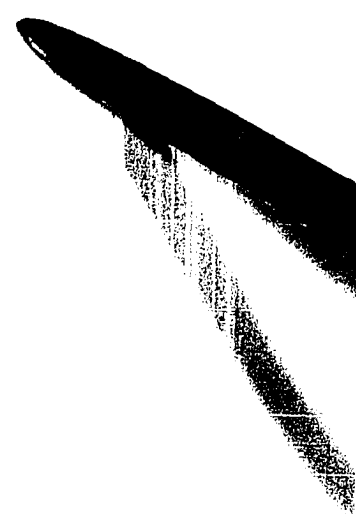
Locke's examples of tacit consent which he cites in II, S. 122, would reduce affirmation of membership to the mere status of resident alien. Yet he insists that full members must give express declarations of allegiance but only one instance is cited and that, the case of heirs of landed proprietors, seems hardly exhaustive of such express promises and engagements. We are left to fall back upon negative evidence. Those who come of age do not emigrate

or do not renounce their inheritance. Yet, in being left in this unsatisfactory condition, we are left where, Seliger argues, modern liberal democratic theory still leaves us:

. . . [such allegiance, such affirmation of membership] can be presumed to be implicit in certain actions and abstentions from others. We do, like Locke, infer an affirmative attitude towards a free society from the fulfilment of civic duties and the exercise of civic rights, although none of such acts, including voting, is directly performed to answer the question whether people agree to belong to their political society or accept its regime.⁴²

Stage IV: Electing the Government

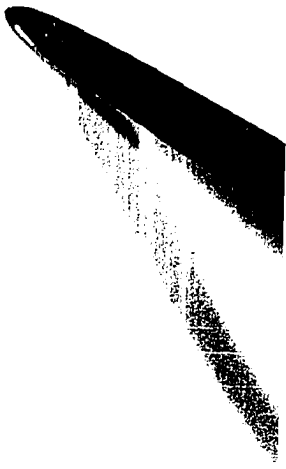
It is here that, textually, Macpherson's thesis finds its strongest support and my tentative thesis of a theologically inspired, developing egalitarian Locke wavers. II, S. 158 could not be more explicit. A "fair and equal Representative" according to true reason would include "the number of Members, in all places . . . in proportion to the assistance, which it [the people] affords to the publick . . .". Macpherson reinforces the fact of the disfranchisement of the poor: "When he addressed himself to questions of economic policy, as in the Considerations, he . . . assumed as self-evident . . . that



the wage-labourer has no other property than his labour he says taxes cannot fall on 'the poor labourer or handicrafts man . . .'".⁴³ In other words, labourers are excluded from voting because they have no assistance to make to the public. Seliger reinforces Macpherson's point that "the Treatises had no need to dwell on details where the principles defended were in line with prevailing practice For the public that he addressed and the cause which he served, universal manhood suffrage was anything but a pressing issue."⁴⁴

Stage V: The Right of Revolt

It is in his development of his theory of revolution that Locke stands out in greatest contrast to his earlier conservative authoritarianism as revealed in the Tracts. Here if anywhere can be found the materials upon which to build a liberal-constitutionalist image. And this is in fact, as Macpherson points out, also the "only effective test of citizenship, as he made no provision for any other method of exercising the right to turn out an unwanted government".⁴⁵ It is here that I feel once more on firmer ground in my position that there are in Locke important egalitarian strands which link his theological framework with the world of reality. The whole tenor of the argument



is that it is the people, the "multitude" of the Tracts in whose hands lies the ultimate right of appeal to heaven. For to the arguments which he himself had advanced in the earlier work, that such a policy is tantamount to anarchy, inasmuch as "the People being ignorant, and always discontented, to lay the Foundation of Government in the unsteady Opinion, and uncertain Humour of the People, is to expose it to certain ruine" (II, S. 223), Locke in his maturer work, born of his growing awareness of the potential rationality of all men as well as the ubiquity of partiality and ignorance, responds:

. . . such Revolutions happen not upon every little mismanagement in publick affairs. Great mistakes in the ruling part, many wrong and inconvenient Laws, and all the slips of human frailty will be born by the People, without mutiny or murmur. But if a long train of Abuses, Prevarications and Artifices, all tending the same way, make the design visible to the People, and they cannot but feel, what they lie under, and see, whither they are going; 'tis not to be wonder'd, that they should rouse themselves . . . (II, S. 225)

For this "settled design" against their persons, liberties and possessions is a clear sign of the state of war and a state of war far worse than that of "the state of Nature, or pure Anarchy". The greatest evil for Locke lies not in the machinations, passions and criminality potential in his fellow-men. The greatest evil is the same tendencies

in government, armed as it is not only with the authority of the political community but with the force of that community, its wealth, its people united together behind what they had intended to be a responsible and law-abiding regime.

And so Locke advanced to his really "strange doctrine", that "true" rebellion is not the action of the people against arbitrary and illegitimate exercise of authority. Rather it is the latter who are "truly and properly Rebels. For when Men by entering into Society and Civil Government, have excluded force, and introduced Laws for the preservation of Property, Peace, and Unity amongst themselves; those who set up force again in opposition to the Laws, do Rebellare, that is, bring back again the state of War, and are properly Rebels: Which they are who are in Power (by the pretence they have to Authority, the temptation of force they have in their hands, and the Flattery of those about them) being likeliest to do . . ." (II, S. 226). Again: ". . . when either the Legislative is changed, or the Legislators act contrary to the end for which they were constituted; those who are guilty are guilty of Rebellion." (II, S. 227).

To those who say that the People are not justified in

taking action against such "authority", Locke retorts:
"They may as well say upon the same ground, that honest Men may not oppose Robbers or Pirates, because this may occasion disorder or bloodshed." (II, S. 228)

In such circumstances no "superfine distinctions" of the schools are necessary to determine a violation of the law of nature. Here the signs are so plain, so visible, no man can ignore them for he can understand them, and be moved by them through that very mechanism that moves men to action, the feeling of unease, pain, suffering. When all men's faculties and parts are so affected, can any man be blind to what is afoot?

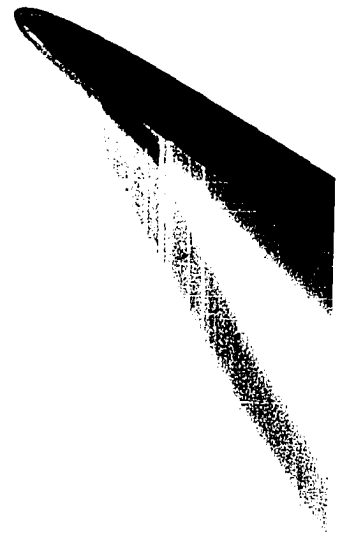
It is here I believe that Locke's thesis rings most sincerely, most fervently and it does so because it is an issue that he believes strikes personally at himself and all Englishmen, in the face of the Filmerian thesis in vindication of absolute and arbitrary authority as alone legitimate.

Locke's Commitment to an Egalitarian Paradigm

Macpherson has rightly observed that for an autonomous ethic to prevail it must find some equality among men more important than their differences which will enable them to

live together in a moral and humane way. With Locke the only evidence for such equality was man's relationship to God. Given that metaphysical framework men were equal, free, rational. They were stamped with a worth that transcended the gross, but for Him, irrelevant inequalities of mundane existence.

When God is dead, an equality is found by Locke's successors. In Bentham equality evolves through Locke's epistemological insights rather than his moral and political insights. "Tabula rasa" is the key to man's equality. But it is the equality of a Hobbes, an equality stripped of moral worth. Man the appetitive animal, seeking pleasure, avoiding pain, a biological species geared to the survival and consumer principles, on such foundations the grounds are laid for the development of a democratic Britain. And for operational, descriptive political science. How men behave, what they want, their psychological or biological needs as revealed as operating within the market mechanism, these are the grounds for modern democratic theory. And they satisfy the logical canons of a Hume. For there are no leaps from 'is' to 'ought'. There are no 'oughts'. "If ought meant anything", Bentham said, "it ought to be removed from the dictionary."

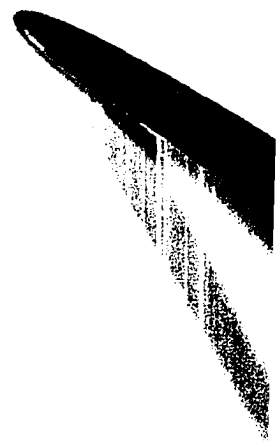


Logic is satisfied, satisfactory statistical units consisting of atomised, appetitive, consuming "economic men" are now on hand for the development of a mathematical-statistical predictive political science.

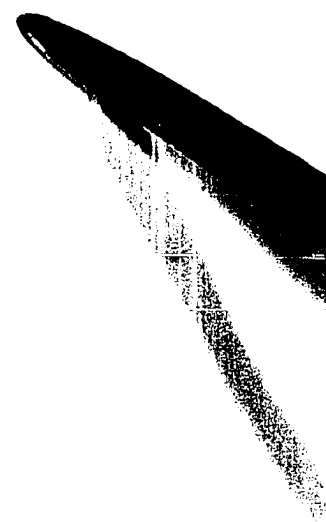
It took a John Stuart Mill, it took a Green to defy this literal debasement of the human condition with its reductivist analysis of man to how in the gross he behaves, now, he wills now and desires. Green defied the crudities of this materialistic rendering and showed how man as a human being could move from how he operates now to heights of nobility as a moral being in an enhanced and ennobling social/political vision. It took a John Stuart Mill to turn with disgust from the statistically satisfying, but humanly debasing Benthamism and proclaim: "Better a Socrates dissatisfied than a pig satisfied." Man as individual has within him the resources to rise to new heights of human development and enrichment, culturally, aesthetically, ethically, intellectually. Both Green and Mill demand not conformity to what we are now and as conditioned by an appetitive, consuming society, but as we can be by aspiring to the heights of what we could be. Von Leyden could equally turn his critical, analytical mind upon their apparent tendency to deduce or induce

ethical premises from factual, empirical ones. Their portrayals of man's highest potentiality can hardly be grounded on a non-descriptive understanding of man. Where but in man's characteristics, biological, rational, etc. could they find the materials out of which to make the ideal individual or the ideal social and political man. But as Berlin has observed, the so-called "Humean law" is simply irrelevant to these paradigms. These ways of seeing man transcend the dimensions of the canons of deductive-inductive inference. They are the conceptual frameworks within which these canons operate. But their transcending of the canons of logic does not mean that they transcend, are irrelevant to, the practical life of man. On the contrary, their whole purpose is grounded in the belief that what they ask man to "see" is within the capacity of man to achieve. And they are open to criticism if they fail to satisfy these canons of human possibility. They can, like Locke, fail the test if their metaphysical and moral frameworks ask too little of human capacity and potentiality as well as too much. Locke's moral and theological framework portrays a humane and aspiring humanity, a world of equal, free, rational men. We can demand of him: Why fulfil this vision in the hereafter?

Why not consider that if in mundane affairs men treated each other according to your standard in their social, economic and political relationships that perhaps after all they need not await the kingdom of heaven for their ultimate happiness. If men can be counted upon as sufficiently aware of and obedient to natural law within the state of nature, in the founding of legitimate political communities, and in rebelling against irresponsible mishandling of such communities, why deny them similar responsibility within the political community, in choosing their representatives, in standing as representatives? Is it the reality principle that holds him back or is it moral timidity and insensitivity, or something of both? We are unsure. Yet this equivocation in Locke need not prevent us from admiring the magnificent and morally compelling denunciation of a Locke roused by the prospects and implications of arbitrary, absolute, irresponsible government. On that note he does take with him and can expect to take with him any reasonable human being. Against this call to revolution which men have remembered and looked up to we may excuse his petty social distinctions, his loss of moral nerve in his analysis of the wage relationship. This call to revolution was a practical

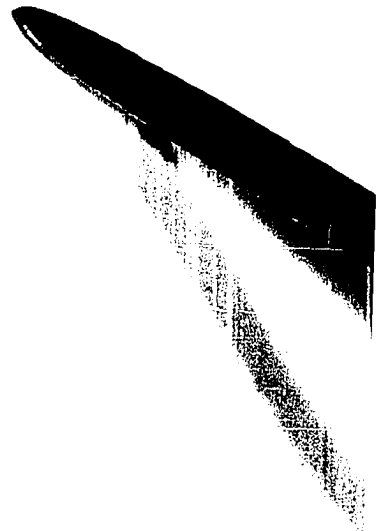


assertion guided by his egalitarian paradigm. It aroused men to a recognition of the "beastly" and irrational behaviour of irresponsible and arbitrary government. That contribution was prompted by the demands of seventeenth century England but it is a contribution with a universal appeal and a universal relevance.



Footnotes

1. R. Ashcraft, "Faith and Knowledge in Locke's Philosophy", in J. W. Yolton, ed., John Locke: Problems and Perspectives: a Collection of New Essays (Cambridge: University Press, 1969), pp. 219-21.
2. Locke quoted in J. Dunn, The Political Thought of John Locke: an Historical Account of the Argument of the 'Two Treatises of Government' (Cambridge: University Press, 1969), pp. 253-54.
3. ibid., p. 231.
4. J. Locke, Two Treatises of Government, ed. P. Laslett (revised edition; Toronto: The New American Library of Canada Limited, 1965), (Introduction), pp. 82-3.
5. Quoted in Dunn, op. cit., p. 7.
6. C. B. Macpherson, The Political Theory of Possessive Individualism: Hobbes to Locke (3d edition; Oxford: Clarendon Press, 1965), p. 194.
7. ibid., pp. 261-62.
8. Sir I. Berlin, "Does Political Theory Still Exist?", in P. Laslett and W. G. Runciman, eds., Philosophy, Politics and Society (2d Series; 3d printing; Oxford: Basil Blackwell, 1967), p. 28.
9. ibid., pp. 29-30.
10. W. von Leyden, "John Locke and Natural Law", Philosophy, XXVI, no. 1 (1956), 30-1.
11. A. C. Danto, "Human Nature and Natural Law", in S. Hook, ed., Law and Philosophy: a Symposium (New York: New York University Press, 1964), p. 192.

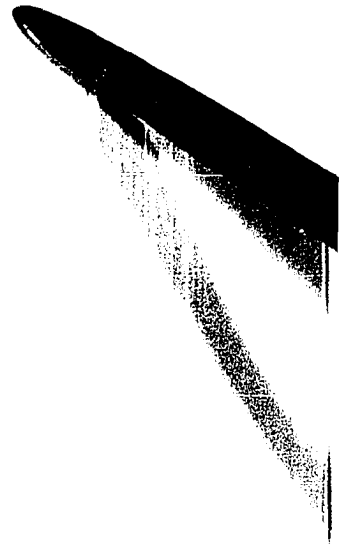


Footnotes (continued)

12. J. W. Yolton, "Locke on the Law of Nature",
Philosophy, LXVII (October, 1958), 495, 498.
13. H. L. A. Hart, The Concept of Law (4th edition;
Oxford: Clarendon Press, 1961), p. 89.
14. Laslett, (Introduction), op. cit., p. 123.
15. ibid., p. 109.
16. J. Locke, The Reasonableness of Christianity, As
Delivered in the Scriptures, Works (new edition,
corrected, London, 1823; reprinted, 1963;
Aalen, Germany: Scientia Verlag, 1963), VII, 158.
17. J. Locke, Two Tracts on Government, ed. P. Abrams
(Cambridge: University Press, 1967), pp. 96-7.
18. J. Locke, Of the Conduct of the Understanding, Works,
op. cit., III, 208, 211.
19. Locke quoted in Macpherson, op. cit., p. 225.
20. Locke, The Reasonableness . . ., op. cit., VII, 142.
21. ibid., p. 140.
22. ibid., pp. 146-7.
23. Dunn, op. cit., p. 39.
24. ibid., p. 249.
25. M. Seliger, The Liberal Politics of John Locke
(London: George Allen and Unwin Limited, 1968),
p. 231.
26. ibid., p. 231.
27. R. Ashcraft, "Locke's State of Nature: Historical
Fact or Moral Fiction?", The American Political
Science Review, LXII, no. 3 (September, 1968), 911.

Footnotes (continued)

28. ibid., p. 911.
29. H. Aarsleff, "The State of Nature and the Nature of Man", in Yolton, op. cit., p. 102.
30. J. J. Rousseau, A Discourse on the Origin of Inequality (Everyman's Library; London: J. M. Dent & Sons Ltd.; New York; E. P. Dutton & Co. Inc., 1955), pp. 204-5.
31. Seliger, op. cit., p. 100.
32. Laslett, (Introduction), op. cit., p. 121.
33. Dunn, op. cit., p. 121.
34. ibid., pp. 121-22.
35. Laslett, (Introduction), op. cit., p. 126.
36. Dunn, op. cit., p. 162.
37. Laslett, (Introduction), op. cit., p. 123.
38. J. Dunn, "Consent in the Political Theory of John Locke", The Historical Journal, X, no. 2 (1967), 161.
39. Seliger, op. cit., pp. 308-9.
40. G. J. Schochet, "The Family and Origins of the State", in Yolton, op. cit., p. 95.
41. Dunn, The Political Thought . . ., op. cit., p. 130.
42. Seliger, op. cit., p. 282.
43. Macpherson, op. cit., pp. 216-17.
44. Seliger, op. cit., p. 288.
45. Macpherson, op. cit., p. 224.



Chapter

V

J E F F E R S O N I A N D E M O C R A C Y

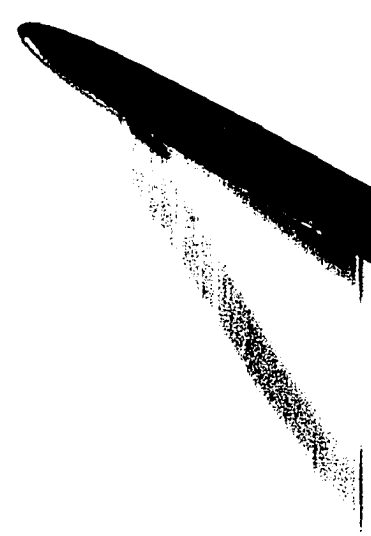
NATURAL RIGHTS AS A LIVING REALITY

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

The Declaration of Independence as Adopted by Congress, July 4, 1776. In The Papers of Thomas Jefferson, ed. J. P. Boyd (3d printing; Princeton: Princeton University Press, 1969) I (1760-1776), 429.

A Conscious Adherence to the Equality Paradigm

Acknowledging natural law as a normative legal/moral order laid down by a benevolent, rational Creator, a law



before which all men stand in equal subordination and with equal capacity to acknowledge and obey, Jefferson sought, throughout his life, to give living reality to that normative order, that set of assumptions grounded in an egalitarian paradigm. His political credo with its belief in the entitlement of all to life, liberty, and the pursuit of happiness, derived from equal worth in the eyes of their Creator, was for Jefferson, as for the Levellers and Locke, the ultimate standard by which any political and legal order was to be judged. That 'ought' confronted the 'is' of existing political and legal orders and judged it wanting. For the Levellers that creed could only be the expression of a yearning. For Locke the yearning was too easily satisfied, the 'ought' seems to make its peace too conveniently with the 'is'. 'Ought' and 'is', when brought into too close proximity for the conveniences of Lockean social and economic predispositions, were allowed to move along in parallel lines never meant, apparently, to meet. Only with Jefferson do we find a conscious, persistent and courageous attempt to narrow those lines into a single channel, to make of the "glittering generalities" a living reality.

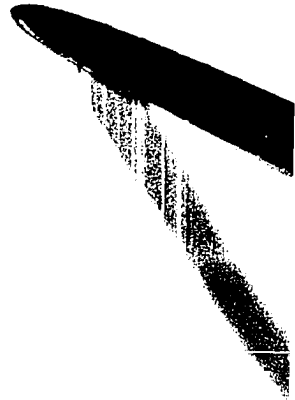
Jefferson's formulation of the natural rights political

philosophy seems a mere echo of Locke:

We hold these truths to be sacred & undeniable; that all men are created equal & independent, that from that equal creation they derive rights inherent & inalienable, among which are the preservation of life, & liberty, & the pursuit of happiness; that to secure these ends, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government shall become destructive of these ends, it is the right of the people to alter or to abolish it, & to institute new government, laying it's foundation on such principles & organising it's powers in such form, as to them shall seem most likely to effect their safety & happiness.¹

And yet there are significant differences. Those differences are summed up in Jefferson's own assessment of Locke's contribution to religious freedom: "it was a great thing to go so far". But as Chinard observes: "he also considered that Locke had not gone far enough and had not analyzed the fundamentals of the problems",² not only of religious freedom but of the logical and human implications of the natural rights thesis. For Jefferson the substitution of "pursuit of happiness" for "property" was no idle slip. It was a conscious and deliberate revision. Here a Rainborough, not an Ireton, is at work. Locke was saved the uncomfortable confrontation of his theory with his socio-economic assumptions, of his respect for the equal worth of man and his commitment to a conception of

differential rationality based on property distinctions. No Putney Debates, no direct confrontation with the mass of the people, faced either Locke or Shaftesbury with the need to reconcile the universal proposition and the particular political judgments of their social group. Not so for Jefferson. Like the men of the Puritan Revolution, he was directly challenged by undercurrents of Leveller ideology within the ranks of people and army. Yet even without their radicalism his intellectual honesty would have forced him to consider what is involved in the meaning of "permanent attachment", a "stake in the community". The man who fought for his colony, who risked his life for it, seemed hardly unattached and uncommitted to its well-being. Such probings would lead Jefferson to a reassessment of the social, economic and political assumptions of the propertied class. From the beginning of his political theorising he drew a distinction between natural and civil rights. Only those rights with commensurate power in the individual could be legitimately termed natural rights, those requiring the protection of society, civil rights. The right to self-government was ranged categorically on the side of natural rights, that of property on the civil side. For Jefferson, the concept of the civil compact,



of government based on consent, did not degenerate into an ambiguous reductionism to tacit consent or the absence of overt rebellion. His political theory, and his political action, show that for him, as for Rousseau, consent must be an operative reality.

The phrases are Locke's, the spirit Leveller. The reasonableness of Christianity which for Locke found its ultimate sanction and justification in a happiness hereafter, for Jefferson and for the Levellers, must offer its reward here on earth. To Jefferson it seemed that only now, in his land, could that message be given concrete expression. God is the kingpin in his perspective but it is God the Creator, He who out of emptiness made this wondrous contrivance of order and design. Now at last man too could create in the image of the Great Builder, moulding from the tabula rasa of a vast wilderness men as the Creator meant them to be and to live, in harmony and cooperation, bending nature to their will as God Himself had done. Locke was Jefferson's moral and political mentor but he would take his apprenticeship, as Locke would have done, under the guidance of Bacon and Newton, using his natural faculties of sense and reflexion in observation and experimentation in the human and social spheres.

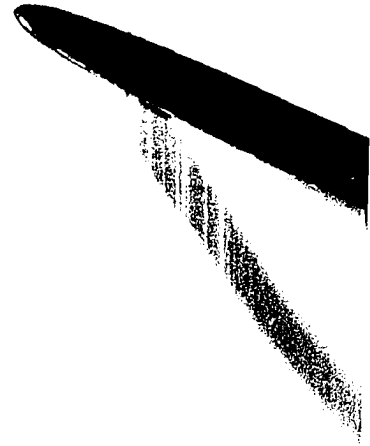


America was to be the great laboratory and, like any laboratory, was to be shut off from the encroachment of alien and disrupting influences which could obstruct his penetration of the laws of human and social relationships. Above all the great experiment must be cut off from the contaminating influence of Europe:

The doctrines of Europe were, that men in numerous associations cannot be restrained within the limits of order and justice, but by forces physical and moral, wielded over them by authority independent of their will. Hence their organization of kings, hereditary nobles and priests. Still further to constrain the brute force of the people, they deem it necessary to keep them down by hard labor, poverty, and ignorance, and to take from them, as from bees, so much of their earnings, as that unremitting labor shall be necessary to obtain a sufficient surplus barely to sustain a scanty and miserable life.³

"We," on the contrary, Jefferson argues,

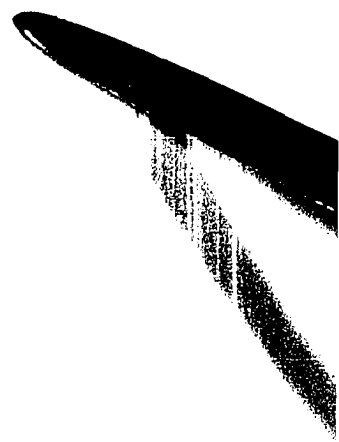
believed . . . that man was a rational animal, endowed by nature with rights and with an innate sense of justice; and that he could be restrained from wrong and protected in right, by moderate powers, confided to persons of his own choice and held to their duties by dependence on his own will We believed that men, enjoying in ease and security, the full fruits of their own industry, enlisted by all their interests on the side of law and order, habituated to think for themselves, and to follow their reason as their guide, would be more easily and safely governed, than with minds nourished in error, and vitiated and debased as in Europe, by ignorance, indigence and oppression. . . .⁴



He had only to turn to England to see "'the pauperism of the lowest class, the abject oppression of the laboring, and the luxury, the riot, the domination and the vicious happiness of the aristocracy'". Against this backdrop America offered an equality of socio-economic condition which would render feasible an experiment in man's capacity to govern himself: "' . . . we have no paupers, the old and crippled among us, who possess nothing . . . The great mass of our population is of laborers; our rich, who can live without labor, either manual or professional, being few, and of moderate wealth. Most of the laboring class possess property, cultivate their own lands, have families, and from the demand for their labor are enabled to exact from the rich and the competent such prices as enable them to be fed abundantly, clothed above mere decency, to labor moderately and raise their families The wealthy . . . and those at their ease, know nothing of . . . luxury. They have only somewhat more of the comforts and decencies of life than those who furnish them. Can any condition of society be more desirable than this?'"⁵

Hartz has made a similar assessment of the relative equality of American conditions:

The liberal idea could not have flourished so successfully unless there had been an open



place to put it, and in this sense, Turner was right. The American democratic combination did consist in large measure of farmers and workers, and in this sense, Beard was right [If we further] . . . observe England, abstract the bourgeois element, put it on open ground, [we can] watch its democratic logic unfold.⁶

Add to this Bailyn and Pole's analyses of the development of political capability and awareness nurtured in the independency of colonial self-government, and the scene is set for a great political experiment. The self-evidence of the Declaration's political faith, against this backdrop of comparative equality of conditions, was thus for Americans confirmed not just in their hearts, in their minds, by their religious faith, but through their eyes. The Lockean concepts "transformed into operating modes of behavior, yielded the swift victories of American democracy".⁷

All past political experiments became for Jefferson irrelevant:

[The Greeks] knew no medium between a democracy (the only pure republic, but impracticable beyond the limits of a town) and an abandonment of themselves to an aristocracy or a tyranny independent of the people. It seems not to have occurred [to them] that where the citizens cannot meet to transact their business in person, they alone have the right to choose the agents who shall transact it; and that in this way a republican or popular government of the second

grade of purity may be exercised over any extent of country. The full experiment of a government democratical but representative was and is still reserved for us.⁸

The responsibility for managing that experiment was great for it was to stand as living testimonial to mankind's capacity to fulfil the natural, normative social and political arrangements its Maker had intended for its well-being and happiness:

We exist and are quoted as standing proofs that a government so modeled as to rest continually on the will of the whole society is a practicable government As members, therefore, of the universal society of mankind and standing in high and responsible relation with them, it is our sacred duty to suppress passion among ourselves and not to blast the confidence . . . that a government of reason is better than one of force.⁹

In his final year Jefferson believed that the experiment had been successful as a living reality for his own people and as a beacon of light for others:

May it [the Declaration of Independence] be to the world what I believe it will be (to some parts sooner, to others later, but finally to all), the signal of arousing men to burst the chains under which monkish ignorance and superstition had persuaded them to bind themselves and to assume the blessings and security of self-government All eyes are opened, or opening, to the rights of man. The general spread of the light of science has already laid open to every view the palpable truth that the mass of mankind has not been born with saddles

on their backs, nor a favored few booted and spurred, ready to ride them legitimately, by the grace of God.¹⁰

Laying the Groundwork for the Great Experiment: the
Equalisation of Conditions

. . . we passed a law abolishing entails . . .
. . . followed by one abolishing the privilege of primogeniture and dividing the lands of intestates equally among all their children or other representatives. These laws . . . laid the axe to the foot of pseudo-aristocracy. And had another which I prepared been adopted . . . our work would have been complete. It was a bill for the more general diffusion of learning Worth and genius would thus have been sought out from every condition of life and completely prepared by education for defeating the competition of wealth and birth for public trusts The law for religious freedom, which made a part of this system, having put down the aristocracy of the clergy and restored to the citizen the freedom of the mind, and those of entails and descents nurturing an equality of condition (my italics) among them, this on education would have raised the mass of the people to the high ground of moral respectability . . . and would have completed the great object of qualifying them to select the veritable aristoi for the trusts of government.¹¹

Much has been made of the fact that Jefferson's action against entails and primogeniture was not so radical as he believed, that most of those in his own social milieu were prepared to accept it and to do so because these features of English society had not become pervasive,

integral parts of their economic and social landscape. Such criticism is justified. And yet if we probe more deeply into Jefferson's economic and social thinking we find him willing to think and to act against the pre-conceived thought of his age that persons and property were the two great political principles to be represented in political organisation, that property was in fact more important because more enlightened, more committed to the interests of the community, that in fact persons without property were not really persons after all. Jefferson absorbed some of these preconceptions. Certainly he believed that a person required property to give flesh and substance to his identity. But it was not for him a natural right because the earth was the common stock of mankind and because any property acquired could not be protected without political society. As Koch observes:

This distinction between natural and civil rights is basic in Jefferson's philosophy. Essential freedoms are personal and political. . . . all men have a natural right to a share of the earth that, with proper cultivation, would take care of the primary needs. This principle enables Jefferson to criticize specific laws of landed property where these pervert natural rights.¹²

This comes out clearly in his correspondence with James Madison, from Paris in 1785:

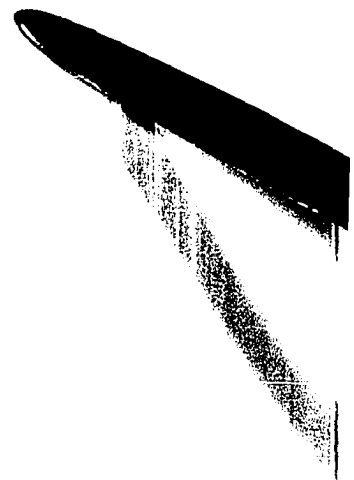
Wishing to know the condition of the labouring poor I entered into conversation with her [a day laborer] . . . and thence proceeded to enquiries into her vocation, condition and circumstance This little attendrissement, with the solitude of my walk led me into a train of reflections on that unequal division of property which occasions the numberless instances of wretchedness which I have observed in this country and is to be observed all over Europe. The property of this country is absolutely centered in a very few hands, having revenues of from half a million of guineas a year downwards. These employ the flower of the country as servants, some of them having as many as 200 domestics, not labouring.

The nagging questions of the Putney Debates loom in his mind:

I asked myself what could be the reasons that so many should be permitted to beg who are willing to work, in a country where there is a very considerable proportion of uncultivated lands? I am conscious that an equal division of property is impracticable. But the consequences of this enormous inequality producing so much misery to the bulk of mankind, legislators cannot invent too many devices for subdividing property, only taking care to let their subdivisions go hand in hand with the natural affections of the human mind. The descent of property of every kind therefore to all the children . . . or other relations in equal degree is a politic measure, and a practicable one.

But an attack on primogeniture is not enough:

Another means of silently lessening the inequality of property is to exempt all from taxation below a certain point, and to tax the higher portions of property in geometrical

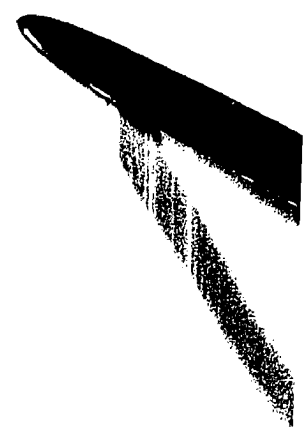


progression as they rise. Whenever there is in any country, uncultivated lands and unemployed poor, it is clear that the laws of property have been so far extended as to violate natural right. The earth is given as a common stock for man to labour and live on. If, for the encouragement of industry we allow it to be appropriated, we must take care that other employment be furnished to those excluded from the appropriation. If we do not the fundamental right to labour the earth returns to the unemployed. It is too soon yet in our country to say that every man who cannot find employment but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of a state.¹³

Jefferson's view of the relationship between property and society is clearly brought out in A Summary View of 1774:

From the nature and purpose of civil institutions, all the lands within the limits which any particular society has circumscribed about itself, are assumed by that society, and subject to their allotment only. This may be done by themselves assembled collectively, or by their legislature to whom they may have delegated sovereign authority: and, if they are allotted in neither of these ways, each individual of the society may appropriate to himself such lands as he finds vacant, and occupancy will give him title.¹⁴

Jefferson's concern that all men have some land, and enough to make them self-sufficient, self-reliant and responsible men and citizens, was spelled out in concrete



political acts. Thus we find him recommending in his Draft Constitution for Virginia in 1776:

Unappropriated or Forfeited lands shall be appropriated by the Administrator (and) with the consent of the privy council. Every (male) person of full age neither owning nor having owned [50] acres of land shall be entitled to an appropriation of . . . [50] acres in full and absolute dominion. and [sic] no other person shall be capable of taking an appropriation.¹⁵

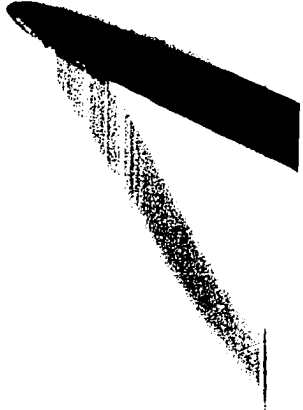
Jefferson was adamantly opposed to the sale of lands either by the government (thus providing it with, for him, a dangerous source of permanent revenue) or by land speculators. Appropriations to settlers should be in small quantities.¹⁶ His determination to protect the Western Territories for self-reliant, independent farmers against land speculators is to be found in his action for the division of Fincastle County into viable self-governing, separate societies of men.¹⁷ His insistence on society's ownership of the land comes out strongly in his letter to James Madison on "The Earth Belongs to the Living":

The portion occupied by any individual ceases to be his when himself ceases to be, and reverts to the society. If the society has formed no rules for the appropriation of it's lands in severality, it will be taken by the first occupants But the child, the legatee, or creditor takes it, not by any natural right, but by a law of society of which they are members, and to which they are subject.

Again:

This principle that the earth belongs to the living, and not to the dead, is of very extensive application and consequences, in every country, and most especially in France. It enters into the resolution of the questions Whether the nation may change the descent of lands holden in tail? Whether they may change the appropriation of lands given antiently to the church, to hospitals, colleges, orders of chivalry, and otherwise in perpetuity? Whether they may abolish the charges and privileges attached on lands, including the whole catalogue ecclesiastical and feudal?¹⁸

Jefferson's penchant for a society of small farmers can certainly be interpreted as the mere reflexion of his own social and economic and cultural milieu - to be more blunt, as the rationalisation of his class bias. But it can also be seen from a wider perspective. Jefferson believed that "Two radically different kinds of society could manage to defeat the republican experiment: a feudal agrarian society, where the mass of the people were serfs in name or in fact, burdened with debts and committed to hopeless poverty; or an unthinking, greedy, industrialized world, where the mass of workers were dependent upon the will of a privileged few for their sustenance. In both cases the greatest number of people would be too oppressed, too early cast into the pit of labor, too ignorant, and too fearful of their economic needs to make dependable citizens of a strong democracy."¹⁹

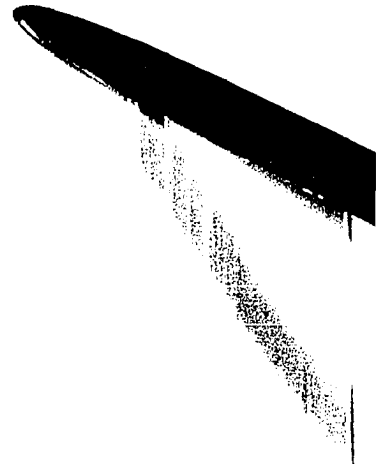


The great American experiment would fail if foreign, distracting and subversive elements were allowed to penetrate. Thus industrialisation with its destructive tendencies over man's body, soul and mind must be left on the shores of the Old World. Immigration must not be encouraged, not because of any inherent inferior or moral taint in such persons but because of their conditioning in a tyrannical and oppressive social and political milieu:

It is for the happiness of those united in society to harmonize as much as possible in matters which they must of necessity transact together Every species of government has its specific principles. Ours perhaps are more peculiar than those of any other in the universe. It is a composition of the freest principles of the English constitution, with others derived from natural right and natural reason. To these nothing can be more opposed than the maxims of absolute monarchies. Yet from such we are to expect the greatest number of emigrants. They will bring with them the principles of the governments they leave, imbibed in their early youth; or, if able to throw them off, it will be in exchange for an unbounded licentiousness, passing . . . from one extreme to another They will infuse into [our legislation] their spirit, warp and bias its directions, and render it a heterogeneous, incoherent, distracted mass²⁰

Yet for those immigrants who came of their own free choice Jefferson would have them admitted to all the privileges of full citizenship. Thus we find him arguing in his Bill for the Naturalization of Foreigners, for the admission

of "all . . . persons born in other countries . . . and all who may hereafter migrate into the same" as "Free Citizens of the same and shall be entitled to all the Rights, privileges and immunities civil and religious of this Commonwealth, as if born therein." These too were to be granted "fifty acres of unappropriated lands wherever [they] shall chuse the same to be held in . . . fee simple".²¹ To them, whether Catholics, Jews or other non-Protestant groups, would be granted religious freedom, a freedom not only to worship as they pleased but not to worship if they so chose. Thus the Lockean qualifications against Catholics and atheists are dropped as well as provisions against the possible subversive tendencies of their beliefs. We find Jefferson in his first Draft of his Virginia Constitution of 1776 succumbing to this Lockean assumption: "All persons shall have full & free liberty of religious opinion, nor shall any be compelled to frequent or maintain any religious service or institution [but seditious behavior to be punble . . . by civil magistrate accdg to the laws already made or hereafter to be made]." ⁱ_^²² (my italics) The bracketed section was dropped from subsequent drafts.



Education: for an Enlightened People and an
Enlightened Leadership

Every government degenerates when trusted to the rulers of the people alone. The people themselves therefore are its only safe depositories. And to render even them safe, their minds must be improved to a certain degree An amendment of our constitution must here come in aid of the public education. The influence over government must be shared among all the people.²³

Education was to be primarily concerned with the preparation of an enlightened and informed public opinion. This enlightenment would come best through history which "by apprizing them of the past, will enable them to judge of the future; . . . it will qualify them as judges of the actions and designs of men; it will enable them to know ambition under every disguise it may assume; and knowing it, to defeat its views."²⁴ Everyone being capable of such education would be provided with free education for three years. Such training would ensure the adequate guardianship of government by its people.

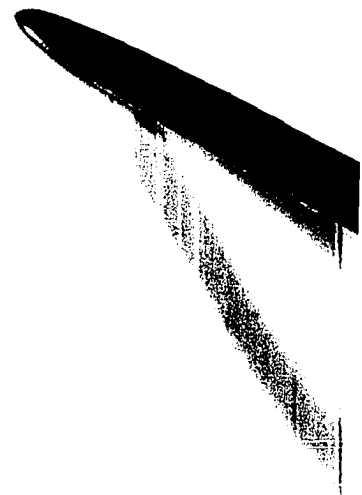
But whereas the "ultimate result of the whole scheme of education would be the teaching all the children of the State reading, writing, and common arithmetic",²⁵ thus preparing them for their responsibility as the guardian

of republican principles, they were "not qualified to exercise themselves the executive department, but they are qualified to name the person who shall exercise it2. They are not qualified to legislate. . . . they only choose the legislators."²⁶ Hence education must be concerned as well with the development of a "natural aristocracy", with a selection of the youths of genius the talents of which "nature has sown as liberally among the poor as the rich". Thus at public expense will be turned out "ten annually, of superior genius, well taught in Greek, Latin, Geography, and the higher branches of arithmetic; . . . ten others annually, of still superior parts, who . . . shall have added such of the sciences as their genius shall have led them to"; and the "wealthier part" shall have been provided with "convenient schools". In sum, "the general objects of this law are to provide an education adapted to the years, to the capacity, and the condition of every one" ²⁷ (my italics)

Here we encounter the first major evidence of Jefferson's aristocratic conditioning obscuring for him the logical unravelling of his republican principles. We are advised that talents are as liberally sown among the poor as the rich. Yet on closer examination we find that Jefferson can hardly believe this inasmuch as his plan

for free education for the poor will be confined, beyond the initial three years primary training, to, at most, ten higher geniuses from among which the natural aristoi, the men of talent and virtue, capable of democratic leadership, are to be selected. Such a number will hardly suffice to fill the senate and assembly. Whence then comes the rest? "From the wealthier part". Thus Jefferson confronts the uncomfortable collision of his republican ideals and his social and culturing conditioning. Locke had to face the awkward contradiction much sooner for to him the universal enlightenment and good sense of the people did not mean that they were entitled or qualified to choose their political leaders. Only those with property carried the necessary credentials. Jefferson will go one step further in his faith in the people. They are qualified to choose their leaders because they have the sense to choose the best:

There is a natural aristocracy among men. The grounds of this are virtue and talents The natural aristocracy I consider as the most precious gift of nature for the instruction, the trust, and government of society I think the best remedy is . . . to leave to the citizens the free election and separation of the aristoi from the pseudo-aristoi . . . In general they will elect the really good and wise. . . .²⁸



Jefferson was perhaps justified in this assumption, inasmuch as in colonial America there was a genuine deference for families of wealth and position, a deference which was to a large extent understandable in view of the public-spirited behaviour of American philosopher-statesmen during their greatest political trial. To that "pseudo-aristocracy" would be added "20 of the best geniuses" "raked from the rubbish", of which half were to be eligible for admission to the natural leadership of talents and virtue. Their numbers would make little impact among a ruling aristocracy of 300 representatives and 50 senators.²⁹

As Edwin Mims has pointed out, Jefferson was not alone in this baffling dilemma of combining self-government with good government. Rousseau faced the same dilemma:

All men are created equal, but, nonetheless and notwithstanding, the masses need a "sublime intelligence, which rises above the grasp of the masses" We find essentially this same combination of seemingly contradictory elements in the Jacobin dictators . . . in Jeremy Bentham . . . in the Marxian Socialists. [They all] . . . proceed from (1) a common postulate as to the potential good will and good judgment of the majority of society, from (2) a common postulate as to the evils of corporate government, and (3) from a common postulate regarding the necessity for what amounts to a temporary concentration and maximizing of power in the hands of a popular leader or group of leaders.³⁰

For Jefferson that leadership would remain a permanent feature of republicanism. Yet at least he never sought to impose such an aristocracy on the people. He combined a belief in the people's ability to detect genuine talent and wisdom with the belief, that after all, talent and virtue were not liberally sown through all classes of society. He was equally convinced that no political leadership, however wise and intelligent, could be left unchecked, free from the onus of public accountability:

Cherish . . . the spirit of our people, and keep alive their attention. Do not be too severe upon their errors, but reclaim them by enlightening them. If once they become inattentive to the public affairs, you and I, and Congress and Assemblies, Judges and Governors, shall all become wolves. It seems to be the law of our general nature, in spite of individual exceptions, and experience declares that man is the only animal which devours his own kind; for I can apply no milder term to the governments of Europe and to the general prey of the rich on the poor.³¹

Ready for Self-Government

This ultimate faith in the people's basic intelligence and common sense grew slowly. As Jefferson confessed to Samuel Kercheval in July, 1816:

The infancy of the subject at that moment [1783] and our inexperience of self-government

occasioned gross departures in that draft [Jefferson's 1783 draft Constitution for Virginia] from genuine republican canons. In truth, the abuses of monarchy had so much filled all the space of political contemplation that we imagined everything republican which was not monarchy. We had not yet penetrated to the mother principle that "governments are republican only in proportion as they embody the will of their people and execute it." Hence our first constitutions had really no leading principles in them For let it be agreed that a government is republican in proportion as every member composing it has his equal voice in the direction of its concerns (not indeed in person, which would be impracticable beyond the limits of a city or small township, but by representatives chosen by himself and responsible to him at short periods), and let us bring to the test of this canon every branch of our constitution.

So tested the constitution is found wanting:

In the legislature, the House of Representatives is chosen by less than half the people and not at all in proportion to those who do choose. The Senate are still more disproportionate and for long terms of irresponsibility. In the Executive, the Governor is entirely independent of the choice of the people Where then is our republicanism to be found? Not in our Constitution certainly, but merely in the spirit of our people Owing to this spirit and to nothing in the form of our Constitution, all things have gone well Let every man who fights or pays exercise his just and equal right in their [the legislature's] election.³²

Judged by this canon Jefferson's own drafts for a Constitution for Virginia would have been equally wanting. Thus we find in his first draft of his 1776 Virginia Constitution



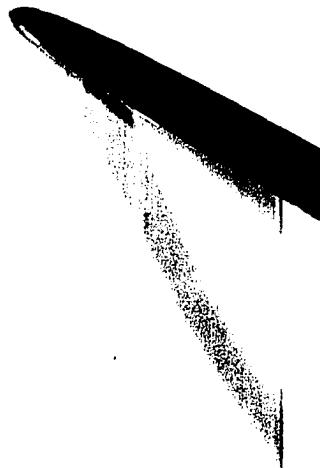
that while the lower house was to be chosen directly by the people, voters were to be restricted to ". . . such as prove a fixed purpose of residence [-as ld.or being inhabt. payg scot & lot" but representatives were to be "in propn to numbers of qualfd electors"; while the Senate "shall be appointed by the house of Representatives & when appointed shall be in for life".³³ In his second draft of the 1776 Constitution qualifications of lower house voters were more specific: "All male persons of full age & sane mind having a freehold estate in [(half) 1/4 of an acre] of land in any town, or in [(50) 25] acres of land in the country, & all persons resident in (this country) the colony who shall have paid scot & lot to government the last [(three) two] yrs shall have right to (vote) give their vote . . . and . . . every person(s) so qualified to . . . elect, shall be capable of being elected . . ." "The Senate . . . shall be appointed by the house of representatives . . . One third . . . shall be removed . . . at the end of the first three yrs . . ." Senators were to be at least thirty-one.³⁴

In a letter to Edmund Pendleton Jefferson explained the rationale of his recommendations regarding the Senate:

I had two things in view: to get the wisest men chosen, and to make them perfectly

independent when chosen. I have ever observed that a choice by the people themselves is not generally distinguished for it's wisdom. . . . But give to those so chosen by the people a second choice themselves, and they generally will chuse wise men

His reason for fixing them in office for a term of years rather than for life, was to remind them that they too were part of the governed. "Yet," he continued, "I could submit . . . to an appointment for life, or to anything rather than a mere creation by and dependance on the people."³⁵ Yet even at this early stage in his political thinking Jefferson was questioning the basic assumptions of his class: ". . . my observations do not enable me to say I think integrity the characteristic of wealth. In general I believe the decisions of the people, in a body, will be more honest and more disinterested than those of wealthy men Now as to the representative house [it] ought to be so constructed as to answer that character truly. I was for extending the right of suffrage . . . to all who had a permanent intention of living in the country. Take what circumstances you please as evidence of this, either the having resided a certain time, or having a family, or having property, any or all of them. Whoever intends to live in a country must wish



that country well, and has a natural right of assisting in the preserving of it."³⁶ Given his further provision of fifty acres "without . . . purchase money to every person not owning nor having ever owned that quantity (of lands) . . ."³⁷ and Jefferson had in effect put forward a proposal for a general male suffrage. In his 1783 draft constitution he had come to the conclusion of Rainborough and the Leveller debaters that to fight for one's country is obvious evidence of permanent attachment. Property may be a sign of such attachment but it is no longer a necessary sign. Decrying the Virginia Constitution in which "The majority of the men in the State, who pay and fight for its support, are unrepresented in the legislature, the roll of freeholders entitled to vote not including generally the half of those on the roll of the militia or of the taxgatherers"³⁸ Jefferson proposed:

All free male citizens, of full age, and sane mind, who for one year before shall have been resident in the county, or shall through the whole of that time have possessed therein real property of the value of ___; or shall for the same time have been enrolled in the militia, . . . shall have a right to vote for delegates . . . and for senatorial electors . . .³⁹ (*my italics*)

In a letter to John H. Pleasants in April, 1824, he is even more explicit in his criticism of his State's

constitution: "Another defect which has been corrected by most of the States is that the basis of our constitution is in opposition to the principle of equal political rights, refusing to all but freeholders any participation in the natural right of self-government".⁴⁰

Convinced like most of his contemporaries both in England and America that a mixed constitution representing the one, the few and the many, was the ideal solution to the threat of the tyranny of a despot, an oligarchy or mob rule, the only effective constitutional device for curbing power for the sake of liberty, Jefferson seeks to retain the virtues of such a system while changing the principles on which it has been based, property and persons. Thus he observes:

The purpose of establishing different houses of legislation is to introduce the influence of different interests or different principles. Thus in Great Britain it is said their constitution relies on the house of commons for honesty and the lords for wisdom; which would be a rational reliance, if honesty were to be bought with money, and if wisdom were hereditary. In some of the American States, the delegates and senators are so chosen, as that the first represent the persons, and the second the property of the State. But with us, wealth and wisdom have equal chance for admission into both houses.⁴¹

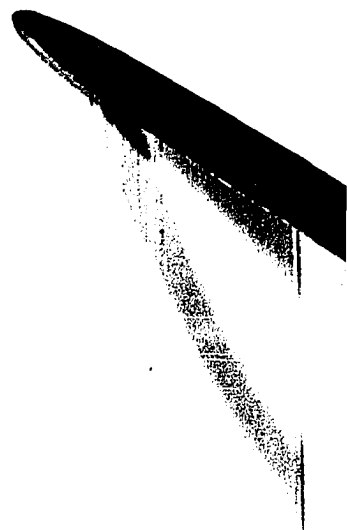
Jefferson's educational programme would have provided for mass education and the training of a natural aristoi.

His suggestions for choosing senators were obviously directed to the choice of such natural aristocrats for the "upper house":

. . . let each county at the time of electing its delegates, choose senatorial electors, qualified as themselves are [who shall in turn] choose, by ballot, one senator for every six delegates which their district is entitled to choose.⁴²

In short, the "different principles" which would operate in a Jeffersonian constitution would be persons and wisdom. For while ". . . the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable . . ." ⁴³ It is the business of the Senate to instill reasonableness into the majority's deliberations.

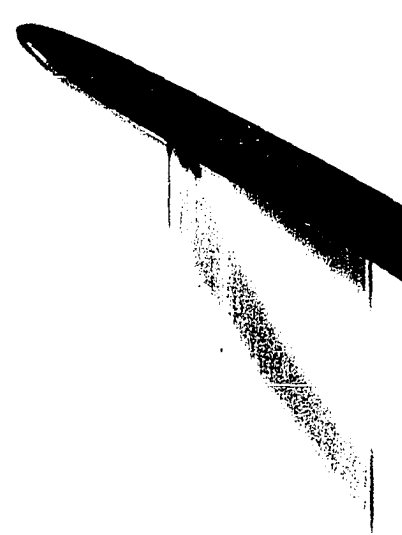
Much has been made of Jefferson's celebrated comment: "An elective despotism was not the government we fought for".⁴⁴ It is cited as strong evidence in support of Jefferson as the "dubious democrat". It is well, however, to examine this remark in the context in which it was made. Jefferson was offering a scathing indictment of the Virginia Constitution which had been drawn up in 1776 by an ordinary legislature, never submitted to the people for approval as a constitution, and was daily being treated by the legislature as both an ordinary piece of legislation which they were free to revise at will and as



a veritable constitution. Jefferson attacks them for concentrating "all the powers of government legislative, executive, and judiciary" in their hands.⁴⁵ In words as scathing as those Lilburne addressed to the Army for referring the Agreement of the People to Parliament and not to the people, Jefferson ridicules their argument that they have in fact established a constitution:

To get rid of the magic supposed to be in the word constitution, let us translate it into its definition as given by those who think it above the power of the law; and let us suppose the convention, instead of saying "We the ordinary legislature, establish a constitution", had said, "We the ordinary legislature establish an act above the power of the ordinary legislature." The other States . . . have been of opinion that to render a form of government unalterable by ordinary acts of assembly, the people must delegate persons with special power. They have accordingly chosen special conventions to form and fix their governments.⁴⁶

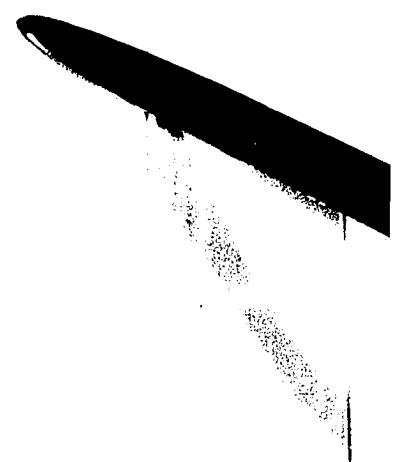
For Jefferson the "elective despotism" he is referring to is that of the "one hundred and seventy-three despots", the present Virginia legislature, which has summarily fixed their own quorum, and even suggested in 1776 the creation of "a dictator, invested with every power legislative, executive, and judiciary, civil and military, of life and of death, over our persons and over our properties".⁴⁷ The defect is to him apparent: ". . .



there being no barrier between the legislature, executive and judiciary departments, the legislature may seize the whole; . . . having seized it, and possessing a right to fix their own quorum, they may reduce that quorum to one, whom they may call a chairman, speaker, dictator, or by any other name they please."⁴⁸

Jefferson lays bare the hollowness of their appeal to tacit consent: "But, say they, the people have acquiesced, and this has given it [the ordinary legislature's 'constitution'] an authority superior to the laws Should a prudent acquiescence, at a critical time, be construed into a confirmation of every illegal thing done during that period?" They must "render unnecessary an appeal to the people, or . . . a rebellion, on every infraction of their rights, on the peril that their acquiescence shall be construed into an intention to surrender those rights".⁴⁹ The solution, for Jefferson, is to call a constitutional convention and that constitution to include provisions for amendment.⁵⁰

Unlike Lilburne, Jefferson never looked upon a constitution as so fundamental that it could never be changed. Believing that "nothing then is unchangeable but the inherent and unalienable rights of man",⁵¹ he said that

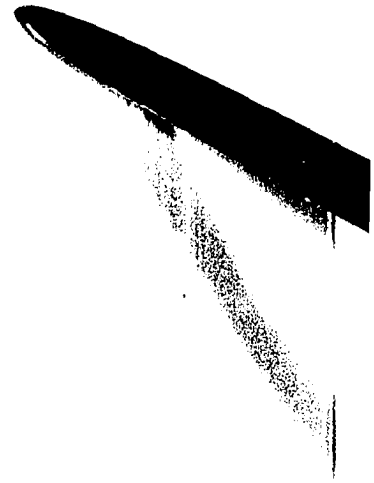


". . . laws and institutions must go hand and hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also and keep pace with the times."⁵²

Government by consent for Jefferson, as for Rousseau, must be an operational reality. It must be evident not merely at election day, for delegates to constitutional conventions and ordinary legislatures, not merely in passive obedience. It must be a meaningful reality for every man. Every man must feel himself and in truth be a participant in the democratic process. Dimly perceived by the Levellers in their schemes for decentralisation, Jefferson spells it out in his theory of a "gradation of republics":

The article, however, nearest my heart is the division of counties into wards. These will be pure and elementary republics, . . . and will make of the whole a true democracy as to the business of the wards, which is that of nearest and daily concern⁵³

. . . . The elementary republics of the wards, the county republics, the State republics, and the republic of the Union would form a gradation of authorities, standing each on the basis of law, holding every one its delegated share of powers, and



constituting truly a system of fundamental balances and checks for the government. Where every man is a sharer in the direction of his ward-republic, or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year but every day . . .⁵⁴

Political Equality: "for Every Body of Men"

Every man, and every body of men on earth, possesses the right of self-government. They receive it with their being from the hands of nature.⁵⁵

The conception of free men forming free societies in cooperation and collaboration was hardly new with Jefferson. It was part of the Norman yoke myth accepted by the Levellers as well as Jefferson. It was an essential ingredient in the Lockean analysis of consensual government. But, with Jefferson, its full operational possibilities were to be explored. As early as his Summary View of 1774, Jefferson was expounding it to the British King:

. . . our ancestors . . . were the free inhabitants of the British dominions in Europe, and possessed a right, which nature has given to all men . . . of going in quest of new habitations, and of there establishing new societies . . .⁵⁶

Unable to see any reason why "160,000 electors in the island of Great Britain should give law to four millions in the states of America, every individual of whom is equal

to every individual of them in virtue, in understanding, and in bodily strength",⁵⁷ he offered the British monarch a vision of a new polity: one of federal pact as against one of dependency and subordination, a glimmering of a Commonwealth of Nations: ". . . settlements having been thus effected in the wilds of America, the emigrants thought proper to . . . continue their union with [the mother country] by submitting themselves to the same common sovereign; who was thereby made the central link connecting the several parts of the empire thus newly multiplied."⁵⁸

His Ordinance of 1784 was simply an unfolding of the same train of thought. Those settling the western parts of the present thirteen colonies should be free to establish their own societies, in which all free males of full age were to meet together to establish temporary government which in time would lead to permanent government "on an equal footing with the said original States".⁵⁹

The Fatal Contradiction: Slavery and Political Equality

Were our State a pure democracy . . . there would yet be excluded from their deliberations:

1. infants, until arrived at years of discretion:
2. women . . .;

3. slaves, from whom the unfortunate state of things with us takes away the rights of will and of property.⁶⁰

None would quarrel with the first reservation. We can only smile with indulgence at his submission to the social conventions of his day as seen in his explanation for the refusal of the vote to women: ". . . to prevent depravation of morals and ambiguity of issue, [women] could not mix promiscuously in the public meetings of men . . ." The natural rights theory was, literally, a theory about the equal rights of men. They were blind to considerations of female emancipation. Not so with slavery. If a creed extolling the equal natural rights of all men, yet grounded in the enslavement of thousands, seems to us incongruous, it was no less so for Jefferson.

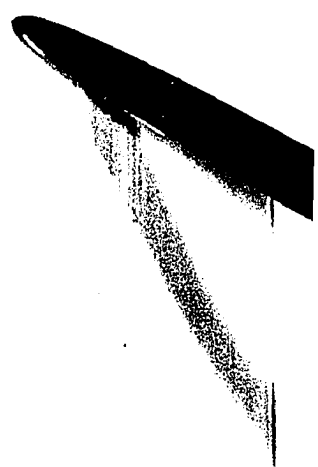
What a stupendous, what an incomprehensible machine is man! who can endure toil, famine, stripes, imprisonment, and death itself, in vindication of his own liberty, and, the next moment, be deaf to all those motives whose power supported him through his trial, and inflict on his fellow men a bondage, one hour of which is fraught with more misery than ages of that which he rose in rebellion to oppose.⁶¹

Much can be made of the hypocrisy of Jefferson's indictment of that "CHRISTIAN king of Great Britain" "determined to keep open a market where MEN should be bought & sold".⁶² Certainly his fellow statesmen found

the accusation uncomfortable. They deleted the entire section against slavery from the Declaration of Independence. Yet slavery remained for Jefferson the greatest moral and social blight of American society. His every piece of legislation made some provision against the practice, either for the abolition of the slave trade, or the emancipation of slaves, or the prohibition of slavery in the new western states, or the education and recolonisation of slaves.⁶³

Under the revision of the Laws in 1778 he introduced an amendment whereby all slaves born after the passing of the act would be emancipated. They were to be brought up at public expense "to tillage, arts, or sciences, according to their geniuses . . . when they should be colonized", to be supported and protected by the American Government until able to stand "as a free and independent people".⁶⁴ It would be impossible to free them and expect either them or their masters to live in any kind of reasonable fellowship. Prejudices were too deep-rooted given the former relationship of brutality and debasement:

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submission on the other . . .⁶⁵

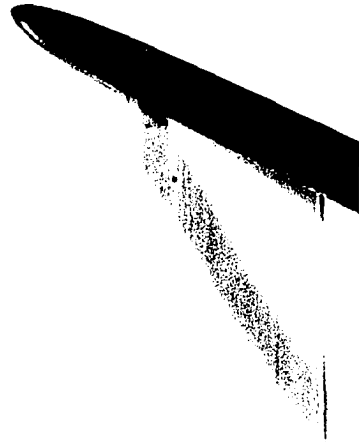


Jefferson trembled at the future of his Empire of Liberty where the people had failed to grasp the truth that the only firm basis for liberty is "a conviction in the minds of the people that these liberties are of the gift of God [.] That they are not to be violated but with his wrath [.]" In his Notes on Virginia we find him struggling with the conflicting demands of a moral and social philosophy which claims equal respect for the dignity of all men and the demands of his social and cultural conditioning which saw in fact a real distinction which nature had made between negroes and whites. Such distinctions are their colour (an admixture of which with white blood would weaken the latter) and their apparent inferiority of reasoning and moral sense, the two key ingredients necessary for an adequate appreciation of and obedience to the law of nature, God's law, the fundamental rules of human relationships. Jefferson strives to minimise these apparent distinctions. The Negroes' tendency to theft can be written off as due "to their situation and not to any depravity of the moral sense":

The man in whose favor no laws of property exist, probably feels himself less bound to respect those made in favor of others. When arguing for ourselves, we lay it down as a fundamental that laws, to be just, must give

a reciprocation of right; that, without this, they are mere arbitrary rules of conduct, founded in force, and not in conscience; and it is a problem which I give to the master to solve, whether the religious precepts against the violation of property were not framed for him as well as his slave.⁶⁶

In conclusion Jefferson warns that "the opinion that they are inferior in the faculties of reason and imagination, must be hazarded with great diffidence" ⁶⁷ For Jefferson was fully aware of the implications of a definition of man that would exclude negroes or other races. Definition in this case is of vital human significance for if we end by including within our denotation only our own race we have provided ourselves with the logically sound argument that therefore other races are below us in the Great Chain of Being and being of lower orders of species, may be used by us as we wish. Thus did Locke speak of men who fell below the level of rational nature as wild beasts. Thus did most of Jefferson's contemporaries look upon their slaves and felt no moral compunction as "booted and spurred" they rode these creatures "born with saddles on their backs".⁶⁸ Thus Jefferson ends his probing of the moral dimension of the slave issue: Take care not to reach hasty conclusions about such creatures: ". . . let me add too, as a



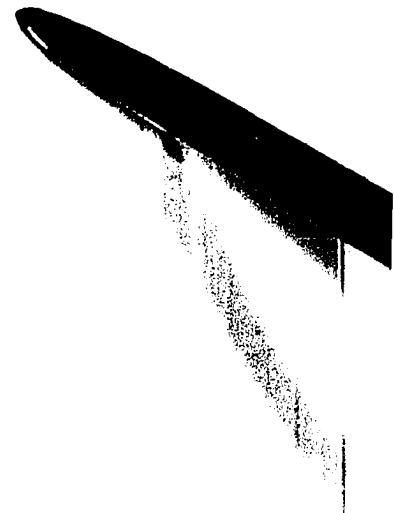
circumstance of great tenderness, where our conclusion would degrade a whole race of men from the rank in the scale of being which their Creator may perhaps have given them."⁶⁹

Jefferson seized eagerly any confirmation of their equality of natural faculties. Thus, to Henri Gregoire in 1809 he wrote:

. . . no person living wishes more sincerely than I do, to see a complete refutation of the doubts I have myself entertained and expressed on the grade of understanding allotted to the negroes by nature, and to find that in this respect they are on a par with ourselves. My doubts were the result of personal observation on the limited sphere of my own State but whatever be their degree of talent it is no measure of their rights. Because Sir Isaac Newton was superior to others in understanding he was not therefore lord of the person or property of others.⁷⁰

Jefferson is here advancing the weaker egalitarian claim, not that all men are equally, to the same degree, equipped with conscience and intelligence, indeed they are quite obviously not. What can be claimed is that all men (except lunatics and idiots) have to some extent a moral sense and a reasoning capacity and all of them have it to an extent sufficient for them to understand and abide by the primary rules of social relationships, the prerequisite to entitlement to equal rights. Such an argument appears to fall prey to the naturalistic fallacy. From a mere

description of what man is, certain rights are to follow, i.e. he ought to be treated thus and so. But the natural rights theory does not proceed from a premise stating what man's characteristics and capacities in fact are. It begins with a major premise which is a value judgment. All men are in the eyes of God of equal worth and dignity. They are equally entitled to freedom, not to do as they list, but to act within a system of rules of reciprocal rights and duties, rules made for them by their Creator for their mutual well-being and happiness. Statements about their natural faculties and characteristics then follow as corollaries of this basic assumption. For to them it would have been logically inconsistent for "creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of that society".⁷¹ For Jefferson, God had provided all men (except lunatics and idiots) with enough rationality and moral sense to recognise the basic rules of social existence and to obey them. For interpreting those rules in the complex world of every day policy decision, all men were qualified to select a natural aristocracy of wisdom and talent. For Locke only the "pseudo-aristocracy" of property could choose the leaders and participate in the leadership.



If one can see in Jefferson's refusal to identify himself with the abolitionists in France and America strains of opportunism, one can also see in it his conviction that the right, the 'ought', in the political sphere must bend to the demands of the practicable, and that, morally, no policy, however right, should be imposed on people in face of their determined opposition.

Jefferson's early legislative programme, for reform of the laws, of the judiciary, of the educational system, like his proposed legislation for the emancipation and colonisation of the slaves, met with indifference or hostility. It is therefore not surprising to find him writing to James Heaton in 1826:

The subject [slavery] . . . is one on which I do not permit myself to express an opinion but when time, place, and occasion may give it some favorable effect. A good cause is often injured more by ill-timed efforts of its friends than by the arguments of its enemies. Persuasion, perseverance, and patience are the best advocates on questions depending on the will of others.⁷²

Jefferson's Commitment to an Egalitarian Paradigm

In Jefferson natural rights theory comes of age. Under the Levellers it felt its first birth pangs. Under Locke it experienced its conceptualisation into a

systematic political theory. Under Jefferson, it left the security of the womb to face the realities of the world of men and nature. In Jefferson there is a conscious persistent intellectual and moral investigation of the social, economic, cultural and political implications of an egalitarian sub-paradigm. Unsatisfied with a moral theory that would find satisfaction for men in the rewards of a world beyond, Jefferson sought to actualise that ideal in the everyday life of every man. There must be, for him, a fusion of the ideal and the real, of doing well and faring well. The theological underpinings are still there in theory and conviction but his increasing concern is to bridge the gap between the 'ought' and the 'is'. And the bridge which will span them is to be found in the very fabric of man's constitution, in his needs, desires, wants, propensities. Jefferson subjected his society, all societies, to the tests of utility and respect for human dignity and found them wanting. If the key to human happiness is to be found in man's very nature, that nature has been remade by Jefferson into a normative, idealised humanity.

. . . nature hath implanted in our breasts a love of others, a sense of duty to them, a moral instinct, in short, which prompts us irresistibly to feel and to succour their distresses . . .⁷³

Impressed by the blending of happiness and virtue in

classical philosophy, he was in the end most deeply impressed by Jesus "for . . . the ancients failed to recognize the reality of love and of duties towards others". "He believed it was Jesus who had set the Western world on a more humane moral level by teaching 'the most sublime and benevolent code of morals which has ever been offered to man'."⁷⁴

In a letter to Dupont de Nemours, in 1816, he summed up his political faith:

. . . . I believe with you that morality, compassion, generosity, are innate elements of the human constitution; that there exists a right independent of force; that a right to property is founded in our natural wants, in the means with which we are endowed to satisfy these wants, and the right to what we acquire by those means without violating the similar rights of other sensible beings; that no one has a right to obstruct another, exercising his faculties innocently for the relief of sensibilities made a part of his nature; that justice is the fundamental law of society: that the majority, oppressing an individual, is guilty of a crime, abuses its strength, and by acting on the law of the strongest breaks up the foundations of society; that action by the citizens in person, in affairs within their reach and competence, and in all others by representatives, chosen immediately, and removable by themselves constitutes the essence of a republic, that all governments are more or less republican in proportion as this principle enters more or less into their composition; and that a government by representation is capable of extension over a greater surface of country than one of any other form⁷⁵



The great American experiment was not for Jefferson an experiment to show the superiority of Americans to other men. It was an attempt to prove by the removal of the inequalities of condition prevalent in other societies that, given the proper environment, the proper nurture of body, mind and soul, men could aspire to faith in men.

If in this Jefferson is seen as representative of the philosophes, prone to abstract speculation and an overweening confidence in man's reason, it must be recalled that Jefferson's natural rights theory was not developed in vacuo. On the contrary, he could say, convincingly, that the authority of the Declaration of Independence "rests then on the harmonizing sentiments of the day".⁷⁶ He was expressing the "common sense of the subject". That common sense appealed not only to their minds or hearts. They had been nurtured in it from the pulpit, the political platform, their history. Natural rights for them had a definite and specific content. It was those rights and liberties Anglo-Saxons had enjoyed prior to the Norman Conquest, which Englishmen wrested from their kings as evidenced in Magna Carta, the Petition of Right, the Puritan struggle and the "Glorious Revolution". The great American experiment in self-government was but

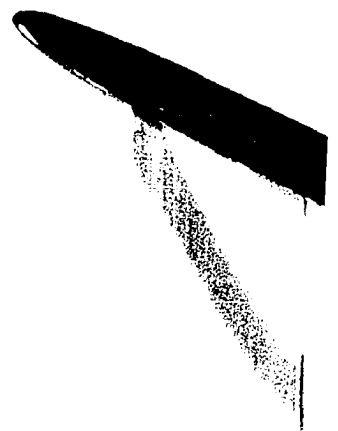


the logical extension of the historical, spiritual and juridical claims of Englishmen: that men have a right to be free insofar as they respect the equal rights of others to be free; that man-made laws are null and void if they defy these rights, which are but the expression of the rules laid down by God, confirmed by immemorial custom, fought for and won by rebellion and revolution.

Jefferson's task was to extend further the implications of that faith, to maintain "eternal hostility against every form of tyranny over the mind of man".⁷⁷ Where Levellers, Locke and Jefferson saw the political dependence of men upon the arbitrary will of any man or group of men as the most glaring instance of such tyranny, Jefferson would probe beyond to find further forms of tyranny, only dimly perceived by the Levellers, never perceived by Locke: the tyranny of rich over poor, of master over slave, of employer over employee. Jefferson's denunciation of industrialisation, of capitalist exploitation, has a Marxian flavour. It echoes the same outrage at the manipulation of men by men, of sheep by wolves. If his agrarian utopia of moderately propertied, independent farmers working and living their lives in harmonious collaboration and good will with their neighbours, seems



so irrelevant to the problems of twentieth century industrialised and computerised society, its vision is really very close to Marx's. Where the one finds the ultimate fulfilment of human personality in communitarian fellowship, the other finds it in a society of autonomous, private persons who enjoy the company of their fellow men and would cooperate and collaborate with them in mutually beneficial undertakings, but would also wish to retire into the privacy and isolation of their individual selves, in pursuit of self-development, intellectual, moral and aesthetic. To see in this penchant for the individual, in this quest for privacy, the origins of competitive individualism, of the supremacy of the private over the public sector, would be, I believe, a complete misinterpretation of Jefferson. For all his denunciations of Plato, Jefferson has much in common with the philosopher-king, the craving to seek "The Good", to contemplate it in utter isolation from the world of public responsibility in communion with kindred spirits, but reluctantly, moved by the claims of his moral sense, returning to the public arena to perform his duty to society. In Locke one can trace the development of a new ethic, a new natural law which would justify in utilitarian, economic terms, the



unlimited acquisitiveness of man. Not so for Jefferson. His whole life was a struggle to withstand and curb that tendency in man. He saw in the life of great cities not wealth and the development of the gross national product, but the trampling and degradation of the majority of men by the "spurred and booted" few. As Chinard has observed:

Hamilton . . . paid little attention to the social modification that an industrialization of the country would probably bring about. Jefferson . . . was solely interested in protecting and preserving a certain pattern of civilization which was essentially an agricultural pattern - the only safe foundation for the political and private virtues of vital importance in a democracy.⁷⁸

In time Jefferson yielded to the necessities of American industrialisation but reluctantly, forced into the decision by the need to protect Americans from an even greater tyranny, that of dependence upon and subservience to Great Britain. He never made peace with the market or with industrialisation and its creation of "canaille" as opposed to men. Yet, as Hofstadter has observed, he yielded "a good part of his agrarian prejudice (like the pragmatic, undoctinaire soul that he was) without sacrificing his democratic preferences. But although he clung to his humane vision of democracy, he left it without the new economic rationale that it required."⁷⁹

Footnotes

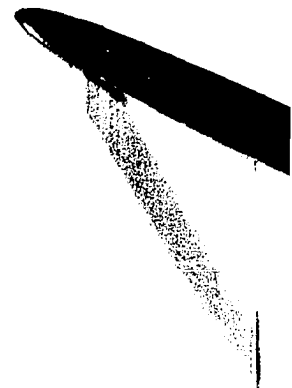
1. From Thomas Jefferson's "'Original Rough Draught' of the Declaration of Independence", in The Papers of Thomas Jefferson, ed. J. P. Boyd (3d printing; Princeton: Princeton University Press, 1969), I (1760-1776), 423-24.
2. T. Jefferson, The Commonplace Book of Thomas Jefferson: a Repertory of His Ideas on Government, introduction and notes by G. Chinard (Baltimore: Johns Hopkins Press, 1926), p. 58.
3. Quoted in C. A. Beard, Economic Origins of Jeffersonian Democracy (1st edition, 1915; New York: The Free Press; London: Collier-MacMillan Limited, 1965), p. 418.
4. ibid., p. 420.
5. Quoted in G. Chinard, Thomas Jefferson: The Apostle of Americanism (2d edition, revised; Ann Arbor: University of Michigan Press, 1966), pp. 492-93.
6. L. Hartz, "The Rise of the Democratic Idea", in J. R. Pole, ed., The Advance of Democracy (New York, Evanston and London: Harper & Row, Publishers, 1967), pp. 26-7.
7. ibid., pp. 20-1.
8. Thomas Jefferson to Isaac H. Tiffany, August 26, 1816, quoted in E. Dumbauld, ed., The Political Writings of Thomas Jefferson: Representative Selections (Indianapolis and New York: The Bobbs-Merrill Company, Inc., 1955), pp. 87-8.
9. Thomas Jefferson to Richard Rush, October 20, 1820, ibid., p. 78.
10. Thomas Jefferson to Roger C. Weightman, June 24, 1826, ibid., p. 9.

Footnotes (continued)

11. Thomas Jefferson to John Adams, October 28, 1813,
ibid., pp. 100-1.
12. A. Koch, Jefferson and Madison: The Great
Collaboration (4th printing; New York: Oxford
University Press, 1967), pp. 64-5.
13. Thomas Jefferson to James Madison, October 28, 1785,
in The Papers of Thomas Jefferson, op. cit.,
VIII, 681-82.
14. In ibid., I, 133.
15. ibid., 352.
16. See T. Jefferson to Edmund Pendleton, August 13,
1776, in ibid., 491-93.
17. For further details, See ibid., 564 ff.
18. T. Jefferson to James Madison, September 6, 1789,
in ibid., XV, 392-3, 396-7.
19. Koch, op. cit., p. 132.
20. T. Jefferson, Notes on the State of Virginia, introd.
T. P. Abernethy (New York, Evanston and London:
Harper & Row, Publishers, 1964), p. 83.
21. In Jefferson, Papers, op. cit., I, 558-59.
22. ibid., p. 344.
23. Jefferson, Notes . . . on Virginia, op. cit.,
pp. 142-43.
24. ibid., p. 142.
25. ibid., p. 140.
26. Quoted in G. Chinard, Thomas Jefferson . . .,
op. cit., p. 238.

Footnotes (continued)

27. Jefferson, Notes on . . . Virginia, op. cit., p. 142.
28. T. Jefferson to John Adams, 1813, in ed. J. P. Foley, The Jeffersonian Cyclopeda: a Comprehensive Collection of the Views of Thomas Jefferson (1st published, 1900; reissued, 1967; New York: Russell & Russell, 1967), I, no. 463, pp. 48-9.
29. See Jefferson's Draft Constitution for Virginia, 1776, in Jefferson, Papers, op. cit., I, 358.
30. E. Mims, Jr., The Majority of the People (New York: Modern Age Books, Inc., 1941), pp. 265-66.
31. T. Jefferson to Edward Carrington, January 16, 1787, in Dumbauld, op. cit., pp. 65-6.
32. In Dumbauld, op. cit., pp. 114-16.
33. In Jefferson, Papers, op. cit., I, 341.
34. ibid., p. 348.
35. ibid., pp. 503-4.
36. ibid., p. 504.
37. ibid., p. 344.
38. Jefferson, Notes on . . . Virginia, op. cit., p. 112.
39. ibid., p. 196.
40. In Dumbauld, op. cit., pp. 118-19.
41. Jefferson, Notes on . . . Virginia, op. cit., p. 113.
42. ibid., p. 195.
43. In Dumbauld, op. cit., p. 42.



Footnotes (continued)

44. Jefferson, Notes on . . . Virginia, op. cit., p. 113.

45. ibid., p. 113.

46. ibid., pp. 118, 119.

47. ibid., p. 120.

48. ibid., p. 123.

49. ibid., pp. 118, 123-24.

50. Compare Jefferson's various schemes for amendment:
Draft I, 1776, Virginia Constitution: "None of these fundamental constitutions to be . . . repealed but by unanimous consent of both legislative houses." in The Papers of Thomas Jefferson, op. cit., I, 345.

Draft II, 1776 Virginia Constitution: "None of these fundamental laws & principles of government shall be repealed . . . or altered but by the personal consent of the people . . ." Two-thirds of the suffrage was necessary to approve any amendments. ibid., 354.

Draft Virginia Constitution 1783: "Any two of the three branches of government, concurring in opinion, each by the voice of two-thirds of their whole existing number, that a convention is necessary for altering this constitution, or correcting breaches of it, they shall be authorized to issue writs to every county for the election of . . . delegates [for a constitutional conference]." In Notes on . . . Virginia, op. cit., p. 204.

51. In Dumbauld, op. cit., p. 126.

52. ibid., p. 124.

53. T. Jefferson to Samual Kercheval, September 5, 1816, in ibid., p. 97.

Footnotes (continued)

54. ibid., p. 99.
55. ibid., p. 83.
56. In Jefferson, Papers, op. cit., I, 121.
57. ibid., p. 126.
58. ibid., pp. 122-23.
59. In Dumbauld, op. cit., p. 40.
60. T. Jefferson to S. Kercheval, September 5, 1816,
ibid., p. 98.
61. The Jeffersonian Cyclopeda, op. cit., II, no. 7931,
p. 811.
62. 'Original Rough Draught' of the Declaration of
Independence, in Jefferson, Papers, op. cit.,
I, 426.
63. See Summary View 1774 in The Papers of Thomas
Jefferson, ibid., 130; 1776 Draft II, Virginia
Constitution, ibid., 353; 1783 Draft Constitu-
tion in Notes on . . . Virginia, op. cit., pp.
197-98; Ordinance of 1784 in Dumbauld, op. cit.,
p. 40.
64. Jefferson, Notes on . . . Virginia, op. cit., p. 132.
65. ibid., p. 155.
66. ibid., pp. 156, 137.
67. ibid., p. 138.
68. In Dumbauld, op. cit., p. 9.
69. Jefferson, Notes on . . . Virginia, op. cit., p. 138.

Footnotes (continued)

70. The Jeffersonian Cyclopeda, op. cit., II, no. 5823,
p. 623.
71. ibid., I, no. 463, p. 48.
72. In Dumbauld, op. cit., p. 62.
73. The Jeffersonian Cyclopeda, op. cit., II, no. 5527,
p. 593.
74. A. Koch, Power, Morals and the Founding Fathers:
Essays in the Interpretation of the American
Enlightenment (5th printing; Ithaca: Cornell
University Press, 1967), p. 32.
75. The Jeffersonian Cyclopeda, op. cit., I, no. 3525,
p. 388.
76. In Dumbauld, op. cit., p. 8.
77. Quoted in Koch, Power, Morals . . ., op. cit., p. 31.
78. Chinard, Thomas Jefferson . . ., op. cit., p. 328.
79. R. Hofstadter, The American Political Tradition and
the Men Who Made It (1st edition, 1948; New
York: Alfred A. Knopf, 1967), pp. 31-2.

Chapter

VI

THE CONTEMPORARY RELEVANCE

o f t h e

N A T U R A L R I G H T S T H E S I S

What then, as Becker asks, is still living in the natural rights thesis? It is a thesis grounded in a theistic major premise, but God is dead. In its American rendering it offered an agrarian Utopia hopelessly irrelevant to contemporary technological society. Under the Lockean justification of unlimited accumulation it led to the exaltation of that principle into a system of capitalist domination and exploitation. It is a thesis which in the nineteenth century was turned upon its exponents by a conservative reaction which in America propounded the natural inequality of man by transforming nature into a descriptive account of men's differences and it bestowed metaphysical personality on the business corporation. In England it was used to justify contemporary economic, social and political structure as the unfolding of the natural law of that society. It was rendered by Social Darwinism, as it had been by Calhoun, into a natural



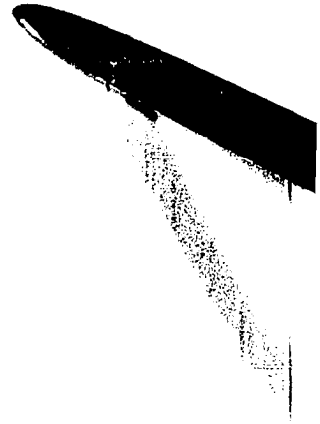
law of progress, of a natural selection of the fittest in the struggle for survival. In its name France had been reduced to the terror of the guillotine and Europe subjected to its Emperor's will.

The "common sense" of the eighteenth century became the "nonsense" of the nineteenth, and the 'ought' a mere reflex of the 'is':

The individual, in the eighteenth century emancipated from prescriptive law and custom, was once more confined within the complex framework of circumstance; liberated by the revolutionary age from his environment in order to reconstruct it on rational lines, he was again imprisoned in the social process.¹

He would find equal confinement under the deterministic sway of the Benthamite pain-pleasure mechanism, under the Freudian determinism of a reality principle stifling the pleasure principle as the necessary price of civilisation, under Darwinian evolution in which man is conceived as the result of the accidental modification, variation and adaptation of mere natural forces in a material universe.

Against this backdrop Becker finds the individual "more diminished than ever, and more helplessly bound. In a universe in which man seemed only a chance deposit on the surface of the world, and the social process no more than a resolution of blind force, the 'right' and the



'fact' were indeed indistinguishable; in such a universe the rights which nature gave to man were easily thought of as measured by the power he could exert".² Paradoxically, the logical outcome of the natural rights theory, democracy, came into its own in this very atmosphere of determinism, in which power, acquisition and struggle were the operative realities. Democracy won out in the nineteenth century not as the vindication and logical extension of a system of values, but by the preponderant weight of its power. Numbers would prevail, might would assure the right of the majority to rule. Democracy came into its own not as a value but as a fact.

And yet, as Becker has argued, faced with the realities of unrestrained power politics, of the extent of the depravity of man and society when moved only by such considerations, we have come to a recognition that ". . . in essentials the political philosophy of Jefferson is our political philosophy":

We may be less sure than Jefferson was that a beneficent intelligence created the world on a rational plan for man's special convenience. We may think that the laws of nature, and especially the laws of human nature, are less easily discovered and applied than he supposed. We may have found it more difficult to define the rights of man and to secure them by simple institutional forms . . . Above all, we have learned that human reason is not quite

so infallible an instrument for recording truth as he believed it to be; and that men themselves are less amenable to rational persuasion.

But despite these qualifications

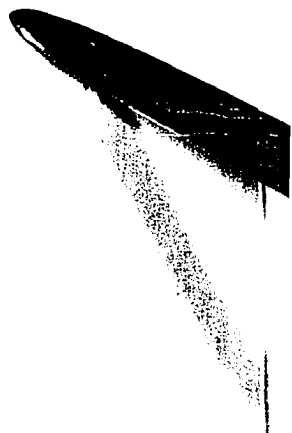
in essentials democracy means for us what it meant for him [:] . . . primarily a set of values, a way of regarding man and the life of man.³

Wright reminds us that

In order to prove that natural law is an outworn or harmful concept it is necessary to do more than demonstrate that it has sometimes been used harmfully, or that some of its advocates argued from faulty premises or in an overly intellectualistic manner. It is necessary to show that political philosophy has no need of a concept which is expressive of standards of right and justice other than, perhaps higher than those set forth in the positive laws, or of a concept which attempts to state in general terms the principles of human nature and behaviour in organized society.⁴

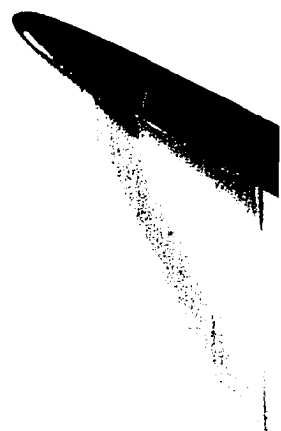
To see in the natural rights thesis what Strauss saw, an exaltation of rights as opposed to duties, of the individual as opposed to society, is to be blind to the repeated emphasis on rights and freedom as meaningful only within the context of a system of rules for men who by nature, inclination, necessity, and obligation, were meant for society. For natural rights theorists man could not choose not to live in society, but he could choose the society he would join, either through expatriation or by

remoulding his own society in accordance with standards of justice and freedom. Their formulation of a social compact is generally acknowledged to be not the description of how atomised units called individuals would interact in a social and political vacuum. It was a model for a reconstruction of men in accordance with those rules necessary for social existence, given men's need and desire for survival, given the limiting conditions of the human situation. Thus, aware of man's vulnerability, man could not live unto himself, he was dependent upon others. Given his fallibility, intellectual and moral, no man, no group of men, had access to ultimate truth but in association and discussion with each other they could come up with reasonably satisfactory solutions to political, economic and social problems. Such were the negative conditions of the human situation. But there was a positive aspect to the human condition as well. Every man qua man had dignity, worth, value. God's assurance of that worth reinforced belief but in time they needed no such confirmation. They looked for and found a common humanity around them. That equal value of the human personality set definite limits to the political, leading to the essence of all doctrines of natural law: ". . . the



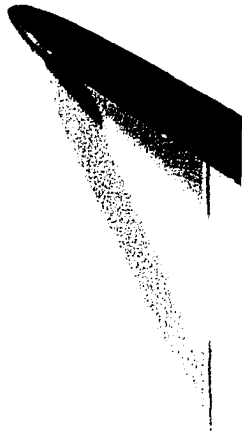
appeal from positive law to justice, from the law that is to the law that ought to be. Unless we are willing to contend that the concept of a law that ought to be is an inadmissible one, the basis of natural law remains untouched."⁵

But what is the epistemological foundation of such a law? Is it objectively valid and if so what means are available for testing its validity? In the face of juristic positivist tests for validity, effectiveness, actualisation, enforcement; of scientific positivist tests, empirical verification, confirmation by sense experience - what forms of verification can the natural rights theorist offer? Faced with this question in the 1920s Carl Becker had replied: "To ask whether the natural rights philosophy . . . is true or false is essentially a meaningless question".⁶ Faced with this same question in the 1940s he declared: ". . . the incredible cynicism and brutality of Adolf Hitler's way of regarding man and the life of man, made real by the servile and remorseless activities of his bleak-faced, humorless Nazi supporters, has forced men everywhere to re-examine the validity of half-forgotten ideas, and to entertain once more half-discarded convictions as to the substance of things not seen. One of



these convictions is that 'liberty, equality, fraternity', and 'the inalienable rights of man' are generalities, whether glittering or not, that denote realities - the fundamental realities that men will always fight and die for rather than surrender."⁷

The fundamental reality we "see" is that men are more alike than unlike, or more correctly, that the ways they are alike are more important in moral and political situations than the ways they differ. There has been a long tradition of "looking at" men in this light, backed up by custom, religion and confirmed by the pragmatic advantages of a society that treats people this way. When asked to provide justification for regarding men in this way it is difficult, as Berlin points out, "to see what is meant by considering it [equality] either rational or non-rational." "Like all human ends it cannot itself be defended or justified, for it is itself that which justifies other acts - means taken towards its realisation."⁸ Yet Berlin is unwilling to leave the issue there, where Hume ostensibly left it as an unbridgeable chasm between description and value, the 'is' and the 'ought', the realm of rationality and the realm of non-rationality. For in the concept of 'human being' he sees what the



natural rights theorists saw. Certain conduct classifies as "human", other conduct as "inhuman". Those who see nothing inhuman in particular forms of conduct may be "classified with homicidal lunatics". For

a man who cannot see that the suffering of pain is an issue of major importance in human life - that it matters at all - who cannot see why anyone should wish to know - still less mind - whether pain is caused or not, provided he does not suffer it himself, is virtually beyond the reach of communication from the world occupied by me and my fellow men. . . . communication is as unattainable as it is with the man who thinks that he is Julius Caesar . . . This seems to me to show that recognition of some values - however general and however few - enter into the normal definition of what constitutes a sane human being. We may find that these ends do not remain constant if we look far enough in time and space; yet this does not alter the fact that beings totally lacking such ends can scarcely be described as human; still less as rational.⁹

Natural rights theorists were attempting to focus attention on a way of looking at, behaving and feeling towards man qua man which was a human way of looking and behaving and feeling. They were providing a description of how men are expected to behave but also a prescription for men, how they ought to behave. In proportion as men did behave in accordance with these rules and attitudes they would be judged human beings. To the extent that we are moved by the human tragedy of an Antigone, shocked by premeditated

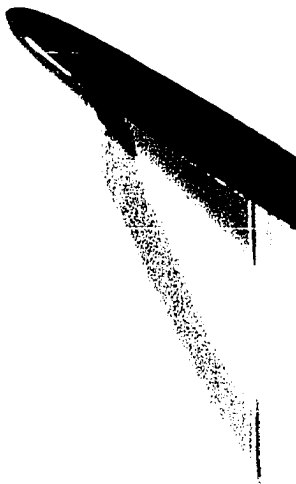
and intelligently devised techniques for the mass extermination of six million persons as a "solution" to a human economic, social or political problem, we are recognising and sharing a publicly ascertainable body of criteria for judging of human affairs, of the limits prescribing the range of permissible political behaviour. Insofar as we so acknowledge such criteria we are in effect subscribing to a natural rights position, that in the ultimate analysis the only thing that remains unchanged is the "inherent and unalienable rights" of human personality.

Bentham and Green repudiated the metaphysical attire of natural rights theorists but retained the underlying core of that thesis, the intrinsic value of human personality. Thus Bentham ". . . after destroying, as he thought, the concept, proceeded to substitute for it a theory of political and social justice which is of the same character".¹⁰ His rejection of natural rights stems in large part from his irritation with the Blackstonian equation of the contemporary English legal system with natural law and natural right, the culmination of the best of all possible worlds. Judged by his objective criterion of utility that system proved inadmissible.

Rejecting a concept of freedom that deprived the vast

majority of human beings of the basic requirements of self-development, of sheer survival, Green formulated a conception of positive freedom that would grant a genuine political equality backed up by what was, for him, genuine economic equality. Like Rousseau, he found the avenue for the full development of human personality through participation in a metaphysical, idealised state which gave expression to such freedom.

If, with Becker, we now repudiate as hopelessly irrelevant much of the Jeffersonian means for the realisation of human development, we can, I believe, equally repudiate much of the means offered by his successors, Bentham and Green. If, as Bryce has argued, Jefferson "'mistook the pernicious channels in which selfish propensities had been flowing for those propensities themselves'",¹¹ so perhaps did they. But we can conclude with Becker regarding Jefferson, and his successors that " . . . this is after all the more superficial aspect of Jefferson's philosophy; and if we turn to its more fundamental ideas - . . . the essential rights to be secured as distinct from the specific means of securing them - we find that Jefferson's political philosophy is as valid for our time as it was for his."¹²

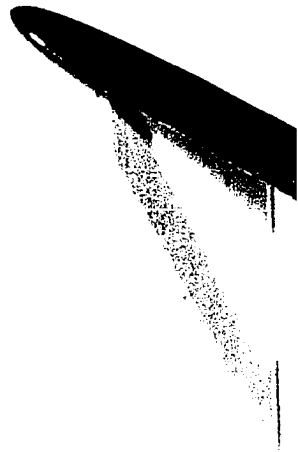


Footnotes

1. C. L. Becker, The Declaration of Independence: a Study in the History of Political Ideas (1st edition, 1922; New York: Random House, 1942), p. 272.
2. ibid., p. 276.
3. C. L. Becker, "The Political Philosophy of Thomas Jefferson", in M. D. Peterson, ed., Thomas Jefferson: a Profile (2d printing; New York: Hill & Wang, 1968), p. 60.
4. B. F. Wright, Jr., American Interpretations of Natural Law: a Study in the History of Political Thought (1st edition, 1931; reissued, 1962; New York: Russell & Russell, Inc., 1962), p. 343.
5. Prof. M. R. Cohen quoted in ibid., p. 322.
6. Becker, The Declaration of . . ., op. cit., p. 277.
7. Becker, "The Political Philosophy of . . .", op. cit., p. 59.
8. Sir I. Berlin, "Equality As an Ideal", in F. A. Olafson, ed., Justice and Social Policy: a Collection of Essays (Englewood Cliffs: Prentice-Hall, Inc., 1961), p. 144, 150.
9. Sir I. Berlin, "Rationality of Value Judgments", in C. J. Friedrich, ed., Nomos VII: Rational Decision (2d printing; New York: Atherton Press, 1967), p. 223.
10. Wright, op. cit., p. 342.
11. Quoted in Becker, "The Political Philosophy of . . .", op. cit., p. 58.
12. ibid., p. 58.

PART TWO

UTILITY



Chapter

VII

U T I L I T Y

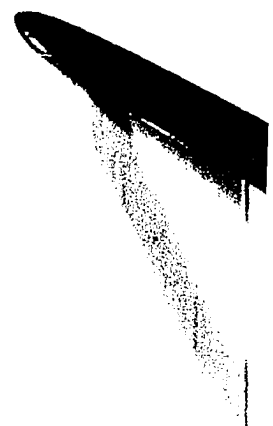
A NEW EGALITARIAN SUB-PARADIGM

Now as to universal suffrage.
. . . what principle can be more impregnable? 1. Who is there, that is not susceptible of discomfort and comfort - of pain and pleasure?
. . . . 3. The happiness and unhappiness of any one member of the community - high or low, rich or poor - what greater or less part is it of the universal happiness and unhappiness, than that of any other?
. . . . 6. Who is there, that, in avoidance of unhappiness, and pursuit of happiness, has not a course of conduct to maintain - which, in some way or other, he does maintain, - throughout life?

J. Bentham, Introduction to Plan of Parliamentary Reform, in The Works of Jeremy Bentham, ed. J. Bowring (1838-1843) (reissued, 1962; New York: Russell & Russell, 1962), III, 459.

The Loss of a Common Intuition

Natural law thinking . . . is essentially an assertion of faith in a standard of values, rather than a demonstration . . . [Its] effectiveness . . . depends upon the existence of a sufficient number of persons who . . .



feel driven to assert the same faith . . .
 Once . . . the spell of a common
 intuition is broken the standard appears
 suspended in mid-air devoid of any apparent
 basis in reality.¹

So broken, the common sense of the eighteenth century became the nonsense of the nineteenth. Such a faith for the English had been grounded in a stable social and economic structure whose very stability and permanence testified to its conformity with the very structure of the universe. But once that social structure began to crack the whole fabric of cosmic unity and order went too. If Bentham's reaction to the Blackstonian fusion of natural law and English law was partly temperamental, impatience with verbal confusion, it was also in part a reflection of the changed economic and social conditions of the England of his day, the evident clash between the realities of the English social and economic scene and the fictitious descriptions of the legal system. Far from those fictions being a reflection of a theistically preordained order, increasingly men of Bentham's age, saw that

. . . the changing structure of society makes it only too obvious to all parties that the alleged authoritative norms . . . are in fact man-made, and that they are not the norms of the whole community to which in their own way men of every rank are equally subject. . . . religion is invoked to justify the norms which one class wishes and is able to use against

another when the working class were gathered . . . into the industrial cities, they were finally torn from a form of community in which it could be intelligibly and credibly claimed that the norms which govern social life had universal and cosmic significance, and were God-given
 . . . in England after 1800 each social class possesses a separate religious history.²

Now one was to rub shoulders with persons seen wholly as strangers whose relationships with each other were reduced to the cash nexus of a market society, in which the "value" of a man was measured by the weight of his purse. Bentham saw in men in groups what Hobbes had seen: external, competitive relationships of interest-dominated atoms. For both, political society had to be constructed in a community void. How else could Bentham describe a community but as an aggregate of individuals? What other experience had he? And what possibility was there of stabilising and rationalising the relationships of such hostile, interest-dominated creatures but through the artificial identification of their interests by the imposition of a variety of externally imposed sanctions? Those sanctions for Bentham if not for Hobbes were to find their ultimate rationale in the greatest happiness of the greatest number. Yet the ultimate sanction on which Bentham hoped to rely, the moral sanction, the public



disapproval of violators of that principle, was hardly an operative reality in Bentham's day. As MacIntyre points out, it was an aspiration, a vision, a goal, an 'ought' without as yet a ground in matter of fact:

. . . the idea of . . . the greatest happiness of the greatest number, is advanced as the key notion in moral philosophy . . . precisely [when] this concept more and more obviously had no real application . . . in the life of the community.³

Natural rights theory, identifiable on the one hand with the entrenched rights of an outmoded and iniquitous legal, social and political structure and on the other hand, with revolutionary forces of anarchy and chaos, was for Bentham no longer a viable formula for an egalitarian paradigm. Bentham offered a new formula for this paradigm, utility, "the rightful supremacy of the universal-interest-comprehension principle . . ." - ". . . interests all to be advanced: without any exception, all to be considered."⁴

Beneath his blistering indictment of the natural law/natural rights formula we find a similar commitment to the equal rights of all as constitutive of the greatest happiness principle. And we find, as in our study of natural rights theorists, the pull between the practical assertions expressive of an egalitarian paradigm and the practical assertions

of his socio-economic milieu, with his penchant for a householder suffrage and his identification with "tradesmanship probity".

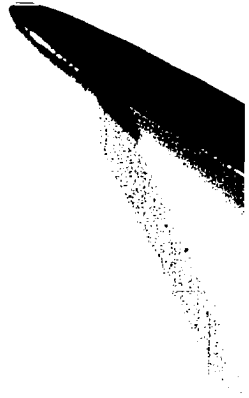
Natural Law: the Confusion of 'Ought' and 'Is'

Bentham's major attack on iusnaturalism was directed against its, for him, verbal and logical confusion of the 'is' and the 'ought': in Blackstone, the reduction of 'ought' to 'is', in the French and American Revolutions, the reduction of 'is' to 'ought'. His attack was two-pronged, against the forces of reaction and the forces of anarchy. On the one hand he saw the Blackstonian equation of English law with natural law, of English law as the expression of law as it ought to be, as imaginary, fictitious nonsense when confronted with the actual operation of the legal system. He saw the latter as a confused morass of uncertain and unintelligible rules, regulations and conventions, the access to which was vouchsafed to the legal profession alone. Their control of the key to its understanding made a mockery of the equality and impartiality of the law and made the litigant, particularly the poor litigant, prey to sinister manipulation. English law as conceived by Blackstone, as the matchless blend of the 'is' and the



'ought', removed law from the realm of appraisal and criticism at a time when law cried out for such appraisal. At the other extreme, the American and French revolutionary reduction of law to morality, of loss of validity for law if at variance with the principle of natural law, opened a Pandora box of madness. It provided an excuse for any and every defiance of law which ran afoul of the subjective whims, caprice, likes and dislikes of one and all. Bentham acknowledged as strongly as natural rights theorists the importance of the 'ought' for a legal and political system. He admitted that any actual legal system ought to be made, as far as possible, to square with the moral. But it neither helped in the theoretical understanding of the nature of law or of morals nor in practical attempts to combine 'is' and 'ought', to obscure the logical difference between the two spheres.

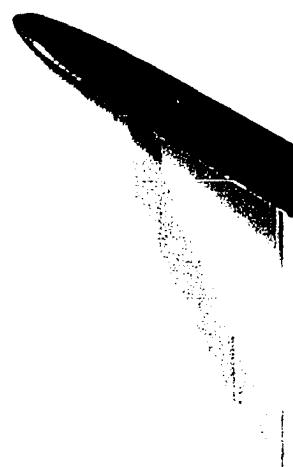
Determined to ground law as well as ethics on a scientific foundation of matter of fact, Bentham undertook his examination of both from the perspective of the neutral observer determined to render his analysis conformable to the only reliable technique of verification, empirical confirmation. Donning his "expositorial" robes, he proceeded to offer a model of law and the state as it



actually exists as the necessary preparation for any censorial appraisal of actuality in conformity with the 'ought'. Seeing in a man a sentient being moved by pain and pleasure, any analysis of man's actions and institutions must be accountable in terms of these facts. Thus evolved his analytical model of a legal system as command/sanction. Law as command, as the will of a human being, was ostensibly confirmable. Obligation as the predictable application of "sanction" grounded his model in the most certain and verifiable matter of fact, pain. Thus rules, legal and moral, were conceived as grounds for the prediction of the infliction of pains in the event of their defiance.

Yet the analysis jars. It seems to reduce a legal system to the "gunman writ large". As long as a situation of habitual obedience to a set of commands prevails, Bentham seems satisfied that a legal structure is in evidence. We may deplore the commands that are issued. We may demand that they ought to be changed. But our censorial indictment will not alter the fact that the command is a legal command - evil, perhaps, but not for that reason illegal.

Locke, the Levellers, Jefferson, on the other hand,



were concerned not with the analytic treatment of actual political and legal systems of theirs or any other age. They acknowledged that command/sanction was the formula meted out to man in most previous ages as well as their own. They were demanding a reorganisation of society such that habitual obedience was a reflection of public recognition of legitimacy. To them a political society, as opposed to tyranny, was by definition a normative condition, recognising in its rules and their enforcement a certain conception of what a human being is, a normative conception of man as a moral being equipped with understanding, requiring not mere subsistence but human existence, entailing thereby the freedom necessary to the adequate use and development of his "human" qualities, his rational and moral nature. Of necessity then political society cannot be neutrally perceived. It contains by definition provisions for the existence and well-being of the normative human being. All previous and contemporary governments are therefore by definition tyrannical.

Plamenatz captured their concern:

In their secret hearts, men are ashamed of being treated like dumb animals . . . When this shame is intolerable and they dare not protest, they are diminished in their own eyes and the injury done to them is the greatest that governments can do to men.⁵

How alien to the spirit of Bentham enraptured with his panopticon dreams: "Call them soldiers, call them monks, call them machines, so they were but happy ones, I should not care."⁶

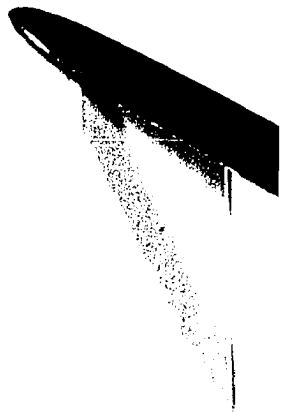
Bentham's analytical treatment of actual legal systems fails to come to grips with the fact that any legal system, even to be acknowledged as a legal system, entails, as natural rights theorists maintained, elements of morality. This insight, Hart argues, is lost by the scientific, external perspective on law:

What the external point of view, which limits itself to the observable regularities of behaviour, cannot reproduce is the way in which the rules function as rules in the lives of those who normally are the majority of society. These . . . use them . . . as guides to the conduct of social life, as the basis for claims, demands, admissions, criticism, or punishment, viz., in all the familiar transactions of life according to rules. For them the violation of a rule is not merely a basis for the prediction that a hostile reaction will follow but a reason for hostility.⁷

Again:

Not only do law and morals share a vocabulary, so that there are both legal and moral obligations, duties, and rights; but all municipal legal systems reproduce the substance of certain fundamental moral requirements.⁸

That substance consists of certain primary rules without which social existence and hence survival would be

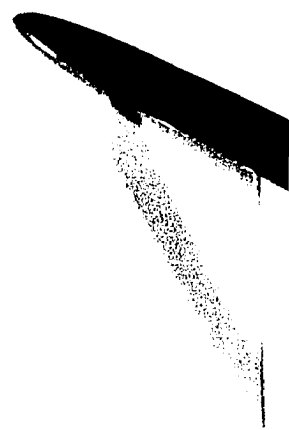


impossible and a recognised procedure for applying those rules, the application of the principle common to all rationality and all justice, impartiality, treat like cases alike.

Natural Rights: the 'Ought' and the 'Is' Further
Confounded

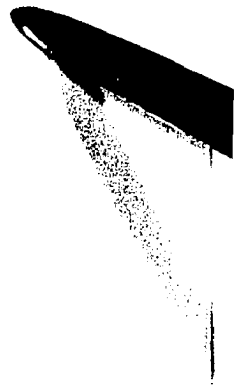
Turning specifically to Bentham's critique of the natural rights thesis, we find the same frenzied attack upon its adherents for reducing, in his opinion, all ethics to the formula "I approve of this; do so as well!" They uttered meaningless phrases grounded in nothing but their whim and caprice, but, because couched in the language of reality, of the 'is', arousing their audience to violent support for the vindication and confirmation of that 'is'.

The language of rights, obligations, duties, Bentham tells us, is the language of fiction but this does not render these words nonsense. On the contrary: "The word right, is the name of a fictitious entity: one of those objects, the existence of which is feigned for the purpose of discourse, by a fiction so necessary, that without it human discourse could not be carried on."⁹ Such words



stand for nothing but one can indicate what they mean, can indicate their meaningfulness, by showing their grounding in matter of fact by the process of paraphrasis,¹⁰ their reduction to the simplest elements, and ultimately to the only real entities, pleasure and pain. Thus:

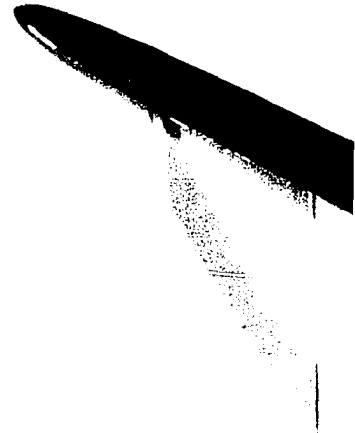
"The fictitious entities which compose this group have all of them, for their real source, one and the same sort of real entity, viz. sensation, . . . signicative . . . of perception considered as productive of pain alone, of pleasure alone, or of both."¹¹ The existence and reality of such a fictitious entity as a right can be predicted if in the event of that right being disregarded, a sanction will be imposed upon the offender. Though men speak of rights as "natural, moral and political" "The only one of the three cases in which the word right has any determinate and intelligible meaning is that in which it has the adjunct political attached to it: in this case, when a man is said to have a right . . ., the existence of a certain matter of fact is asserted: namely, of a disposition on the part of those by whom the powers of government are exercised, to cause him, to possess and . . . to have the faculty of enjoying the benefit to which he has a right."¹² Specifically: "The law prohibits me



from killing you - it imposes upon me the obligation not to kill you - it grants you the right not to be killed by me - it converts into an offence the positive act of killing you . . ."13 Thus real rights are translatable into operational realities, as being matter of fact in two senses: as depending for their efficacy on the sovereign masters of human action and volition, pain and pleasure, and on the effective machinery of the state for the infliction of the pain (obligation and sanction) and the enjoyment of the pleasure (right).

What then of "natural rights"? "Pestilential Nonsense Unmasked",¹⁴ gibberish, nonexistence, mere likes and dislikes, airy nothingness but pernicious nothingness, masking of non-existent rights with the language of fact, of can, the deliberate and intentional confusion of an obvious 'ought' with an ostensible 'is' for purposes of insurrection:

To engage others to join with him in applying force for the purpose of putting things into a state in which he would actually be in possession of the right, of which he thus pretends to be in possession, is at bottom the real object and purpose of the confusion thus endeavoured to be introduced into men's ideas, by employing a word in a sense different from what it had been wont to be employed . . ."15
(my italics)



Bentham may have succeeded in grounding his analysis of right on fact, power, empirical confirmation but he did not in the process also ground it in how the word "had been wont to be employed". Men do not necessarily conceive of rights, of law, of morality, on the command/sanction model. They have other perspectives. As participators in a system of rules and obligations they look upon these not solely in terms of the predictable infliction of pain or punishment in the event of their violation. They see them, as well, as natural rights theorists saw them, as guides, standards for conduct, addressed to moral agents who as rational, moral beings acknowledged the "point" of the rules and saw the sanctions as the necessary additive directed against the odd "criminal" type and against them all in their sometimes unreasonable moments.

Bentham's political philosophy is grounded on psychological egoism and a universalistic hedonistic ethic. He seeks to reconcile these two psychologically, morally, and logically conflicting elements through his interest-duty-juncture principle but in the final analysis that very universalistic ethic, the greatest happiness of the greatest number, each to count for one, demands for its realisation the possibility of appealing to a being much

like that Locke portrays for any reasonable expectation of its actualisation in human relationships. Having finally committed himself to a democratic political society, Bentham presupposed that psychological hedonism and the sinister interests of men were somehow overcome in the identification of the interests of the governors and those of the governed. But such identification implies at bottom a natural harmony of interests among the people in the form either of a Rousseauist general will or of an equal respect for the interests of all. As Pratt has aptly observed:

. . . the Benthamite position in this instance is in fact quite similar to that of John Locke. Locke . . . believed in the existence of a natural ordering of society whose laws were rationally discoverable and ethically compelling. However, he also saw men as wishing to live quietly together in peaceful pursuit of their happiness Natural Law . . . is not only compelling ethically, per se, because it is natural law, but it is also desirable because it will protect those rights which an individual requires if he is to pursue his happiness in peace. It is because of this union of the desired and the ethical, that Locke is able to assume that the majority of a community desires that the government protect the natural rights of its citizens [The Benthamites] . . . merely replaced natural law by the pursuit of the greatest happiness as the basis of this unity. The similarities extend even further, for in Locke the safeguarding of natural rights permits the realization of something very much like the greatest happiness, while in Bentham, the Utilitarian principle requires a society similar to that which Locke's concept of natural rights suggests.¹⁶

Desirable rights, rights that ought to be, for Bentham, are grounded in the very nature of men, not as spiritual beings "nearly equal when all the events of their lives are considered as so many incidents in a great moral drama",¹⁷ but on a more mundane, more secular, basis still vitally linked by a common identity. Men are all equal as sentient beings. The consideration is not: do they talk, can they reason, but can they suffer? The capacity to feel pain and pleasure is not derived from anything, it is original, in the nature of everyone. It is the ground on which the organisation of man's private and public life is to be built. Utilitarianism, like Protestantism, applied its equalitarianism to the affairs of politics:

Now as to universal suffrage. . . . what principle can be more impregnable?

1. Who is there, that is not susceptible of discomfort and comfort - of pain and pleasure?

. . . .

3. The happiness and unhappiness of any one member of the community - high or low, rich or poor - what greater or less part is it of the universal happiness and unhappiness, than that of any other?

6. Who is there, that, in avoidance of unhappiness, and pursuit of happiness, has not a course of conduct to maintain - which, in some way or other, he does maintain, - throughout life?¹⁸

This sentiment echoes a Rainborough: "every man hath a life to live". It is reconfirmed in Bentham's query:

"If, in the instance of any one individual, it be right that he should possess a share, of a certain degree of magnitude, in the choice of a person, to form one in the aggregate body of the representatives of the people, - how can it be right that, in the instance of any other individual, the share should be either, less or greater?"¹⁹

And again: "Property, it is continually said, is the only bond and pledge of attachment to country - Not it indeed. Want of property is a much stronger one. . . . Life is not worth more to yawners than to labourers: and their own country is the only country in which they can so much as hope to live."²⁰

A libertarian could not convey commitment to liberty more eloquently than the hedonist Bentham:

To say that suffrage ought to be free, what is it but to say - that the will expressed by it ought to be the very will of the person by whom it is so expressed? - . . . his self-formed will - the product of his own judgment . . . - not produced by the knowledge or belief of the existence of any will or wish, considered as entertained by any other person, at whose hands the voter entertains an eventual expectation of receiving good or evil . . .²¹

"Dependence on the will of other men" - that consideration led Levellers to withdraw demands for universal suffrage. The dependence was acknowledged, it was accepted, temporarily at least. With Bentham it is not to be accepted.

Secrecy of ballot will remove the dependence: "Secresy
[sic] of suffrage. Short reason, its necessity to secure
freedom . . ."22

Little genuine disagreement lies between natural
rights theorists and a man who argues thus:

It is not the rights of man which causes
government to be established: - on the
contrary, it is the non-existence of those
rights. What is true is, that from the
beginning of things it has always been
desirable that rights should exist - and
that because they do not exist; since, so
long as there are no rights, there can only
be misery upon the earth - no sources of
political happiness, no security for person,
for abundance, for subsistence, for equality:
- for where is the equality between the
famished savage who has caught some game, and
the still more famishing savage who is dying
because he has not caught any?²³

It is because without rights there can be no
happiness, that it is at any rate determined
to have rights; but rights cannot be created
without creating obligations; it is that we
may have rights, ²⁴ that we submit to
obligations . . .

Bentham's dispute with natural rights theorists is
reducible to a verbal quibble about the meaning of
'existence' of rights. For the latter it meant 'validity',
'justifiability'. For Bentham it meant 'actual enjoyment'.
Had natural rights theorists couched their appeal in the
imperative instead of the indicative, the whole vitriolic
attack would have dissolved:

What is stated in the indicative in the Declaration should be put into the imperative . . . that men ought to be equal, and that the law ought not to violate liberty. Herein lies the difference between the "rational censor" of the laws and the anarchist . . . The rational censor admits the existence of the law of which he disapproves, and demands its repeal; the anarchist denies its existence, and sets up his own desire and his own caprice as a law . . .²⁵

As Bentham himself dons the garb of radical reform, he finds his recommendations in turn attacked as "wild, theoretical, visionary, Utopian, . . . ruinous, anarchical, subversive of all governments";²⁶ and he himself reverts to the very arguments and techniques of his former antagonists. Thus, like Jefferson, he gibes at the booted and spurred:

The slaveholder . . . has an interest in common with that of his slaves. True: and so has the mail coach contractor in common with that of his horses Even so is it in the case of C-r-General and Co., under whose management the condition of the poor people is day by day approaching nearer and nearer to the condition of the negro and the horse.²⁷

Like Levellers, Locke and Jefferson, he demands the restoration of the ancient "true" constitution:

Two or three centuries of right, followed by two or three centuries of palpable wrong; - is it not time - high time - that right should be restored - that subversion should be subverted?

Legitimacy - monarch's legitimacy - does it stand upon ground so substantial in any case - as right - people's right - in this case?²⁸

And, finally, the fusion of utility and rights, the ultimate reconciliation, the appeal of the father of Utility to usage and right:

. . . if imagination is to be called in (and why it may not with as much propriety be called in and employed in support of, instead of in opposition to, reason and utility, let anyone say who thinks himself able,) - if imagination be to be called in - imagination, with its favourite instrument, the word right, used in a figurative and moral sense, that insensibly it may be taken and employed in a legal sense - why should not usage - . . . be regarded as creative of right? and that right suspended only in its exercise - suspended and not destroyed - by the intervening interval of wrong?²⁹

Noting this liberal, democratic and radical bent to Bentham's thought, particularly in his later years, we are led to Halévy's conclusion, that:

What Bentham is teaching, under new formulae, is still a law founded on knowledge of the universal nature of man . . . , a law that can be used for the jurisprudence of all nations, . . . by which all systems of positive laws might be explained, while the matter serves as a standard by which they might be tried.³⁰

Bentham grudgingly admits that behind his appeal to the principle of utility, lies commitment to human rights as constitutive of that very standard: "It is because without rights there can be no happiness, that it is at

any rate determined to have rights"³¹ and he goes on to observe what natural rights theorists would equally accept: ". . . but rights cannot be created without creating obligations: it is that we may have rights, that we submit to obligations . . ." ³² Natural rights theorists were committed not just to the ends of security and convenience, but to the ends of community and equal individual worth. Bentham seems as dedicated to the equal value of every man in his commitment to "the rightful supremacy of the universal-interest-comprehension principle"; ". . . interests all to be advanced: without any exception, all to be considered".³³

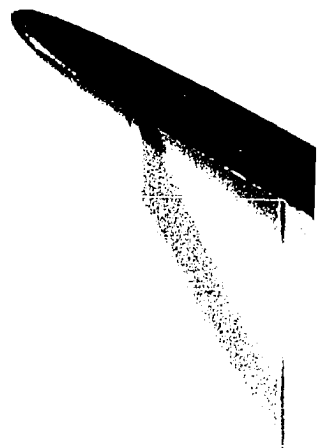
Yet opposing interpretations of Bentham's commitment to equal respect for persons can be tellingly advanced. Certainly his very interpretation of the creation and meaning of rights, as the act of the state enforcing pains, conferring pleasures, appears to ground rights in a view of human nature devoid of any internal commitment to obligation, right, morality: ". . . respecting the origin of rights and obligations" "They are the children of the law" - "The fundamental idea, the idea which serves to explain all the others [rights and obligations] is that of an offence".³⁴ His attack on natural law/natural

rights' resort to a moral sense, common sense, the understanding, confirms his view of the externality of morality. Mill admits that:

Man is never recognised by him [Bentham] as a being capable of pursuing spiritual perfection as an end; of desiring, for its own sake, the conformity of his own character to his standard of excellence, without hope of good or fear of evil from other source than his own inward consciousness If we find the words 'Conscience', 'Principle', 'Moral Rectitude', 'Moral Duty' . . . it is among the synonymes of the 'love of reputation' . . . The feeling of moral approbation or disapprobation properly so called, either towards ourselves or our fellow-creatures, he seems unaware of the existence of; and . . . the word self-respect . . . occurs [not] even once . . .³⁵

As Mill pointed out, Bentham "had a phrase, expressive of the view he took of all moral speculations to which his method had not been applied . . .; this phrase was 'vague generalities'. Whatever presented itself to him in such a shape, he dismissed as . . . absurd. He did not heed, or rather the nature of his mind prevented it from occurring to him, that these vague generalities contained the whole unanalysed experience of the human race."³⁶

If Bentham accused natural rights theorists of confusing law that ought to be and law that is, by arguing that law is not law unless conforming to 'ought', he in turn, like Ireton, confused the 'ought' of rights with the



'is' of legal fact. Rights are grounded in the facts of power and addressed "to the senses [to pleasure and pain]",³⁷ the fundamental realities of human nature. Bentham prided himself on his scientific confirmation of all investigation by appeal to empiricism but as Mill lamented, it was the empiricism of a man with limited experience. He confuses the meaning of a right with its effectiveness, right with might. With no acknowledgement of internal recognition and commitment to the concept of right and obligation in man, morality becomes solely external. All is reducible to pleasures and pains, matter of fact. Yet at the same time he admits that feelings are internal, what each individual alone can experience within himself. If he derides his natural rights opponents for their failure to appeal to an external standard, he must acknowledge that nothing is more internal, more personal, more subjective, than the affective side of human nature. As Manning points out, he grudgingly admits that: "in the same mind such and such causes of pain or pleasure will produce more pain or pleasure than such or such other causes of pain or pleasure: and this proportion will in different minds be different."³⁸ Bentham finds himself thrown back upon the only device available to

atomic, post-Copernican man, a democratic counting of heads, a consensus built upon a discussion and recognition of common feelings. As Prosch observes, for atomistic, post-Copernican man the only ground for objectivity, public standards, lies in inter-subjective transmissible verification of feeling, thought, sense experience. Only through this common heritage can men build a picture of their world that makes existence reasonable and meaningful. Note the development of consensus in the Puritan community, seen in the congregations and the Cromwellian ranks. Through a conscious and sincere seeking together of what is true, what is acceptable, the truth, the acceptable, will emerge for this association of necessarily intellectually and morally fallible creatures.

Bentham correctly analysed rights, even liberties, as logically entailing correlative duties and obligations but again he denies man qua man can acknowledge this intellectually, morally, imaginatively. Man must be made to see the point by a direct threat to his own feelings, through infliction of sanctions. Bentham's analysis of law and man is viewed from the perspective of the court and the legislator confronted with the criminal mind.



As Halévy observes, even in his democratic phase, Bentham's analysis of rights remains the same: "A right only ceases to be a mere fiction and becomes a real right when it is sanctioned by force; the right of force is real the majority are the strongest, and . . . the will of the greatest number is the surest protector of the interest of the greatest number".³⁹

If Bentham's analysis of rights turns on a confusion of the meaning of right with its meaningfulness, the means of enforcement, the power that makes the right a reality rather than a mere pious wish or dream or ideal, so too his analysis of morality in general seems to confuse the 'is' and the 'ought', to reduce 'ought' to the 'is', duty to interest, altruism to egoism. As Halévy observes, Utilitarians too often

. . . let it be believed . . . that they were in agreement with [their adversaries] in their conception of morality and their definition of the virtues, and that they were merely proposing to establish the ancient morality on a new and a more solid basis. In point of fact, the Utilitarians were really trying to bring about a revolution in the conception of virtue . . . [-] . . . an attempt to discredit self-abnegation and to rehabilitate egoism. Be benevolent and do good, on condition that your goodness always serves your own interest indirectly . . .⁴⁰

[Theirs] is a morality of prudence in the first place, and . . . of benevolence and charity

within the limits of prudence Thus was egoism installed at the very basis of morality It is a . . . bourgeois morality, devised for working artisans and shrewd tradesmen . . ., it is a reasoning, calculating and prosaic morality.⁴¹

The Duty-Interest-Juncture Principle: the Reduction of 'Ought' to 'Is'?

Nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand, the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in all we think . . . The principle of utility recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law.⁴²

Bentham's political philosophy rests on three elements:

i) an 'is' statement, psychological egoism; ii) an 'ought' judgment, the principle of utility; and iii) the duty-interest-juncture principle whereby the seemingly psychological and logical contradictions between (i) and (ii) are reconciled.

(i) Psychological Egoism or the Principle of

Self-Preference

There is a "propensity of human nature, by which, on the occasion of every act he exercises, every human being is led to pursue that line of conduct which, according to his view of the case, taken by him at the moment,

will be in the highest degree contributory to his own greatest happiness, whatsoever be the effect of it, in relation to the happiness of other similar beings, any or all of them taken together".⁴³ (my italics)

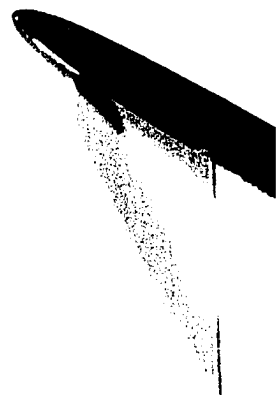
Expressed elsewhere, this principle reads as follows:

That principle of action is most to be depended upon whose influence is most powerful, most constant, most uniform, most lasting and most general among mankind. Personal interest, is that principle . . .⁴⁴

In political terms, this principle becomes:

The actual end of government is, in every political community, the greatest happiness of those, whether one or many, by whom the powers of government are exercised.⁴⁵

(ii) The Principle of Utility, or more correctly, the "greatest happiness . . . principle" is "that principle which states the greatest happiness of all those whose interest is in question, [is] the right and proper, and only right and proper and universally desirable, end of human action . . ." "The word utility does not so clearly point to the ideas of pleasure and pain as the word happiness and felicity do; nor does it lead us to the consideration of the number, of the interests affected; to the number, as being the circumstance, which contributes, in the largest proportion, to the formation of the standard here in question . . ." ⁴⁶

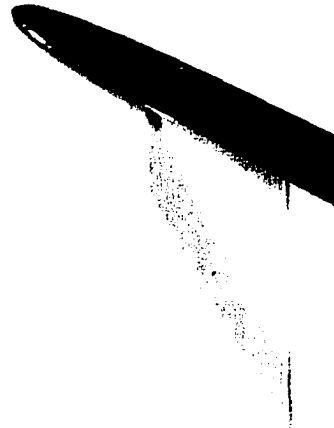


(iii) The Duty-Interest-Juncture Principle: Its
Logical Dimension

In this principle Bentham recognises that 'ought' implies 'can', that some cement must be applied to join and reconcile the principle of utility with his psychological principle of egoism. In the duty-interest-juncture principle philosophic commentary has seen a blatant example of the naturalistic fallacy, an attempt to define the desirable as the desired, to identify Bentham's psychological and ethical statements. Plamenatz sums up this critique:

Whoever accepts the view that morals is an experimental science must believe two things: that the statement that men ought to desire something for its own sake is, when fully analysed, merely a statement about their desires and feelings; and that questions of ultimate ends are therefore always amenable to proof.⁴⁷

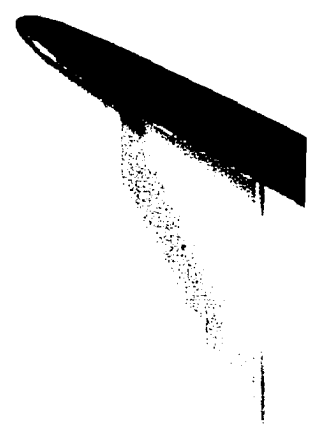
Natural rights theorists saw a close relationship between the desired and the desirable. As Macpherson has pointed out, Locke himself derives rights from desires: "The first and strongest desire . . . being that of self-preservation, that is the foundation of a right to the [inferior] creatures, for the particular support and use of each individual person himself."⁴⁸ But as Macpherson shows, this naturalistic foundation is arrived at,



indirectly, through the mediation of God, whose existence and benevolence confirm that the desires men in fact have are desirable. Desired and desirable were inextricably fused, but the roles were reversed. For Locke something was desirable not because one desired it. One desired it because it was desirable. The point of reference was out there, in the total cosmic order in which man was teleologically and inevitably bound. Hart has expressed this well. Theirs was a "teleological conception of nature":

. . . on this older outlook every nameable kind of existing thing, human, animate, and inanimate, is conceived not only as tending to maintain itself in existence but as proceeding towards a definite optimum state which is the specific good - or the end (telos, finis) appropriate for it on the teleological view, the events regularly befalling things are not thought of merely as occurring regularly, and the questions whether they do occur regularly and whether they should occur or whether it is good that they occur are not regarded as separate questions what generally occurs can both be explained and evaluated as good or what ought to occur, by exhibiting it as a step towards the proper end or goal of the thing concerned.⁴⁹

This theistic, God's eye view of man and nature gradually disappeared. We have seen the link between natural rights and its theistic ground more and more recede as men became more and more engrossed in the secular, mundane world of here and now. But in that new absorption



they continued to cling to belief in the normative, moral nature of human beings. They could, therefore, in turning to man's reason, common sense, intuition, understanding, moral sense, find that very system of correlative rights and duties which they first learned from the Sermon on the Mount and could now see directly as regulative of inter-human relations. They saw man as normative, intuitively. Locke, even more so, Jefferson, might argue that such knowledge was gained through experience, through the light of nature. But a strong case can be advanced that Locke's "seeing" was an expression of his religious faith and Jefferson's "seeing" was really an imposing of what he already believed on what he saw. Hume no less than natural law/natural rights theorists, no less than Bentham, saw men's moral attitudes of approval and disapproval as not reducible to mere caprice, to mere subjective likes and dislikes. Building upon the insights of natural rights theorists as to the development of society and political organisation from necessity, inclination and obligation, he too saw the development of natural laws, of primary rules of social organisation as essential to human existence. Prosch describes very well Hume's assessment of how moral as opposed to mere subjective



attitudes evolved:

. . . although these moral judgments of mine are very naturally caused in me as an atomic individual, they are to some extent caused similarly in other men. When men endeavour to communicate these basically subjective judgments to each other in a public sort of way . . . the very development of a language itself in which to express these distinctions leads . . . to the development of general terms of praise and blame, with shared meanings. These general terms then become the public and intersubjective moral standards and principles, i.e., the "natural" ones.⁵⁰

Thus evolves the moral point of view, a disinterested distant perspective of the sympathetic observer who judges certain actions by a public standard which tends to approve those actions that prove useful or beneficial to society. Because Hume observes men as capable of sympathy, or empathy, of concern for other human beings, he can appeal directly to human nature as a normative moral nature. In sympathy and natural benevolence he has a cement for fusing the individual and the private to the social and public interest. Bentham took over most of what Hume prescribed but with an important admixture of Hobbesian psychology which rendered his passage from subjective inclinations, likes and dislikes, to moral, public, objective attitudes of approval and disapproval a more difficult assignment.

Bentham and Mill attempted to justify or substantiate the principle of utility by an ultimate appeal to psychological realism. Acknowledging that an ultimate principle such as theirs is not capable of formal logical proof, that it cannot therefore be proved by being presented as the conclusion of a formal syllogism, Bentham examined of what sort of proof, other than proof in the strict sense, an ultimate principle was susceptible. He fell back ultimately upon how human beings are constituted:

By the natural constitution of the human frame, on most occasions of their lives men in general embrace this principle, without thinking of it . . .⁵¹

He appealed to the honesty and intelligence of reasonable men. He defied them to deny that in arguing a moral position they did not, directly or indirectly, fall back upon the principle of utility.

It is now generally acknowledged that neither Bentham nor Mill was defining the desirable in terms of the desired. They were appealing to the psychological fact that unless men actually desired, actually acknowledged certain ends as desirable, it would be impossible, logically or psychologically, to motivate them towards those ends. Hall has put it well:

. . . if no one appealed to the greatest



happiness to justify ethical judgments or even in practice desired the greatest happiness, no consideration capable of getting reasonable people to accept that principle as ethically ultimate could be presented. Let us call this the requirement, directed towards any ethical first principle, of "psychological realism".⁵²

In other words, just as natural rights theorists, though indirectly, grounded the existence and justification of the primary rules of any social group upon the implicitly or explicitly declared desire to survive, so in turn utilitarians grounded the moral experience and the rules accepted and developed as part of that experience, upon the implicitly or explicitly declared desire for happiness and the avoidance of pain. In each case, their appeal can be made to matter of fact, to how men in fact behave, to what in fact men desire and find good.

Yet Bentham can find no cement to bind his psychological statement and ethical premise. For despite his ultimate appeal to human nature and the human constitution, there is nothing there, for him, to appeal to, to build upon, as a natural development of human nature, which would allow for a reconciliation between an egoistic psychology and an altruistic ethic. For Hume, the passage from psychology to morality could be traversed by means of sympathy (though even for Hume, at the political level,

it had a tenuous hold). For Bentham the only possibility of fusing these positions was a purely external technique, by manipulation. Through education and legislation men's duties could be artificially contrived to mesh with their interests. The only way that Mill the Benthamite could establish, on utilitarian premises, that A's happiness was a good to A, B's a good to B, "and the general happiness, therefore, a good to the aggregate of all persons"⁵³ was through an artificial manipulation of commands and sanctions such that it was in A's and B's interests to act in such a way that A's and B's pleasure was a good to all. For psychological realism, on Bentham's view, revealed a world of completely self-centered, self-interested atoms utterly unable to act in anyone else's interest except insofar as in so doing such action would prove in the interest of each atom. Mill as eclectic could find his way out in the same way as natural rights theorists, by appeal to an inner moral sanction, conscience.

Bentham and Mill did not fall prey to the naturalistic fallacy. They did not define their ethical principle in terms of their psychological premise. Duty and interest, 'ought' and 'is', were, for them, quite different concepts.

For them as for natural rights theorists, these concepts were logically and practically inseparable. But whereas for natural rights theorists the fusion could be achieved through an actual appeal to the inner man, the moral agent, in the utilitarian case, the fusion would by definition have to be artificially and externally contrived.

Bentham's psychological realism unearthed two conflicting views of man, man motivated solely by consideration of self-interest and man motivated, in ethical situations, by an ultimate appeal to utility, a complete contradiction and logical and psychological impossibility on the basis of the first image of man. That first image of man seems to defy empirical confirmation. Plamenatz points out:

Whatever men may be doing when they are acting morally, they are not seeking pleasure, nor are they being selfish, prudent or sympathetic. Morality curbs egoism, is often indifferent to pleasure and usually overrides prudence. These are the undeniable facts vouchsafed by our daily experience . . .⁵⁴

Because they thought of men as creatures pursuing one private end after another, the utilitarians made too little both of the quality of the inner life needed to make a man happy and of community of faith and shared loyalties.⁵⁵

It remained for Mill the eclectic to restore the first dimension, for Green to restore the second.

(iii) The Duty-Interest-Juncture Principle: Its
Practical Dimension

Bentham found his reconciliation of interest and duty in three ways, through the fusion of interests, the natural harmony of interests, and the artificial identification of interests. The first solution posits the possible reconciliation of self-interest and the universal interest through the intervention of a Humean sympathy. But, like Hume, Bentham sees little evidence of social sympathy in actual political relationships. For much of his life he did acknowledge with Adam Smith a natural harmony of interests at least in the economic sphere, in the operation of a market economy and the competition of solely privately oriented interests with results equally satisfying to all. Yet, even in the economic sphere, Bentham was, as Stone has observed, as much committed to a "Hands On!" policy by government as to a "Hands Off!" policy, particularly as, with the advancing years, Malthusian and Ricardian insights showed no necessary assurance of resources adequate for even minimum subsistence and a growing disparity of income and interest between all economic classes. Yet so long as Bentham viewed man as consumer of material goods he could conceive



of men as equally committed to a common objective, the best products at the cheapest prices.

But in the final analysis Bentham fell back upon the artificial identification of interests, to which the interest-duty-juncture principle mainly refers. In his earlier phase, at the political level, Bentham saw this as the work of the well-intentioned legislator, directed by the scientific, utility-trained expert, manipulating education, certain economic and social institutions, and law, particularly criminal law, through the imposition of a set of sanctions scientifically geared to mesh in slightly more than equivalent measure the pain inflicted by the sanction as against the pain inflicted by the offence.

The Panopticon scheme of prison reform was to him the key to the artificial identification of interests in economic and social life, a scheme to be applied to workhouses, schools, hospitals. Premising these schemes on the governing principle of personal interest,

. . . he applied to the solution of the problem [of the poor] the principles . . . in the Panopticon - not only the architectural principle of the universal inspection, but the principle of the artificial identification of interests . . . the duty and interest junction principle The industry-houses were to



be ruled by a central board . . . elected by all the members of a society . . . which would exploit the labour of the assisted poor. The same principle as in the Panopticon, the life assurance . . . principle gave the administrators an interest in preserving the life of those assisted. The same principle of publicity . . . submitted them to the control of popular or moral sanction [Those assisted] were only assisted to the extent to which they worked . . .⁵⁶

Disillusioned by contemporary government's failure to adopt his Panopticon scheme, Bentham came to look upon actual government as but an example of the self-regarding, self-preference principle. The only way to reconcile the actual interest of governors with the universal interest was through application of the interest-duty-juncture principle. They must be made to identify their interests with the people's interests through representative democracy.

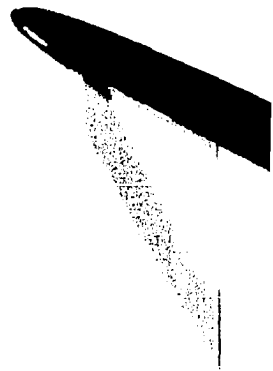
But once again beneath the layer of artificial identification of interests lies an implicit faith in the natural harmony of the interests of all with the public interest. Bentham, not unlike Lilburne, unmaskes the sinister, partial interests of one group only to place once again faith in the benevolence of another group. Thus, instead of expanding his analysis of the power play of partial and sinister interests, so manifest to him in all

forms of group organisation and in the attitude of governors to governed in the absence of effective public accountability, he finds in the public at large commitment to a common interest which can be seen as Pratt sees it,⁵⁷ as a Rousseauist general will, or as Gunn sees it,⁵⁸ as respect for the interests of all concerned. Yet Bentham's psychological principle cannot be squared with this. The utility principle remains incompatible with a logical or psychological premise that says that I do what I like to do "whatsoever be the effect of it, in relation to the happiness of other similar beings, any or all of them taken together".⁵⁹

Bentham's tacit acceptance of a natural harmony of interests between the interests of all and the public interest does seem to presuppose a commitment to a general will, or perhaps, more consonant with Bentham's individualistic bent, at least to an equal respect for the interests of all. So understood, the Benthamite principle ends up with a stance very similar to that of natural rights, a commitment to the value of persons and to the promotion of the happiness of all such persons, so far as is practicable. Certainly the whole tenor of Bentham's defence of democracy in his Plan for Parliamentary Reform and Radical Reform Not Dangerous, fits this

rendering of Bentham.

Yet this underlying ideal of equality that operates in a Rainborough, a Locke, a Jefferson, and in a Bentham as well, recedes in confrontation with the awkward 'is' of social and political realities and one's place in them. Thus we have found Locke qualifying his conception of equality and liberty by bestowing its rhetoric upon a somnolent popular sovereign, its reality upon the propertied class. We found a Jefferson granting equality of representation to all, but the reality of power to the wise and virtuous, the definition of which fits snugly the characteristics of his own socio-economic group. The Benthamite vitriolic attack upon the disciples of equal rights can find a sympathetic audience in those who see the hollowness of a law that "in its majestic equality forbids the rich as well as the poor to sleep under the bridges, to beg in the streets and to steal bread";⁶⁰ of an equal freedom within a market economy of "a workman, living from daily labour" and "a great corporation bargaining to buy or sell iron or coal". As Stone points out ". . . this assumption would only be valid if the parties are equally free to make or refuse a bargain; that is, have equal choices of alternatives, equal



'waiting power' to hold out in default of agreement, and equal acquaintance with the market".⁶¹ He concludes:

". . . equality in the chosen respects superimposed on inequality in the ignored respects may produce the most flagrant injustice."⁶²

It was Bentham's determination to expose the hollowness of the rhetoric of equal rights, to reveal the imaginary, fictitious, unreality of the claims advanced by Blackstone and to offer the English people a system of rights and equalities that would be meaningful because enjoyed, guaranteed, and enforced. Faced with the incongruities between rhetoric and reality, between the 'ought' and the 'is', he was determined to ground that 'ought' on the only thing that he felt mattered, the human feelings of suffering and joy. He grounded his 'oughts' in pain and pleasure not primarily because he conceived pain and pleasure as "scientifically" the only real matter of fact entities. For him pleasure and pain, and especially pain, suffering, were the only realities because they moved him in what his political and ethical philosophy seemed to ignore, in his affective, imaginative and empathetic self. In the end, he unconsciously acknowledged the identification of all sentient human



beings in his ultimate reliance on the natural harmony of interests in a democratic society of persons equally respectful of the interests of all.

And yet this offers a one-sided view of Bentham. It neglects his penchant for happiness defined as security, as property, as peace and order. In both his Principles of the Civil Code and his Constitutional Code equality is subordinated to security. Among the social corollaries of utility, subsistence and security take precedence over abundance and equality:

. . . subsistence and security rise together to the same height: abundance and equality are manifestly of an inferior order The two first ends are like life itself: the two last are the ornaments of life.⁶³

Again:

When security and equality are in opposition, there should be no hesitation: equality should give way. The first is the foundation of life - of subsistence - of abundance - of happiness; everything depends on it. Equality only produces a certain portion of happiness The establishment of equality is a chimera: the only thing which can be done is to diminish inequality.⁶⁴

It overlooks his tendency to equate probity with the middle classes:

Say now whether property [i.e. landed aristocratic property] is probity; say whether kingship is probity; say whether peership is probity: say whether bishopship

is probity: say whether - if every one of these is probity, - tradesmanship probity . . . is not worth all such other probities put together?⁶⁵

It obscures his willingness to accept as late as 1820 a householder suffrage after publication of his Radical Reform Bill in which he had advocated manhood suffrage:

In regard to extent, I for my part, if it depended on me, would gladly compound for householder suffrage . . .

He concedes, however, that he cannot see

how those who on this plan would be excluded from the right of suffrage, and also would perhaps constitute a majority of male adults, should be satisfied with such exclusion . . .⁶⁶

While later, in his Constitutional Code, his commitment to manhood suffrage was again unequivocal,* his middle class bias reappeared in his principle of "pecuniary competition" whereby "all the candidates for office should be asked to promise if nominated to pay a sum which might be less than, equal to, or even greater than, the emoluments of the post . . .". As Halévy observes: ". . . Bentham sets up a sort of venality of offices, and made the exercise of the

* See Bentham, Works, ed. J. Bowring (1838-1843) (reissued, 1962; New York: Russell & Russell, 1962), IX, 107 and 162 where his "Electors, Who" refers back to the qualifications listed in the Radical Reform Bill.

functions of State a sort of privilege, if not aristocratic, at least plutocratic. He distributed the posts no longer, as in the English system, to the landlords, to the representatives of the landed aristocracy, but to those men whose interests the Utilitarian economists defended against the feudal caste, the creators of movable wealth, the new rich, manufacturers and traders."⁶⁷

Bentham could brutally unmask the subterfuge and partiality of all previous and contemporary governing classes. Referring to the temporary alliance of the monarchico-aristocracy and the democratic element in Ireland, he observes:

These leaders - how came it that they deserted and betrayed the cause of those by whom they had been chosen? - Answer: Because they had gained everything that in their eyes was for the advantage of their aggregate interest As for the interest of the rest of the community, in so far as distinct from their own, it was not, it never had been, it never could have been, of any value in their eyes. . . . taking them [people in general] as a body, it is inconsistent with the nature of man that it ever should have been so.

These aristocratic leaders were more determined than ever to hold on to their leadership "to employ all their art and energy in giving obstruction to [those] measures [urged by the people]".⁶⁸ Bentham failed to realise and did not live to see the same fate befall those led by the middle classes, his paragons of probity.

The confrontation of utilitarianism and natural rights theory was primarily focused on the logical and verbal confusion of the 'is' and the 'ought'. Bentham accused his adversaries of failing to differentiate between the meaning of law and law as it ought to be. Such supposed confusion was misunderstood by Bentham. He failed to recognise that the natural rights thesis was not concerned with an analytic treatment of the logical elements of any existing political/legal system, but with unfolding the elements essential for the legitimisation of such systems. Bentham and Locke were thus arguing at two different levels. Our examination has shown, however, that even within the analysis of legal systems as such, elements of morality intrude in the form of primary rules and the principle of impartiality of law. These elements had been recognised and understood by natural rights theorists as arising out of the very nature of human beings and their condition and the very meaning of rationality and law.

In our consideration of Bentham's specific attack on the theory of natural rights we have found him succumbing in turn to the very confusion he found in his adversary's position, the confusion between the meaning of right and



the meaningfulness of right, an identification of the meaning of right with its effectiveness, with its actual enjoyment. Turning to Bentham's analysis of human nature this confusion of 'is' and 'ought' reappears in his analysis of interest and duty, in his tendency to resolve their inherent incompatibility by the reduction of duty to interest through the artificial identification of interests and the interest-duty-juncture principle, and in turn in his reduction of duty to a merely external, behavioralist analysis in terms of predictability and force. In his attempt to relate all meaningful discourse to empirical verification he robbed most discourse of its meaningfulness to persons actually engaged in such discourse and failed, by remaining outside the perspective of the actor, to see the function of rules, rights, obligations and laws as standards or guides for conduct, as reasons for and justification of conduct and the infliction of punishment.

Yet, in the final analysis, his major contribution was his work as a political and social reformer, his life-time endeavour to reconcile the 'is' and the 'ought', by appraising the 'is' in terms of the 'ought' and devising techniques for the incorporation of the 'ought' into the

'is'. In the process he fell prey to the very weaknesses we have encountered in our specific studies of natural rights theorists. He too faced the awkward problem of reconciling his ideal with the facts of his own social, economic and cultural milieu and revealed a reluctance to share advantages of the same with those less fortunate than himself. Equal rights for persons capable of choice can be made to accommodate partialities and vested interests by special renderings of "capable of choice", of "persons", of equal rights as equal rights to what men have now, i.e. gross inequalities of condition and opportunity. Utility can be made compatible with the right of all to subsistence, provided they work, provided they make a contribution to the greatest happiness on the whole, to the gross national product. In both these virtual political representation could be made to do for actual representation. For natural rights theorists and utilitarians convinced themselves that they in fact did speak more articulately and understood more fully the "real" as opposed to the undisciplined wants of the less fortunate and the unrepresented.



Footnotes

1. J. Stone, Human Law and Human Justice (Stanford: Stanford University Press, 1965), p. 80.
2. A. MacIntyre, Secularization and Moral Change (London: Oxford University Press, 1967), pp. 14-5.
3. ibid., p. 15.
4. J. Bentham, The Works of Jeremy Bentham, ed. J. Bowring (1838-1843) (reissued, 1962; New York: Russell & Russell, 1962), III, 462, 452.
5. J. Plamenatz, The English Utilitarians (reprint of 2d revised edition with minor corrections; Oxford: Basil Blackwell, 1966), p. 133.
6. Quoted in E. Halévy, The Growth of Philosophic Radicalism (2d edition reprinted with corrections; London: Faber & Faber Limited, 1952), p. 84.
7. H. L. A. Hart, The Concept of Law (4th edition; Oxford: Clarendon Press, 1967), p. 88.
8. ibid., p. 7.
9. Bentham, Works, op. cit., III, 218.
10. "6. A word may be said to be expounded by paraphrasis, when not that word alone is translated into other words, but some whole sentence of which it forms a part is translated into another sentence; the words of which latter are expressive of such ideas as are simple, or are more immediately resolvable into simple ones than those of the former. Such are those expressive of substances and simple modes, in respect of such abstract terms as are expressive of what Locke has called mixed modes. This, in short, is the only method in which any abstract terms can, in the long run, be expounded to any instructive purpose: that is in terms calculated to raise images either of substances perceived, or of emotions; - sources, one or other of which every idea must be drawn from, to

Footnotes (continued)

10. be a clear idea." J. Bentham, A Fragment on Government, ed., W. Harrison (1st printed, 1948; reprinted, 1967; Oxford: Basil Blackwell, 1967), p. 106.
11. Bentham, Works, op. cit., VIII, 247.
12. ibid., III, 218.
13. ibid., III, 159.
14. Quoted in J. H. Burns, "Bentham and the French Revolution", Royal Historical Society Transactions, 5th Series, XVI (1966), 111.
15. Bentham, Works, op. cit., III, 218-19.
16. R. C. Pratt, "The Benthamite Theory of Democracy", Canadian Journal of Economics and Political Science, XX (February, 1955), 23.
17. Halévy, op. cit., p. 137.
18. Bentham, Works, op. cit., Introduction to Plan of Parliamentary Reform, III, 459.
19. ibid., III, 452.
20. ibid., Preliminary Explanations: Radical Reform Bill, III, 560.
21. ibid., Introduction to . . ., III, 453.
22. ibid., III, 453.
23. ibid., Pannomial Fragments, III, 219.
24. ibid., III, 220.
25. Halévy, op. cit., p. 175.
26. Bentham, Works, op. cit., III, 437.

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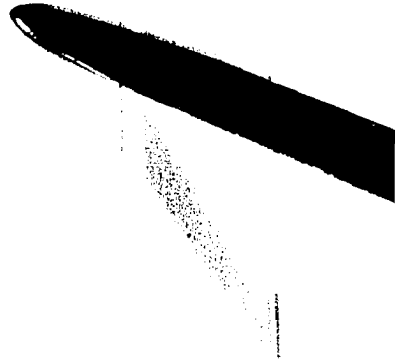
27. ibid., III, 442.
28. ibid., III, 515.
29. ibid., III, 515.
30. Halévy, op. cit., p. 63.
31. Bentham, Works, op. cit., III, 220.
32. ibid., III, 220.
33. ibid., III, 462, 452.
34. ibid., III, 160.
35. J. S. Mill, "Bentham", in introd. F. R. Leavis, John Stuart Mill on Bentham and Coleridge (1st edition, 1950; New York: Harper & Row, Publishers, 1962), pp. 66-7.
36. ibid., p. 59.
37. Bentham, Works, op. cit., III, 160.
38. Quoted in D. J. Manning, The Mind of Jeremy Bentham (London: Longmans, Green & Co. Limited, 1968), p. 40.
39. Halévy, op. cit., p. 431.
40. ibid., p. 474.
41. ibid., pp. 476-78.
42. J. Bentham, An Introduction to the Principles of Morals and Legislation, ed. W. Harrison (1st printed, 1948; reprinted, 1967; Oxford: Basil Blackwell, 1967), p. 125.
43. Quoted in T. P. Peardon, "Bentham's Ideal Republic", Canadian Journal of Economics and Political Science, XVIII (1951), 186.

Footnotes (continued)

44. Quoted in H. L. A. Hart, "Bentham: Lecture on a Master Mind", Proceedings of the British Academy, XLVIII (1962), 300.
45. Quoted in Peardon, op. cit., p. 186.
46. Bentham, An Introduction to the Principles . . ., op. cit., p. 125.
47. Plamenatz, op. cit., p. 135.
48. Quoted in C. B. Macpherson, "Natural Rights in Hobbes and Locke", D. D. Raphael, ed., Political Theory and the Rights of Man (London, Melbourne, Toronto: Macmillan, 1967), p. 6.
49. Hart, The Concept . . ., op. cit., p. 184-85.
50. H. Prosch, The Genesis of Twentieth Century Philosophy: the Evolution of Thought from Copernicus to the Present (2d edition; New York: Doubleday & Company, Inc., 1966), p. 202.
51. Bentham, An Introduction to the Principles . . ., op. cit., p. 128.
52. E. W. Hall, "The 'Proof' of Utility in Bentham and Mill", J. B. Schneewind, ed., Mill: a Collection of Critical Essays (New York: Doubleday & Company, Inc., 1968), p. 161.
53. Mill, quoted in Hall, op. cit., p. 155.
54. Plamenatz, op. cit., p. 148.
55. ibid., pp. 174-75.
56. Halévy, op. cit., pp. 233-34.
57. Pratt, op. cit., 20-9.

Footnotes (continued)

58. J. A. W. Gunn, "Jeremy Bentham and the Public Interest", Canadian Journal of Political Science, I, no. 4 (December, 1968), 398-413.
59. Quoted in Peardon, op. cit., p. 186.
60. Anatole France, quoted in Stone, op. cit., p. 104.
61. Stone, ibid., p. 95.
62. ibid., p. 104.
63. Bentham, Works, op. cit., Principles of the Civil Code, I, 303.
64. ibid., 311.
65. ibid., III, 478.
66. ibid., 599. Note that this preference for a householder franchise was still being espoused in his democratic phase. This tract, Radicalism Not Dangerous, covered the period from November 1819 to the middle of April 1820.
67. Halévy, op. cit., pp. 414-15.
68. Bentham, Works, op. cit., III, 617-18.



PART THREE

THE COMMON GOOD



Chapter

VIII

T H E C O M M O N G O O D

REDEFINITION OF A SPIRITUAL PARADIGM

We . . . always said that the enfranchisement of the people was an end in itself. We said . . . that citizenship makes the moral man; that citizenship only gives that self-respect which is the true basis of respect of others . . .

T. H. Green quoted in M. Richter, The Politics of Conscience: T. H. Green and His Age (Cambridge: Harvard University Press, 1964), p. 364.

If Bentham had to discard natural rights as a formula for social reform because of its contemporary complacent identification of the 'ought' with the 'is', so in turn did Green have to reject the utilitarian formula as a technique for social reform. For he was to see what Bentham never lived to see. The identification of the public interest with the interest of the middle class was to take the form of most previous interpretations of the public interest, an identification of public with partial interest. Once middle class interests were



achieved, its spokesmen sought to stem the tide of working class participation in its benefits. In this new crisis over the definition of public interest, the concepts of natural harmony of egoistic interests, of good and evil as pleasure and pain, could no longer act as reforming media. The call was now to be not to interest, to satisfaction of desire, but to shame, guilt, self-sacrifice, a demand to square the original Benthamite universal and egalitarian premises with reality, the 'ought' with the 'is'.

In contrast to Marx and the philosophical radicals, Green began his agitation for change, not by denouncing asceticism and official Christian values of charity and justice as sham, but by re-affirming their validity.¹

Green's appeal was to the conscience, not the interest, of his middle class audience:

It is no time to enjoy the pleasures of eye and ear . . . while the mass of men whom we call our brethren, and whom we declare to be meant with us for eternal destinies, are left without the chance, which only the help of others can gain for them, of making themselves in act what in possibility we believe them to be.²

If "God was dead", he was to be resurrected. Born to an Evangelical faith, Green was to inherit the fervent devotion to service, to self-sacrifice, to Christianity as

a social message. But that message was to be clothed in new apparel, a metaphysical Aristotelian/Hegelian wardrobe that would be fashionable for a middle class drawn to the demands of reason and science yet yearning still for an assurance of the validity of its faith. Thus Green was to assure his educated and uneducated audiences that God was still with us but immanent, revealing himself in the unfolding of our "possible" selves and our "possible" societies. The dynamism and faith of the Leveller, the belief in a world pulsating with divine life, were to be restored but in nineteenth century form, as a divine teleological process, a progressive development of spirit as manifested in man himself and his social and political institutions.

The social message is the same, the priesthood of all believers, the ultimate worth and value of the common man:

. . . every human person has an absolute value; . . . humanity in the person of every one is always to be treated as an end, never merely as a means; . . . in the estimate of that well-being which forms the true good everyone is to count for one, and no one for more than one . . .³

The egalitarian premise was for him, as for the Levellers and Jefferson, to be translated into reality. This was seen in his concern for the suffering poor and in his

concern for the degradation and corruption of their existence. It was also seen in his denunciation of slavery and in his demand for universal franchise:

We . . . always said that the enfranchisement of the people was an end in itself. We said . . . that citizenship makes the moral man; that citizenship only gives that self-respect which is the true basis of respect of others . . .⁴

In contrast to the Levellers, he saw the theistic presence not by looking back but ahead, to the actualisation of the potentiality of man and society. Thus, the egalitarian premise could be seen as a progressive unfolding and development of God's spirit:

To the ancient Greeks, the only possible society consisted of a small group of freemen having recognised claims upon each other but using as instruments a much larger number of aliens and slaves with no such recognised claims. Then Christianity proclaimed that men, in a profoundly spiritual sense, are all equally dear to God. Yet historical Christianity failed to create a society organised on its own principles of equality, justice and mercy. This failure can no longer be tolerated by modern man, who by the immanent logic of his spiritual development now has new and more demanding moral obligations.⁵

Though Green adopted as his own the Hegelian fusion of the rational and the real, the inevitable unfolding of progress into higher and higher syntheses, his reformist bent, as with Marx, led him to stress not the assurance of



the outcome but the struggle necessary to achieve it.

"'You cannot find a verification of the idea of God or duty; you can only make it.'"⁶ As Lord Lindsay has observed of Marx: "'A belief in thoroughgoing determinism and a vigorous call to action are logically incompatible, but, if the call to action comes first, they are psychologically compatible.'"⁷

Nor did the Hegelian language lead him to a mystical totalitarian identification of one's real self or the common good with the state. Green's redefinition of the natural rights thesis on close examination reveals no genuine departure from Lockean premises. The common good is found to be reducible to an equal respect for the good of each, a reciprocal claim and counter-claim based on the shared belief in the ultimate supreme value of "free life". But the Hegelian vocabulary would tend to obscure the distinction between 'is' and 'ought', tend to identify the "true" state with the contemporary European state system.

It is generally believed that Green's rendering of the natural rights thesis is a novel reinterpretation both of 'natural' and 'rights'. I believe this needs serious qualification. So far as Green's analysis of 'natural' in



natural rights is concerned he does not deviate from Locke's essential premises, or rather, Locke is implicitly committed to a similar position. Locke would hardly reject Green's rendering of this meaning of 'natural rights' despite its idealist overtones:

[Rights] are . . . 'natural' in the same sense in which according to Aristotle the state is natural; not in the sense that they actually exist when a man is born and that they have actually existed as long as the human race, but that they arise out of, and are necessary for the fulfilment of a moral capacity without which a man would not be a man.⁸

In both cases the conception of human nature is a normative one. Man as a moral agent requires for fulfilment of that nature certain rights. Man is capable of respect for the equal rights of others within a framework of common agreement as to the reasonableness of Christianity and the benevolence of its God. While Locke would claim, that, on the whole, men qua men acknowledge the law of nature and respect each other's rights as demanded by that law, he would not argue that the validity or existence of such rights depends on such social recognition. The law of nature and the rights and duties it enjoins would be valid regardless of whether men ever actually acknowledged it. The efficacy of that law would of course depend on

such social recognition. Thus, for Locke, the claim to certain forbearance and respect from one's fellow men is justifiable independent of one's power to actualise that claim. But the very making of the claim presupposes discourse among moral agents capable of fulfilling duties.

Locke would agree with Green's insistence on mutual recognition of rights as more than a logical point about the correlativity of rights and duties, as involving recognition of each other as free moral agents:

The doctrine . . . that all rights are relative to moral ends or duties, must not be confused with the ordinary statement that . . . rights and duties are correlative
 . . . what is meant is something different, viz., that the claim or right of the individual to have certain powers secured to him by society, and the counter-claim of society to exercise certain powers over the individual, alike rest on the fact that these powers are necessary to the fulfilment of man's vocation as a moral being . . .⁹

Green does deviate from Locke, however, in his tendency to equate recognition of each other as equal moral agents, entitled to equal rights, with social recognition, and, in turn, with actual recognition by a specific society or one's state. Both would agree that the discourse of rights implies discourse among equal moral agents, equal respect for the freedom of each for moral self-development. But Green tends to allow this logical and moral point to slide

into an actual identification of the elements of a moral situation with an actual social or political situation. Thus we find the curious statement: "A right against society, in distinction from a right to be treated as a member of society, is a contradiction in terms."¹⁰

This stress on social recognition leads, as Richter points out, to a redefinition of rights, considerably different from Green's earlier definition of rights as "necessary for the fulfilment of a moral capacity without which a man would not be a man":

A right is a power of which the exercise by the individual or by some body of men is recognised by a society, either as itself directly essential to a common good, or as conferred by an authority of which the maintenance is recognised as so essential.¹¹

This shift of emphasis to social recognition raises serious difficulties. A claimed power could be contributory to the common good and yet not be acknowledged. Rights actually acknowledged could be in conflict with the common good, i.e. the rights of slaveholders.

We are offered a two-sided analysis of rights: as a claim by the individual "arising out of his rational nature, to the free exercise of some faculty" and as a power "given by [society] to the individual of putting the claim in force".¹² Like Bentham, Green tends to equate



the existence of rights with their enforcement and hence with their enjoyment:

There is a system of rights and obligations which should be maintained by law, whether it is so or not, and which may properly be called 'natural'; [but] not in the sense in which the term 'natural' would imply that such a system ever did exist or could exist independently of force exercised by society over individuals . . .¹³

And he tends to equate society with one's particular state:

. . . for the member of a state to say that his rights are derived from his social relations, and to say that they are derived from his position as member of a state, are the same thing.¹⁴

Yet shortly after we are assured that a citizen is not "under all conditions to conform to the law of his state, since those laws may be inconsistent with the true end of the state as the sustainer and harmoniser of social relations".¹⁵ And when we turn to Green's treatment of the personal rights to life and liberty, we find him returning to a traditional natural rights analysis:

If there are such things as rights at all, then, there must be a right to . . . free life. . . . there can be no right to mere life, no right to life on the part of a being that has not also the right to use the life according to the motions of its own will
 . . . the right is one that belongs to every man in virtue of his human nature . . . and is a right as between him and any other men . . .¹⁶



Green accuses Rousseau of arousing confusion and misunderstanding in the minds of his readers by defining sovereignty as a normative concept, the people acting in accord with the general will. Yet in ordinary usage, it is defined as legal sovereignty, the supreme coercive power in society. Thus he creates a misconception of the general will as equal to the will of the majority whatever the content of that will might be. Green's own use of a normative concept of the state, of the "true" state, leads to a similar confusion and identification of the 'is' and the 'ought', the actual with the true state. In reading Green we can see the reason for Bentham's exasperation with the confusion of the expository/censorial functions in legal, moral and political analysis. As Richter observes:

Strictly speaking, a theory of rights, defined purely as socially acknowledged claims, says nothing about their content It is impossible to reconcile the assertion that rights are such only when socially recognised, with the contrary view that there exist rights which ought to be granted, whether or not they are in fact recognised.¹⁷

Just as Green's analysis of rights wavers between a rendering in terms of claim and power, so it could be argued, does his analysis of common good waver between a definition of it as a single mystical entity transcending the individual members of a society or as a good which all



recognise in and for each other. With the exception of his occasional references to the concept of "patria", a common heritage of customs and traditions as necessary for adequate development of the concept of citizenship, Green tends to render the common good in individualistic terms and never in terms of the Hegelian mystical good of the state. The following is a typical illustration of his understanding of the common good, an understanding shared with a Locke or a Leveller:

. . . he [the most dispassionate publicist] apprehends . . . it [the common good], i.e. not as a good for himself or for this man or that more than another, but for all members equally in virtue of their relation to each other and their common nature he [the ordinary citizen] has a clear understanding of certain interests and rights common to himself with his neighbours, if only such as consist in getting his wages paid at the end of the week, in getting his money's worth at the shop, in the inviolability of his own person and that of his wife. Habitually and instinctively . . . he regards the claim which in these respects he makes for himself as conditional upon his recognising a like claim in others, and thus as in the proper sense a right, - a claim of which the essence lies in its being common to himself with others. Without this instinctive recognition he is one of the 'dangerous classes', virtually outlawed by himself.¹⁸

Equally, we cannot find in Green the "monstrous" implications of a totalitarian paternalism lurking within the concept of positive freedom as he develops it.

Green's analysis of freedom brought to the fore a new way of looking at rights, an awareness that man qua man is entitled to claim of his fellow creatures not simply noninterference but services and that either claim, the negative or the positive, presupposes certain minimum agreement in a society as to what a human being is and requires for the fulfilment of his nature. This common agreement did not for Green imply belief in a common good transcending or independent of the well-being of the men and women in a society. The common good was the minimum good life for each of them, consisting for Green primarily in a "free life" and the conditions for its realisation and thus precluding any metaphysical good over and above the free lives of men and women.

Green's stress on common good and duty tends, however, to minimise the extent to which, for natural rights theorists, for Mill and even for Green himself, personal freedom is of intrinsic worth, independent of its contribution to social ends. This intrinsic value of freedom is even more emphatically stressed by Mill than by Locke: the demand to do as we want, whether what we want to do is for some good to ourselves or others. This is not a Hobbesian freedom to do as we list, for in Mill's



case no less than in Locke's, the claim to such freedom is conceived as made by a moral agent to other moral agents and includes recognition that society may intrude upon such freedom on the grounds of "self-protection". It is the one natural right which Hart argues may be claimed if there are any moral rights at all: "the equal right of all men to be free" - the claim that any adult human being capable of choice:

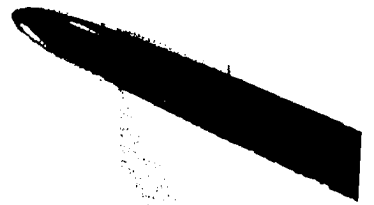
(1) has the right to forbearance on the part of all others from the use of coercion or restraint against him save to hinder coercion or restraint and (2) is at liberty to do (i.e. is under no obligation to abstain from) any action which is not one coercing or restraining or designed to injure other persons.¹⁹

It is a natural right, one that all men have "qua men and not only if they are members of some society . . ." and a right which "is not created or conferred by men's voluntary action . . ." ²⁰ It is, of course, conditional upon the requirement that men must meet to have any rights, that "they should be moral, that they should be capable of duties".²¹

Isaiah Berlin's classification of freedom as negative and positive, the identification of the liberal thesis with the former concept alone, cannot, I believe, be sustained. Defining negative freedom as freedom from, as

absence of coercion or interference, Berlin quotes Bentham's and Hobbes's analysis of freedom as typical renderings of the classical liberal position: "Law is always a 'fetter', even if it protects you from being bound in chains that are heavier than those of the law, say, arbitrary despotism or chaos".²² Even the acknowledgment of the right to freedom as implying the correlative duty to respect the equal right to freedom of others is, for Berlin, seen by liberal theorists as a restraint of "natural freedom". Equality of liberty is a part of the basis of liberal morality but "it is freedom that I am giving up for the sake of . . . equality . . ." ²³ Yet how strange to quote a Hobbes, or even a Bentham, as spokesmen for the "liberal" position, the one having no respect for liberty in his search for security, the other failing to list it as one of the social corollaries of the utility principle.

We are further advised that the "Christian . . . belief in the absolute authority of divine or natural laws, or in the equality of all men in the sight of God, is very different from belief in freedom to live as one prefers".²⁴ Yet when we turn to Locke we find a sharp denunciation of the analysis of liberty as the right to do as we list. Locke attacks the Hobbesian analysis of liberty as licence,



the "law" of the wild beast who acknowledges no rules to guide him and his fellow men in their relations to each other. For Locke absolute liberty is a contradiction in terms. To demand freedom as necessary for human development is to admit claims of all other human beings to the same freedom. He sees this concept of reciprocity, of the correlativity of rights and duties, presupposed in the very concept of freedom. Thus, for Locke, freedom inevitably, logically, includes the concept of equality which does not, as Berlin argues, deprive man of freedom, only of licence.

Again, the Christian view to which Berlin refers permeates the Lockean development of the state of nature/law of nature/social contract model. Green's positive freedom conveys much the same message. Men are free in order to follow reason and will in accord with the dictates of God's laws. To deny such natural law is not to be free but to be a "wild beast", to forfeit one's humanity.

If the negative concept of freedom is identified with the view that "We must preserve a minimum area of personal freedom if we are not to 'degrade or deny our nature'"²⁵ one who argues as follows would qualify for membership in



the club:

Now any direct enforcement of the outward conduct, which ought to flow from social interests, by means of threatened penalties . . . does interfere with the spontaneous action of those interests, and consequently checks the growth of the capacity which is the condition of the beneficial exercise of rights. For this reason the effectual action of the state . . . for the promotion of habits of true citizenship, seems necessarily to be confined to the removal of obstacles.²⁶

And again:

The claim of the slave to be free, his right implicit to have rights explicit, i.e. to membership of a society of which each member is treated by the rest as entitled to seek his own good in his own way, on the supposition that he so seeks it as not to interfere with the like freedom of quest on the part of others rests . . . on the fact that the slave is determined by conceptions of a good common to himself with others . . . No state-law can neutralise this right.²⁷ (my italics)

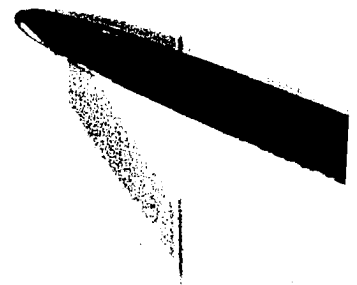
As to the query: "What then must the minimum [area of personal freedom] be?" Green's answer does not differ from the traditional liberal position: "That which a man cannot give up without offending against the essence of his human nature"²⁸:-

[The right to a free life] is one that belongs to every man in virtue of his human nature . . .²⁹

Positive freedom as Green conceives it cannot be reduced to the totalitarian implications that Berlin finds

hidden in positive freedom: ". . . to block before [a man] every door but one, no matter how noble . . . is to sin against the truth that he is a man, a being with a life of his own to live."³⁰ For Green, positive freedom implies an unfolding of a common good, a set of shared values, of a minimum level of 'humanness' through the coming together of equal, free, moral agents, who evolve their concept of the good life for man and in the light of that concept use government to help men to achieve that ideal through the removal of hindrances to its realisation. In Green as in Locke, Jefferson and Bentham, freedom and consent were seen against a backdrop of an educated, enlightened public operating with a set of agreed values and standards, in accordance with right reason, law of nature, or the greatest happiness of the greatest number. None of them saw freedom as "do as you list" but do as you will within an agreed system of rules and shared ends.

Certainly, as Richter observes, there are dangers in rendering freedom in this "positive" form. But, as he goes on to point out, ". . . it is somewhat artificial to ignore what use was actually being made of the negative theory of freedom, while pointing with alarm to dangerous implications of the positive theory of freedom, dangers



which never made themselves felt in England".³¹ For Green, the glaring mockeries of negative freedom could not be ignored:

To an Athenian slave, who might be used to gratify a master's lust, it would have been a mockery to speak of the state as a realisation of freedom; and perhaps it would not be much less so to speak of it as such to an untaught and under-fed denizen of a London yard with gin-shops on the right hand and on the left.³²

To be master of myself, to feel myself, and actually to be, free from the arbitrary will of other men, this was the pervasive yearning in all natural rights spokesmen, though the shape and form of such arbitrary sway might and did vary with time and place. The logical relatedness of the two concepts of freedom, "The freedom which consists in being one's own master, and the freedom which consists in not being prevented from choosing as I do by other men",³³ was blurred for Mill by his aristocratic rejection of the ultimate equality of worth of all men, his fear of the tyranny of the majority, his plea for freedom from interference for the man who had the resources to regulate, without help, his life and activity. His individualism was an individualism for the unusual man against the pressing intrusions of the mediocrity and conformity of the average man. Green probed deeper in search of a

self-respect and self-development for all men through membership in a community of first class citizens. He saw that:

Freedom had conditions other than sheer lack of restraint. Independence and the right to take one's own course through life were essential but not the whole "Without a command of certain elementary arts and knowledge, the individual in modern society is as effectively crippled as by the loss of a limb or a broken constitution. He is not free to develop his faculties."³⁴

Freedom and equality were, for Green, inevitably fused. For Mill, they were inherently in conflict given his pessimistic loss of faith in the capacity and reasonableness of average people. Green, like Jefferson before him, was a political democrat because, as Lindsay points out, he was a "spiritual" democrat. For Green the origins of modern democracy lay with the seventeenth century Puritans, with their view of the equal worth and value of each for himself, for God and for the community. Government by consent in an environment dedicated to that ideal would be the closest approximation to self-mastery that could be politically devised. Green would extend the argument. The very participation in the democratic process would enrich man's private as well as his social nature. In active citizenship men would find the greatest opportunity

for self-realisation.

If Green's concept of the common good cannot be translated into the Hegelian adulation of the state, neither can his concept of positive freedom be seen as a prelude to a socialist state. For all Green's bitter denunciations of the conditions of the poor, of the propertyless and destitute proletariat, which echo Marxian moral outrage, his explanations for such deplorable conditions were found, not in the very structure of the capitalist system, but in its "antecedent circumstances",³⁵ in the conditions created by the "original landlords [who] have been conquerors". "Landless countrymen, whose ancestors were serfs, are the parents of the proletariat of great towns":³⁶

. . . those influences of feudalism and landlordism which tend to throw a shiftless population upon the centres of industry have been left unchecked . . . Their health, housing, and schooling were unprovided for. They were left to be freely victimised by deleterious employments, foul air, the consequent craving for deleterious drinks. When we consider all this, we shall see the unfairness of laying on capitalism or the free development of individual wealth the blame which is really due to the arbitrary and violent manner in which rights over land have been acquired and exercised . . .³⁷

Whereas unlimited accumulation of land deprived the country of wealth and sustenance, unlimited accumulation of wealth

need harm no one. With the inculcation of the appropriate virtues of the middle class, thrift, sobriety, rational calculation, all members of the proletariat can become "small capitalists" as already have "the better sort of labourers".

Property in one's person requires property in things "as a permanent apparatus for carrying out a plan of life",³⁸ as "the power of getting and keeping the means of realising a will".³⁹ This right to property implies, like all rights, that the use of it does not interfere with the exercise of like power by another. But a situation in which "men may have property, but great numbers in fact cannot have it . . ." is one in which the latter "might as well . . . be denied rights of property altogether".⁴⁰ In such circumstances, "'property is theft'",⁴¹ but the circumstances as we have just noted, are the results, not of the capitalist system but of the previous conditions of a landowning society. "The capital gained by one is not taken from another, but one man cannot acquire more land without others having less . . ." ⁴²

Thus the father of the new Liberalism, the philosophic apologist for the future welfare state, stands revealed as an accredited representative of English natural

rights theory, as the legitimate spokesman for a Lilburne, a Locke, and a Bentham. Green's rationale of freedom will continue to find room for all freedoms, personal, political, social and economic, an equality of rights "compatible with . . . great inequalities of possession".⁴³

Green's theological and metaphysical foundation, with the presuppositions of an inevitable progressive unfolding of divine telos in actual societies and peoples tended not to a fusion but to a confusion of 'ought' and 'is'. Natural rights theory, in its innovative, reformatory stages, rejected this tendency, except as a tactical device. Despite a similar teleological assumption, the "true" state, and "true" human relations, were to be discovered not by examining actual states but by examining, with the aid of the light of nature, man's basic needs and desires as the key to unlock the secrets of the ideal relationships God had intended for men. They, too, tended to equate the "true" state with that "matchless Constitution" of the Anglo-Saxon past and Locke certainly believed that the "Glorious Revolution" achieved, for his generation, the perfect fusion of the 'ought' and the 'is'. He would not, however, have seen this achievement as the result of a logical, necessary development of divine telos.

He would have seen it as the accomplishment of the propertied few, with the tacit support of the English people. This need not be construed as rationalisation. The justifications of the "Glorious Revolution" and the American Revolution were set forth by men who genuinely believed that reality was now, or soon would be, an expression of the 'oughts', the standards by which they appraised that reality. But Green's metaphysical assumptions of a necessary, progressive development of the 'ought' in the 'is' could be used to obscure or rationalise away any regressive features in the actual world.

Even if understood as limited to an explanation of a common heritage implicit in the English political system, Green's concept of the common good would not do. Just as the greatest happiness principle was advanced to help England through a crisis in community so too Green's "common good" principle was offered as an explanation of a descriptive reality but primarily as a rallying cry for reconciliation for a disintegrating community. As Richter points out:

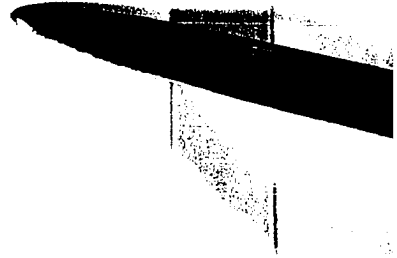
In part [his vision] represented the hopes of those who felt that the extension of the franchise in the Second Reform Bill and after could be much more than a class victory. For

this Liberal vision contemplated the creation of a new and positive spirit of unity which might animate a reconstruction of national life on the basis of spiritual equality.⁴⁴

Green's attempt, MacIntyre claims, ultimately failed as did Marxism in the English setting:

. . . the compromises and abdications consequent upon the class co-operation of English life produced a situation where it was impossible for any one group plausibly to absolutize its own claims and invoke some kind of cosmic sanction for them - hence, in part at least, the failure of the Labour churches, and of Marxism. Yet it was equally impossible to establish or re-establish coherent social unity - hence the failure of Green's social philosophy⁴⁵

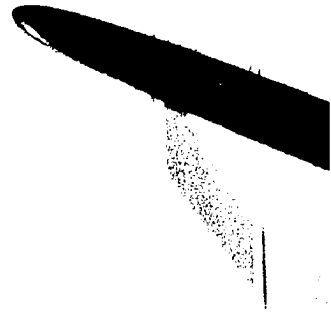
There was no single vocabulary of justification limited to class because of the need and willingness to compromise with other classes. There was not enough social cohesion for Green to verify community by making it. Like Green, MacIntyre admits that morality implies common agreement on shared ends and values as necessary for the authority of any 'ought' or 'right'. Because British society lacks such common agreement, it is, for MacIntyre, not a community. For both MacIntyre and Green it is an ideal. But Green wavered between assuming its reality in his day and attempting to verify such reality by a call to the middle class for lives of self-sacrifice. The response was



inadequate. Workers would in time resort to the Utilitarian formula: one's interests can only be heard, considered, and satisfied by holding effective political power. To cloak such reality, as Green tried to do, is, for MacIntyre, pernicious: "What is pernicious is the illusion that is created of a society united not as in fact it is by harsh utilitarian necessities, but by common standards and ideas."⁴⁶

Green, captivated by his progressive concept of reality and morality, could not conceive of morality in the Western European state system regressing. For us in the twentieth century his optimistic metaphysics masking an underlying theistic faith, can only appear, as it did to his biographer, a rationalisation of a deep personal yearning - more cynically expressed, as the emotive expression of his own subjective preferences. The claim behind his 'ought', that he can appeal to an external, publicly recognised standard, could not be supported. His faith in the potentialities of spiritual development as progressively unfolding in our actual state systems strikes us as incongruous as we see about us, in our more pessimistic moods, so much evidence of a regressive tendency in man and his societies, a tendency to be in

fact reducible to his purely animal nature, the final resolution of man's alienation in a return to an original state of nature.



Footnotes

1. M. Richter, The Politics of Conscience: T. H. Green and His Age (Cambridge: Harvard University Press, 1964), p. 134.
2. Green quoted in ibid., p. 219.
3. Green quoted in ibid., p. 218.
4. Green quoted in ibid., p. 364.
5. ibid., p. 219.
6. Green quoted in ibid., p. 101.
7. Lord Lindsay quoted in ibid., p. 133-34.
8. T. H. Green, Lectures on the Principles of Political Obligation (1st edition, 1883; Ann Arbor: University of Michigan Press, 1967), no. 30, p.47.
9. ibid., no. 21, p. 41.
10. ibid., no. 99, p. 110.
11. Green quoted in Richter, op. cit., p. 235.
12. Green, op. cit., no. 139, p. 144.
13. ibid., no. 9; p. 33-4.
14. ibid., no. 141, p. 146.
15. ibid., no. 143, p. 148.
16. ibid., no. 151, p. 155-56.
17. Richter, op. cit., p. 264.
18. Green, op. cit., no. 120, p. 129.
19. H. L. A. Hart, "Are There Any Natural Rights?" in A. Quinton, ed., Political Philosophy (Oxford: University Press, 1967), p. 53.

Footnotes (continued)

20. ibid., p. 53-4.
21. J. Plamenatz, "Rights", Aristotelian Society Proceedings, Supplementary Volume XXIV (1950), 82.
22. Sir I. Berlin, "Two Concepts of Liberty", in Quinton, op. cit., p. 143.
23. ibid., p. 144.
24. ibid., p. 147.
25. ibid., p. 145.
26. Green, op. cit., no. 209, p. 208-9.
27. ibid., no. 145, p. 151.
28. Berlin, op. cit., p. 145.
29. Green, op. cit., no. 151, p. 156.
30. Berlin, op. cit., p. 146.
31. Richter, op. cit., p. 225.
32. T. H. Green, "On the Different Senses of 'Freedom' As Applied to Will and to the Moral Progress of Man", published with Green, Lectures on the Principles of Political Obligation, op. cit., no. 6, p. 8.
33. Berlin, op. cit., p. 149-50.
34. H. Holloway, "Mill and Green on the Modern Welfare State", Western Political Quarterly, XIII (June, 1960), 397-98.
35. Green, op. cit., no. 227, p. 225.
36. ibid., no. 229, p. 226.
37. ibid., no. 230, p. 228.
38. ibid., no. 220, p. 228.

Footnotes (continued)

39. ibid., no. 221, p. 220.
40. ibid., no. 220, p. 219.
41. ibid., no. 221, p. 220.
42. ibid., no. 229, p. 227.
43. ibid., no. 222, p. 221.
44. Richter, op. cit., p. 266.
45. A. MacIntyre, Secularization and Moral Change
(London: Oxford University Press, 1967), p. 30.
46. ibid., p. 57.

Chapter

IX

C O N C L U S I O N

The Rationality of Normative Discourse

In advancing moral commendations and political recommendations, I have noted that as ordinary thinking men and women we find ourselves arguing for our position, offering reasons, justifying advice and decision, engaging in what we believe is a form of rational discourse. We are unwilling to retreat from this position lightly for, as Hart reminds us, in such discourse we are engaged in consideration and defence of the most important matters in human life. What shall I be? What life is worth living? What is worth defending? So engaged, we do not see ourselves involved in the trivial business of merely expressing our feelings or in some form of manipulation. In the Introduction, therefore, I rejected the rendering of moral commendation or political recommendation as mere caprice, whim, arbitrary subjective likes and dislikes. I rejected a view that would set us adrift in our own worlds of moral isolation, a view that would make of

politics and morals a mere arena of power relations, in which we were supposedly engaged in the game of persuading others to adopt our "product". I rejected the view of moral and political theorists as admen, pushing their latest "gadgets".

So at least as commonsensical, ordinary people, I believe, we see the matter. And trusting to such "instincts", I turned to the dilemma Hume had supposedly posed, 'ought' independent of 'is' and yet our 'oughts' seemingly bound up with the 'is' of our needs, desires and wants. I moved beyond a consideration of a neat separation of evaluation and description to a consideration of ways of looking at man and his condition in all its complexity and fullness. I found that man inevitably "sees" and evaluates within conceptual frameworks, paradigms, that fuse descriptive, evaluative and hybrid categories that defy separation and analysis. The ways in which man sees himself and his world, as part of an harmonious teleological/theistic order, or as an atom in a mechanistic universe, or as part of a wider organic whole, could not, I found, be falsified or verified by reference to empirical data or hypotheses. They stand above the facts, organising and patterning the facts into

pictures of man and his world that can be judged wanting only to the extent that they tend to distort, oversimplify or ignore what ordinary men and women judge vital aspects of the human condition.

I noted certain facts as particularly relevant to such paradigms. There are the 'brute' facts of the human constitution and condition that reveal a common core of values, rules and characteristics that seem intrinsic to our very way of thinking of man and as man. There are the facts which our paradigms, our ways of seeing the world and our place in it, focus on as relevant and significant. There are the facts emphasised by the perspective of time and place and socio-economic milieu.

Turning specifically to the development of Anglo-American liberal democratic thought, I have noted a framework of consistency, the liberal paradigm of equality, with its view of man as an autonomous, masterless agent, which provided the landmarks to guide men in their practical assertions. I have traced the development of three sub-paradigms of this equality paradigm: natural rights, utility, and the common good.

The natural rights thesis, supposedly a classic example of the violation of the so-called "Humean Law",

with its arguments from the being of a God to 'oughts', from "observations concerning human affairs" to 'oughts', was found neither to have committed the naturalistic fallacy nor to have "violated" the "Humean Law". I found that the state of nature, as conceptualised by Locke and understood by the Levellers and Jefferson, was not a descriptive, anthropological study of how men actually behave in a political and social vacuum. It was rather a logical model of a normative theistic/legal/moral order to which all men were bound. It was a description of the rules under which all were to live, which all men would acknowledge with experience and development, and which all men were capable of knowing and obeying. It offered a description of man, but man as a moral agent, bound from birth by a set of rules made by his Creator for his well-being and happiness. The "natural" equality of man was a normative equality, an equality as moral agents. Their "natural" characteristics, their capacity to reason, their inclination to seek society, were seen as validating conditions for an equality of rights to life, liberty and property as necessary constituents for the realisation of their role as moral agents.

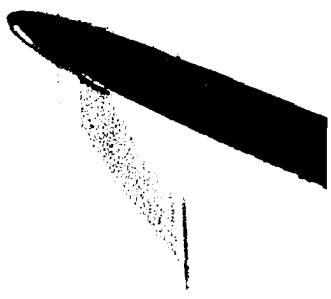
In time the theistic premise receded from view. As

"Nature", human nature and the natural environment in which man found himself, became the key to the understanding of God's laws for men, men became immersed in the problems of turning the key to the locked secrets of their individual and social well-being. Whether grasped intuitively through the moral sense, or arrived at by the exercise of the "light of nature", the rules that "Nature" revealed were the same, a set of primary rules for the realisation of the one overriding implicit or explicit premise, life is worth living, men want to live. The natural rights thesis proved able to stand without theistic underpinnings. For given the single aim of survival, given the facts of human nature and its environment, man's primary rules were found to rest in the final analysis on the 'is', on these facts as reasons for these primary rules being the rules they are.

Beneath the theistic framework, beneath the irrelevance of many of the "practical assertions", and beneath the "common sense" language of the seventeenth and eighteenth centuries, "natural rights", we find an analysis of man's limitations and conditions, a set of facts which serve legitimately as reasons for the primary rules we have in any social setting. For, as Hart has

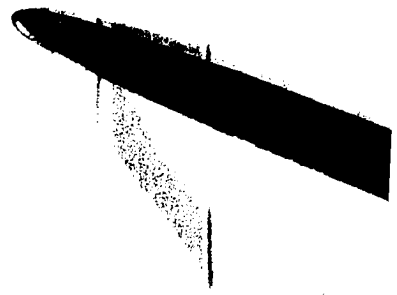
observed, natural rights theorists brought home to us the realisation of certain truisms about men. Men are vulnerable, fallible, approximately equal in their capacity to injure. They have limited altruism and limited understanding and strength of will. Together with their existence in a contingent condition of scarcity, and their overriding desire to survive, these facts show us why men, whether in organised, legal systems or in primitive social groupings, have certain common primary rules, rules against violence, rules in favour of keeping promises, telling the truth, respecting property. For without these primary rules, social organisation and existence would be impossible. A social organisation by definition means the acknowledgement of and general obedience to such a system of rules. To the extent that such rules are neither generally acknowledged nor generally obeyed the grounds for applying the term 'social organisation' no longer exist.

Turning to the successor of natural rights, utilitarianism, we found a further appeal to men's actual desires as grounds for the moral evaluations we do and ought to make. Men suffer, men feel pain, men want to avoid pain, pain for them is an evil. Therefore, we



ought not to make them suffer, we ought not to inflict pain. Compare the natural rights thesis. Men want to live, life is worth living, therefore we ought to arrange matters so that men can live. Both positions, that of natural rights and utility, assume that moral rules, any rules, are meaningless unless grounded in men's basic needs, interests, and desires. Hence both would repudiate any Kantian formula for the autonomy of the moral sphere in the sense of its complete isolation from the human condition.

Moral reasoning has traditionally moved upward, away from the choosing self, through a system of rules or norms to a basic or overriding rule or norm. Such ways of reasoning morally still prevail in many quarters. Natural rights theorists and utilitarians ask us to move downwards again to the choosing human being. What do men on the whole want? On these grounds we should build a normative system. Men want to live. Social rules are a reflection of this need. Men want to avoid pain. The principle of utility acknowledges this basic want. Thus the recommendations of both natural rights theorists and utilitarians are grounded on the facts of human nature and the human condition. They offer new insights or recall us to



old insights about what it is to be a human being. As Isaiah Berlin has observed, bound up in the term 'human being' are the concepts of sanity and reasonableness, both of which include the recognition that men want to live, that they feel pain. Therefore to fail to recognise these facts, to fail to recognise that it makes a significant difference whether you kick a man or kick a stone, whether you smash a bottle or a man's head, is to find oneself classified not as a person who has different moral values than one's own but as insane or mad, as not a person or a human being at all.

If we understand by human being one who wants to live, to avoid pain, we seem to confine him to only one aspect of his nature, the physical and sentient aspect. Natural rights saw a duality in human nature which Bentham ignored. Benthamite utilitarianism tended to reduce men to a lower order of species, to the animal world and even to a non-sentient materialistic level. Kant strained to lift them out of their inevitable inseparability from the animal, naturalistic plane. Natural rights theory in the hands of the Levellers, Locke and Jefferson, never succumbed to a reductionism of men either to mere sensation or to pure spirit. Happiness was for them what men desired but it

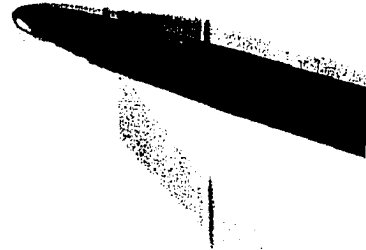
was a happiness expressive of the duality of man, a state of mind as well as a state of body. If they wanted life, they wanted it on terms acceptable to their "higher" needs, a life of freedom in which they saw themselves and others as entitled to certain types of treatment expressive of an underlying respect for their persons. Thus, beyond the negative and limited conception of a human being as a being wanting life and hating pain, natural rights theorists offered a positive conception of man. Man is a being with worth, value, a free, choosing, evaluating human being. Green, building on natural rights, gave that perspective deeper spiritual and moral substance. The Kantian insight of man as valuable and to be valued as an end in himself, not merely as a means, was brought down to earth. Man's absolute value was to be actualised in the mundane, secular atmosphere of political and social activity. Through a community of first-class citizenship, all men were to find their self-realisation, their well-being in a common good in which all equally shared.

If "natural rights", "utility", and the "common good" were the commonsensical formulae of the seventeenth, eighteenth and nineteenth centuries respectively in the Anglo-American world, and if these formulae appear non-



sensical to us today, the substance behind the formulae has remained "commonsensical". Beyond the negative conception of human being as wanting life and hating pain, we too embrace the positive view of man as a choosing, evaluating personality. And given that commitment of necessity our development of consensus, of objective criteria for moral decision and recommendation must be open-ended. For if we value above all the worth of human personality and its expression as choosing, evaluating beings, we are committed, as the Levellers and Jefferson and Green were committed, to a community of equals as the only procedure for evolving objective criteria. Objectivity and autonomy can thus be retained. Through free and open discussion among equal rational, choosing men and women we can evolve a set of criteria which achieve objectivity through a process of inter-subjective verification. In such an atmosphere the language of morals becomes the language of any form of rational discourse, an equal consideration of the opinions of others, and extends beyond to the logical unfolding of rationality in human conduct, an equal consideration of the claims, interests and needs of others.

Equality has been the recurrent theme of this study.



We have noted certain assumptions in the theorists we have examined.

1) Men have an equality of capacity to know and obey the primary rules of social existence. As Hart observes, we are not praised for recognition of and obedience to such rules. Any reasonable, sane man is meant to see their "point" and behave accordingly.

2) Equality as fact has been evidenced in certain truisms about human beings. These are contingent facts, as Hart points out, but bound to continue, facts about the vulnerability and fallibility of all men and the consequent need for cooperation and organisation and hence for the primary rules noted above.

3) Equality as a formal principle has been evidenced in the logical demand for consistency, treat like cases alike; in the legal concept of impartiality, treat similar persons similarly; in the moral concept, treat persons as equals in consideration of their opinions, interests and needs.

4) Equality as a normative/descriptive/predictive concept has been seen in their analysis of what is meant by human being. Man is a creature who wants to, is expected to and ought to, avoid pain, be a free, choosing,

deliberating human being.

5) There is an equality as an intrinsic quality of worth and value in human personality.

6) There is an equality of rights, of claims to certain behaviour and attitudes on the part of one's fellow creatures.

These aspects of equality find their rationale within the master-paradigm of an ideal of equality, evidenced first in natural rights. Their basic political principle is: recognise and build on these facts of fundamental equality of men as men. Conceptually strip men of the artificial inequalities and distinctions of convention and "see" them as members of a common humanity. Make your institutions reflect this fundamental oneness. Equality of rights, equality as human beings, spell out more specifically what human personality is and what it requires in the way of behaviour and attitudes on the part of others. Equality as a formal principle demands the consistency inherent in all forms of reasoning and as a substantive principle is but a rephrasing of one's commitment to the equal worth of persons. Equality of capacity may be seen as the validating condition for the claim to equal rights, while equality as fact sets out the limiting

factors in the human condition which bind us in a common destiny and a common dependence and explain why we have the rules we do.

Given this paradigm of equality the relevant features in a political and social context are those which we share, not those that divide and separate us. These "spectacles" through which we view the world parallel the scientific perspective of "seeing" nature in a certain way, as a machine, as an organism, as a system of converging electrical forces. Given the perspective, the rules of rationality follow. The perspective, normative or scientific, is judged in the one case by its capacity for helping us to improve our moral deliberations and our relationships with others; in the other case, by its capacity for helping us to understand the world around us. Thus, looking at others as equals is part of what we mean by rationality. The formal principle of rationality, treat equals as equals, be consistent, impartial, demands our prior commitment to similarities, our deviations from such commitment as requiring justification. But the leap from the formal to the substantive principle, treat human beings as equals, requires an act of faith, an intuitive grasp, an empathetic identification with others. Yet if

we use experience as an elastic rather than a rigid concept we can look upon the "seeing" of value and worth in other human beings as something more than mere faith, the reality for which men are willing to fight and die. If we refuse to acknowledge these vague or glittering generalities as realities, if we deem them "unworthy of notice" or denounce them as "absurd", we shall have closed our minds and hearts to the fact, as Mill observes, that "these generalities contain . . . the whole unanalysed experience of the human race".¹ To limit knowledge to the realm of empiricism strictly defined is, again to quote Mill, to be committed to "the empiricism of one who has had little experience".²

Building a Model of Normative Discourse

In the Introduction I sketched a model of normative discourse. I suggested that in stating 'I ought to do x' contextually imply:

- a) that I approve of x;
- b) that I have good reasons for doing so;
- c) that anyone else in my situation would do

the same;

- d) that in the end I, as a free, rational, moral agent must make the decision as to whether x is my moral

obligation in the present situation.

Our appeal to good reasons and to the attitudes of everyone else in a similar situation ultimately rests on an appeal to a publicly ascertainable and recognised system of standards and values. The language of rights implies the language of moral discourse. Rights are claims addressed by moral agents to moral agents. The claiming of a right implies the logical/rational and moral point that such a claim can only be made on the understanding that I acknowledge similar claims of others and that I address others as beings capable of understanding and living up to duties. Whether shared ends or values consist in happiness, the common good, the self-realisation of human beings, we have found that natural rights theorists, and their successors, Bentham and Green, acknowledged that rights are constitutive of those very ends and cannot be conceived, claimed or recognised except within an implicit or explicit framework of consensus on these common values. This does not mean that rights cannot be claimed without consensus here and now, that rights cannot exist that should be but never have been and never may be claimed. It means that the language of rights, actual or ideal, can only be understood within an actual or ideal system of shared ends and values.



We have noted a tendency in natural rights theorists and their successors, Bentham and Green, to "confuse" the 'is' with the 'ought' as a reformist tactic in an effort to actualise the 'ought'. Thus, for natural rights theorists such as Overton, law is not law unless it conforms to natural law. For Green the state is not a state unless it conforms to the essentials of the "true" state. For Bentham morality is not morality unless it appeals to the principle of utility. The expository analysis of law, state, and morality, in each case, tends to shade into a censorial indictment of legal, political and moral systems that do not conform to these normative concepts. The 'is' is not an 'is' unless in accordance with the 'ought'. The theorists we have considered were engaged in remaking the legal, political and moral systems into what they conceived to be the only legitimate interpretations of these systems. They were trying to draw a distinction between an actuality which distorts and deforms human existence and one that would give opportunity for an expression of the worth of human personality. They were trying to build new ideal pictures of their time and place, new "normal", "commonsensical" communities of normative discourse which would reduce the inherent tension

between the autonomy of the moral agent and the implicit claims of a shared system of rules and values.

There are dangers in this tactic. Some of the theorists we have examined have tended to suppose they had what they yearned for. They have tended to find their ideals in the actualised legal, political and moral systems of their day and to attribute to historical accidents what they saw in the present system as morally unacceptable. For example, we have noted Locke's tendency to equate government by consent with the actual unrepresentative political system of his day. We have noted Green's tendency to see the European state system of his day as the inevitable unfolding and even contemporary actualisation of the characteristics of his "true" ideal state. We have seen Bentham espousing the greatest happiness of the greatest number as in fact the moral principle to which men deferred at a time when the disintegration of English society made of such a principle an ideal rather than a reality. We have seen Green condemn but explain away the gross inequalities of his age as due to "historical antecedents" rather than to pursuit of unlimited accumulation of wealth in all its forms.

Confusion between 'is' and 'ought' at a theoretical

as opposed to a pragmatic level did not arise with the transformation of a theistic normative perspective into a secular normative one. For example, the further confusion of the 'is' and 'ought' which we have noted in Bentham did not arise from his attempt to ground his normative axiom in psychological realism, an appeal to what men in fact desire and find desirable. We have noted that natural rights theorists ultimately found justification for their normative recommendations in a similar ground. But in Bentham's case the appeal to psychological realism misfired because of the logical and moral impossibility of reconciling an altruistic ethic with an egoistic psychology. He tended to find his way out of this dilemma by a reduction of morality to interest through the duty-interest-juncture principle. Yet if Bentham, in his theoretical analysis of human nature, raised an insuperable barrier between his normative axiom and his "scientific" analysis of human motivation, Bentham the moral agent and political reformer defied his psychological premise. As Mary Mack so sympathetically reveals, Bentham's life of devotion to reform was sparked by his acute anguish at the sight of the unnecessary and brutal sufferings of those caught in the meshes of the legal system of his day. Berlin has

caught Bentham's mood:

. . . a man who cannot see that the suffering of pain is an issue of major importance in human life - that it matters at all - who cannot see why anyone should wish to know - still less mind - whether pain is caused or not, provided he does not suffer it himself, is virtually beyond the reach of communication from the world occupied by me and my fellow men This seems to me to show that the recognition of some values . . . enter into the normal definition of what constitutes a sane human being.³

In opposition to Halévy's analysis of Utilitarianism as the morality of prudence, Harold Perkins sees in the principle of utility

. . . a moral imperative more categorical than the Evangelical version of the Christian ethic . . . The Benthamites were in fact 'secular Evangelicals', burning with a passion for moral reform With their characteristically professional emphasis on justification by service to society . . . they helped to add a new dimension to the moral revolution, transforming it . . . into an attempt to moralize society itself.⁴

My analysis of normative discourse in relation to the evolution of political equality in Anglo-American liberal-democratic thought has brought out the complexity of the dimensions of the 'is' which impinge on the 'ought'. Thus I have noted:

1) The very contextual implications of an 'ought' imply the 'is' of an agreed right way of doing things in

terms of criteria, principles, rules and values; imply, further, "good reasons" for moral and political recommendations and decisions, reasons grounded in the needs, wants and interests of human beings.

2) The 'ought' confronts the 'is' of man's basic constitution and condition. The 'facts' of human nature and its condition analysed by Hart and Berlin show that man in a social/political context is a rule-governed, value-committed being.

3) The 'ought' confronts the 'can', the need to reconcile itself with the limitations and capacities of man as such as well as with the limitations and capacities of man within his particular social and historical setting.

4) The 'ought' confronts the facts judged significant and relevant within one's normative political paradigm.

5) The 'ought' confronts the 'is' of the established, recognised mores of one's society and one's place in that society.

The relation between 'ought' and 'is' in (1) to (4) is one of close, one might venture to argue, logical interdependence. Yet beyond the obvious truism that ought implies can, one must know what one is about in arguing

such a position. While it is true that the contextual implications of normative discourse imply appeal to agreed right ways of doing things this does not entail that such agreed right ways of doing things do in fact exist. Only acquaintance with the actual situation would entitle one to say whether this was so or not. And for those of us committed to the moral autonomy of liberal-democratic man, we can never acknowledge the entailment of the 'ought' and the 'is' in terms of any finalised specific right way of doing things. What one can maintain at this level of the is/ought confrontation is that it is incumbent on one engaged in normative discourse either to point to such agreed right ways of doing things or to set about trying to establish with one's community such agreed criteria, principles or rules. Otherwise one is left at best to moral isolation, at worst to the trivial business of venting one's feelings or describing one's tastes. In either case one is not engaged in normative discourse as generally understood.

Again, one can argue that by definition social organisation and social existence presuppose acknowledgment of certain rules and that our positive attitude to "man" carries with it a commitment to the value of human

existence and the avoidance of human suffering. But here again the substance of Hart's minimum content of natural law can take multiple forms and arouse considerable dispute as to the justice and reasonableness of any particular set of rules against lying, stealing, etc., and there can be considerable argument as to what constitutes "survival" and "suffering" as well as about what other characteristics we associate with being a "human being". The "demon" in our general evaluative language refuses to be tied to any finalised descriptive characteristics or criteria and so enables us to use such language to rebuild our moral worlds.

Again, our paradigms change. We come to adopt new perspectives that then change for us the significance and relevance of the facts within our paradigms.

In short, the case for the logical interdependence of 'ought' and 'is' in (1) to (4) can be made if we limit ourselves to the contention that in each case the 'ought' requires factual moorings, a set of agreed right ways of doing things, a grounding in the basic needs, wants, interests and capacities of human beings, a set of facts as significant and relevant within our paradigms. It is only in those transitional phases when our 'oughts' are



cast adrift from their old descriptive characteristics and criteria and have not yet found their new footing in established ways of thinking and doing in a normative context that our "oughts" look as though they can be, and logically and morally ought to be, independent of any factual moorings whatsoever.

What I have tried to show in this study is that when sincerely engaged in moral discourse the onus is upon us to reduce the tension between moral autonomy and community of discourse, to tame the "demon" in evaluative language to serve the purposes both of moral reformation and stability. My thesis has been concerned to show how from a particular egalitarian perspective within liberal-democratic society such an attempt has been made.

When one turns to (5), the confrontation of the 'ought' with the 'is' of established mores, there is not the same tendency to argue for a logical interdependence of these realms. Granted Hart's point that any social organisation as such entails a system of norms, a minimum content of natural law, it is still logically and morally reasonable to ask: Ought this established system of mores to prevail? Do Hart's minimum norms conform with justice and equity as established in this society? The theorists

we have examined have each in turn raised this question implicitly or explicitly. They have challenged the normative system of their time and place and judged it wanting in the light of reason, conscience, and justice as expressed in their particular paradigm. They sought not to destroy mores but to moralise them, to make the established normative order conform to and actualise their ideal picture of their time and place. Having achieved that objective, those who came to accept the new normative transformation would tend then to equate morals and mores, to reduce morals to mores. But the autonomous moral agent shies away from such identification. 'Ought', he argues, may at certain times be fused with the 'is' of conventional mores in a morally satisfactory way. But in most cases it is never completely fused. Given our capacity for moral development and the changing needs of man and society we must not be lulled into such reductionism. For it would deny to us our autonomy as moral agents and it would rob the 'ought' of its commendatory and recommendatory role as a tool for moral and political innovation and reform.

To those who approve of the established mores of their society there is a tendency to define morality in deontological terms, to see morality as a set of commonly

acknowledged rules. Thus what I ought to do is just a matter of locating one's action within the ready-made slots of that established system. This language of morals breaks down once that established system is questioned. Men move beyond deontological considerations to a higher level of analysis, a teleological perspective - what purposes do the rules serve? why have rules? do the rules serve the ends of justice, equity, humane existence? The conflict between the theorists we have examined and the normative order of their day can be seen as a conflict between these deontological and teleological perspectives.

As reformers and innovators men tend to use their moral vocabulary to change their world. As conservers, they tend to use it to justify their status quo. Whether normative language is being used for conservative or revolutionary purposes can only be determined by a study of the historical setting in which the language is spoken. We have seen how each of the sub-paradigms we have examined, natural rights, utility and the common good, began as innovatory systems for the revitalisation of their normative worlds in accordance with an equality paradigm. We have seen how each in turn gave way to its successor as each in turn became captive of an entrenched status quo, and so



unable to carry further the implications of this egalitarian paradigm.

In the contextual implications of a moral situation I noted that ultimately the individual moral agent must decide for himself whether he ought to do x, whether x is really morally obligatory. Despite the contextual implications of a moral situation as embracing the fact of community, those of us who find ourselves within the liberal democratic ideology are committed to this stance. With Locke we would admit that our assent, our consent, must be moralised, must be given as expressions of ourselves as autonomous, rational, moral agents. We cannot shirk the personal responsibility for the determination of what our duties are and whether we will carry them out. Inevitably, then, given our perspective, we can never achieve a finalised fusion of the 'is' and the 'ought'. Given our commitment to personal freedom we are bound to find an inherent friction between our moral convictions and any shared consensus on ends and values. And when our convictions war with the values of our society others may well judge those convictions to be expressions of mere subjective likes and dislikes. To dispel these doubts the onus is on us to make our moral

claims "stick" by trying to build, with our community, a new ideal picture of our time and place.

This account of the rationality of normative discourse is not an index to actual behaviour of moral agents. It is an ideal model, an evaluative reconstruction of the "moral point of view" as seen from the perspective of liberal-democratic man. Of necessity in such reconstruction we are going beyond a meta-ethical position to a recommendatory posture: "see" morality in this way, admit that in your more enlightened, "best" moments, you do think and act in this way. If, in our more sophisticated moments, we dub such analysis "naive" and proceed to examine the "real" world of the interplay of power groups, focus our attention on who gets what, when, how, we are, I believe, unconsciously resting such analysis on the implicit acceptance of certain common ends and agreed ways of doing things. The '60s have brought to the attention of political scientists the dangers of neglecting this underlying consensus or taking it too much for granted. As the bargaining, pluralistic societies of the United States and Canada totter close to the edge of the Hobbesian state of nature, the community on which political scientists implicitly rest their realistic analyses threatens to lose its operational reality.



Our study of natural rights and its successors, utility and the common good, has shown us a recurring dialectic not only between the 'is' and the 'ought', but between the individual, private and personal, and the social and public. We have been presented with the sphere of moral rights, the claims of individuality, separation and privacy against the intrusion of state and society. We have seen in the Puritan community and Green's concept of citizenship another aspect of morality, the concept of community, the transcending of the language of rights by the language of love. We have seen in natural rights theory a tendency to a reductionism of morality to the language of rights, self, private over public interest. Yet we have seen too a recognition of social inter-relationships in the very claiming of a right. If we have seen little evidence of a reductionism of morality to the language of a common good, we have in this study of natural rights and its successors, utility and the common good, been spared a confrontation with such "moral monstrosities" as the subordination and sacrifice of ordinary men and women to a mythical entity transcending in value their mundane existence. To see morality reduced to either dimension, to pure individuality or to pure community,

would, I believe, destroy an important aspect of human well-being. For natural rights theorists, there is an inherent duality in man, a personal and social nature, a need for some dividing line between the public and private. This line can no more be eliminated without serious human impairment than can the distinction between, though inseparability of, the 'is' and the 'ought'. Natural rights theorists recognised the duality of man and of the 'is' and the 'ought', and sought a fusion of both that would contribute to humane existence.

Their commitment to the intrinsic value of human personality and freedom as its necessary corollary meant no finalised fusion, no completed reconciliation of man's personal and social nature, and of the 'ought' and the 'is'. Jefferson voiced their message for posterity. Man must cling to the one unchanging reality, the inviolability of the natural rights of man, and seek practical assertions that come closest to their fullest realisation in his own time and place.

Most of us would acknowledge the relevance of this ideal, while seeing little relevance in the practical assertions in which they tried to actualise it. Yet their practical assertions are not irrelevant. Natural rights



theorists and their successors have shown in their practical assertions the variety of forms of intrusion upon and denial of human personality, political, economic, religious, social, military. They remind us not to confuse the prevalence and pervasiveness of such intrusions with any particular example of it, to keep our minds open to the multiplicity of forms in which human personality can be debased and stunted. Their practical assertions also reveal the limitations of perspectives, limitations to which we are all prey. They show how economic and social milieu can blind men to the extent of the practical assertions they could have made in the light of their universal premises. They impose upon us the burden of confronting the implications for our age in our situation of our equality paradigm. They demand a sincere confrontation of that paradigm with the 'facts' of twentieth century society. They ask that we resolve whether these 'facts' are mere puzzles to be solved within that paradigm or whether the relation between the facts and the paradigm are so distorted that the paradigm must be replaced by a new "extraordinary" paradigm.



The Equality Paradigm and the 'Facts' of the Twentieth Century: Puzzles or Anomalies?

Those of us committed to the welfare state, the twentieth century sub-paradigm of the liberal equality paradigm, find ourselves confronted with an inherent contradiction between the claims advanced by its set of assumptions. It is claimed that liberal-democratic society can and does maximise Bentham's utility and Green's common good. It is claimed that our society maximises, equitably, utilities and human powers conceived as man's ability to use and develop his rational, moral and spiritual nature. Yet, as Macpherson has so tellingly revealed, the equal self-development of all men is frustrated within a capitalist ethos. For ". . . in . . . a market society, inequality of strength and skill . . . is bound to lead to greatly unequal holdings . . . which effectively deny the equal right of each individual to make the best of himself. It is indeed a requirement of the capitalist system of production that capital be amassed in relatively few hands and that those left without any should pay for access to it by making over some of their powers to the owners."⁵ If this has always been so of capitalist logic, it is increasingly so in a highly technical and



computerised society in which the means of labour are primarily corporately owned.

Our historical survey of the unravelling of the master-paradigm, equality, in natural rights, utility and the common good, saw the claims of both equality and free enterprise advanced as necessary supports of each other. Free enterprise was seen as the necessary condition for the development of self-reliant, masterless men. As Marshall has observed:

If . . . citizenship has been a developing institution in England at least since the latter part of the seventeenth century, . . . its growth coincides with the rise of capitalism, which is a system, not of equality, but of inequality. Here is something that needs explaining. How is it that these two opposing principles could grow and flourish side by side in the same soil? What made it possible for them to be reconciled with one another and to become, for a time at least, allies instead of antagonists?⁶

We have noted how these apparently contradictory principles were in fact reconciled in the theories we have examined. The natural man, the masterless agent, freed from the shackles of tradition, authority, immobility, was to find his fulfilment in a world of natural relations, in a natural economy, bound by a natural law and a natural religion. For the Levellers men, freed from arbitrary, hampering royal monopolies, guaranteed in their civil

liberties, in their right to work anywhere for anyone, in a free market, would develop into independent entrepreneurs, self-reliant men, free from the arbitrary sway of the will of other men.

. . . citizenship, even in its early forms, was a principle of equality . . . Starting at the point where all men were free, and in theory, capable of enjoying rights, it grew by enriching the body of rights which they were capable of enjoying. But these rights did not conflict with the inequalities of capitalist society; they were, on the contrary, necessary to the maintenance of that particular form of inequality. . . . the core of citizenship at this stage was composed of civil rights. And civil rights were indispensable to a competitive market economy. They gave to each man, as part of his individual status, the power to engage as an independent unit in the economic struggle modern contract is essentially an agreement between men who are free and equal in status, though not necessarily in power Differential status, associated with class, function and family, was replaced by the single uniform status of citizenship, which provided the foundation of equality on which the structure of inequality could be built.⁷

For Locke the free market economy would provide the conditions for an increased and increasing gross national product in an affluent society in which all men, even the day-labourer, would have the means to realise what the fundamental rule of the law of nature decreed, the right to subsist. For Bentham the free market would allow men the unrestricted opportunity to realise what they alone

could realise, the satisfaction of their hedonistic urge. Happiness being equated with wealth, to maximise a society's happiness it was necessary to maximise its wealth. For Green the free market was a necessary means to what alone mattered, the moral life, spontaneous, conscientious action as expressive of the moral will. Freedom of trade and freedom of bequest were essential means to the full development of man as a permanent subject. If such economic competition meant, as he saw it meant, a system of inequalities, these inequalities would not hinder the equal realisation of full self-development of all men. For while land, being limited, required social control, industrial and financial capital, being unlimited, could be accumulated to an unlimited extent without infringing on the equal right of other men to gain similar property.

These explanations can no longer satisfy us in the twentieth century. We must accede to Marshall's conclusion:

Is it still true that the basic equality can be created and preserved, without invading the freedom of the competitive market. Obviously it is not true.⁸

Macpherson has exposed the realities that were blurred for spokesmen of natural rights, utility and the common

good. Their assumptions of a model of perfect competition were never realised. The implicit assumption that all men were to start fair in the race never materialised. And even if it had, the inequality of strength and skill among men would lead to very unequal possessions which would effectively deny the equal right of each individual to the access to the means of realising his human powers. The model of perfect competition retreated before the actualities of monopoly, oligopoly, and managed prices and production.

Thus the assumptions of our egalitarian predecessors are no longer available to us. We confront a world of gross inequalities which deprive the majority of access to the means of developing their human capacities. We confront an affluent society in Canada and the United States in which one-fifth of the population live below subsistence level. We confront a Canada in which five million, two-thirds of labour, being unorganised, face government and corporations in a weak bargaining position. They are the nameless, inarticulate "globs of humanity" with no one to plead their cause. We find an obsessive commitment to a market economy to the extent that we are willing to swell the ranks of unemployed in order to keep

the economy functioning "efficiently".

Can these 'facts' be conceived as mere "puzzles" or are the relations between the 'facts' and the equality paradigm so distorted that a new "extraordinary" paradigm seems demanded? Perhaps we will succeed, as Wolin suggests nineteenth century England succeeded, in adapting our paradigm to the 'facts':

. . . given the political culture of early nineteenth-century England, its professions of being a society with representative institutions and guaranteed liberties, the ways in which that society adjusted its paradigm to accommodate the growing self-consciousness among the working classes and the accompanying demands for suffrage reforms provide an example of the adaptation of a political paradigm to new 'facts'. The paradigm has to be changed, because, if there is to be accommodation, the 'facts' must be viewed differently: in this case, not as they had been viewed at Peterloo but as they were to be viewed during the passage of the successive Reform Bills.⁹

Yet as political scientists we may prove unfaithful to our paradigm in the twentieth century by a complacent belief that we live in an age that has seen the "end of ideology". We may hide from ourselves the implications of such 'facts' as we have just noted. Wolin reminds us that "the most embarrassing aspect of the Negro protest movement was its reminder that some of the basic elements

of the [democratic] paradigm, such as the Constitution and the Declaration of Independence, were more consistent with the demands of the protestants than with the actions of the guardians of the paradigm".¹⁰ The cry of a Leveller, a Locke, a Bentham, a Jefferson still confronts us. It is the establishment, the status quo defenders, who are in fact the "true rebels" against the time-honoured set of assumptions that has moved liberal-democratic man since the Protestant Reformation.

We might attempt a way out of our impasse by opting, for example, for a democratic/socialist experiment, something like the abortive Czech experiment in 1968, an equal share by all in control of amassed property together with protection of civil and political liberties. John Stuart Mill had foreshadowed such a solution in his Autobiography:

The social problem of the future we considered to be, how to unite the greatest individual liberty of action, with a common ownership of the raw material of the globe, and an equal participation of all in the benefits of combined labour.¹¹

If we take this option we shall have to face up to Green's demand. We shall need an active, concerned, well-informed, public-interest-dominated citizenry and effective operational realities for realisation of such a general will.

Otherwise, we may face what the Levellers, Locke, Jefferson and Bentham feared, a concentrated tyranny of political, military, economic and social power in the hands of officious bureaucracy and arrogant elected officials.

Political behavioralists tend, as Wolin points out, to proceed like normal scientists "by an understanding of the world as defined by the dominant paradigm".¹² Their operational research has revealed disquietening 'facts' about the world focused upon by our equality paradigm.

Thus, as Wolin writes,

Some evidence seems to suggest that a democratic system will enjoy greater stability if certain segments of the electorate did not vote; other evidence hints that the poorer elements of the population possess attitudes which might be dangerous to the political order.

And Wolin cautions that "if [these] anomalies were to become more persistent and widespread, the paradigm might be in trouble . . .".¹³ Those of us committed to retention of that paradigm will demand not the preservation of stability for its own sake, but confrontation with these 'facts' of discontented and dangerous elements to determine if such discontent and danger is but a reflection of our failure to live up to the full implications of the equalitarian perspective.

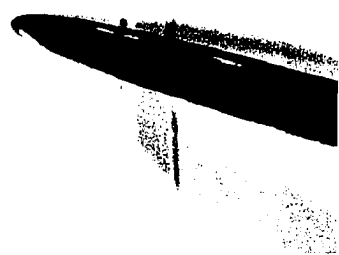
These 'facts' do not exhaust the anomalies within our contemporary egalitarian paradigm. The implications of that paradigm, as Green argued, do not stop at the borders of a state:

The admission of a right to free life on the part of every man, does in fact logically imply the conception of all men as forming one society in which each individual has some service to render, one organism in which each has a function to fulfill.¹⁴

Membership of any community is so far, in principle, membership of all communities as to constitute a right to be treated as a freeman by all other men . . .¹⁵

Thus, as sincerely committed to equalitarian assumptions, we must "square" those assumptions with the have-nots within our national boundaries and beyond, in the world community. We must face up to the challenge of equality demanded by race, in particular, for us, by French Canada, which is unassuaged by an equalitarian formula such as "Rep by Pop" for those who constitute a permanent minority.

This brief resume of the clash between some of the 'facts' of the twentieth century and the liberal egalitarian paradigm has shown a growing awareness of the value both of individuality and of community. And so the liberal egalitarian paradigm moves towards the socialist paradigm. Nor can we avoid the implications of the



conservative egalitarian perspective. If Walwyn and his fellow Levellers were alert to "the pravity and corruption of mans heart",¹⁶ if Jefferson and Bentham despaired of the integrity of legislators if left unchecked by an alert public opinion, we in the twentieth century, mindful of a Belsen and now of a My Lai, cannot escape the relevance of the conservative pessimistic acceptance of the equal depravity of all men. In short, the liberal egalitarian paradigm will retain its relevance insofar as it acknowledges the significance and relevance of much in the socialist and conservative egalitarian traditions as well.

Today, MacIntyre argues, the claims of our moral vocabulary have broken down. Moral autonomy and shared common standards no longer constitute part of a harmonised normative model. Macpherson argues that there is some consensus, in support of the value of human personality, in the real world of democracy, that embraces not only the liberal-democratic ethos but the Communist world and the Third World as well. If so, there is a possibility of evolving agreed ends and values not only within our own liberal-democratic borders but beyond. Perhaps we can provide genuine forums for discussion out of which to

evolve new practical assertions about that value in the community that must increasingly dominate our moral and political frameworks, the world community.

There will be an ever-ending dialectic of the 'is' and the 'ought' for us in our ever-changing, technological, computerised age. The final synthesis is denied to us by the very facts of the dynamism of the world we have created for ourselves as well as by the facts of our intellectual and moral fallibility, and, primarily, by the fact of our commitment to the importance of human autonomy, of developing and realising that autonomy in a telos we make for ourselves and together, for our community, whatever its dimension. As Green perceived, the dimensions can be broadened. Persons, inevitably on our premises, ought to include all mankind. The concept of self-realisation can be enriched. We may not agree with Green that the 'ought' is being realised in the 'is', as part of an inevitable divinely contrived teleological process, but we can, like our natural rights forbears, choose to make the 'is' a reflection of our 'oughts'.



Footnotes

1. J. S. Mill, "Bentham", in introd. F. R. Leavis, John Stuart Mill on Bentham and Coleridge (1st edition, 1950; New York: Harper & Row, Publishers, 1962), p. 59.
2. ibid., p. 62.
3. Sir I. Berlin, "Rationality of Value Judgments", in C. J. Friedrich, ed., Nomos VII: Rational Decision (2d printing: New York: Atherton Press, 1967), p. 223.
4. H. Perkin, The Origins of Modern English Society, 1780-1880 (London: Routledge & Kegan Paul; Toronto: University of Toronto Press, 1969), pp. 287-88.
5. C. B. Macpherson, "Democratic Theory: Ontology and Technology", in D. Spitz, ed., Political Theory and Social Change (New York: Atherton Press, 1967), p. 215.
6. T. H. Marshall, "Citizenship and Social Class", in his Citizenship and Social Class and Other Essays (Cambridge: University Press, 1950), p. 29.
7. ibid., pp. 33-4.
8. ibid., p. 9.
9. S. S. Wolin, "Paradigms and Political Theories", in P. King and B. C. Parekh, eds., Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of His Retirement (Cambridge: University Press, 1968), pp. 149-50.
10. ibid., p. 150.
11. Quoted in Perkin, op. cit., p. 324.
12. Wolin, op. cit., p. 152.

Footnotes (continued)

13. ibid., p. 152.
14. T. H. Green, Lectures on the Principles of Political Obligation, introd. Lord Lindsay of Birker (Ann Arbor: University of Michigan Press, 1967), no. 154, p. 157.
15. ibid., no. 140, p. 145.
16. Quoted in S. A. Lakoff, Equality in Political Philosophy (Cambridge: Harvard University Press, 1964), p. 68.



B I B L I O G R A P H Y *G E N E R A L

Barker, E. Principles of Social and Political Thought.
1st published, 1951; Oxford: University Press, 1965.

Benn, S. I. and R. S. Peters. The Principles of Political Thought: Social Foundations of the Democratic State.
2d printing; New York: Macmillan, 1966.

Berlin, Sir I. "Does Political Theory Still Exist?", in P. Laslett and W. G. Runciman, eds., Philosophy, Politics and Society. 2d Series; 3d printing; Oxford: Basil Blackwell, 1967.

----- . "Equality As an Ideal", in F. A. Olafson, ed., Justice and Social Policy: a Collection of Essays. Englewood Cliffs: Prentice-Hall, Inc., 1961, pp. 128-150.

----- . "Rationality of Value Judgments", in C. J. Friedrich, ed., Nomos VII: Rational Decision. 2d printing; New York: Atherton Press, 1967, pp. 221-23.

----- . "Two Concepts of Liberty", in A. Quinton, ed., Political Philosophy. Oxford: University Press, 1967, pp. 141-52.

Corbett, P. Ideologies. London: Hutchinson & Co. (Publishers) Ltd., 1965.

Easton, D. A Framework for Political Analysis. Englewood Cliffs: Prentice-Hall, Inc., 1965.

* This bibliography is confined to the list of books, articles and manuscripts specifically cited in the text or footnotes.

- Hampshire, S. "Fallacies in Moral Philosophy", in R. E. Dewey et al, eds., Problems of Ethics: a Book of Readings. 2d printing; New York: Macmillan, 1965, pp. 435-50.
- Hart, H. L. A. The Concept of Law. 4th edition; Oxford: Clarendon Press, 1967.
- Hartz, L. The Liberal Tradition in America: an Interpretation of American Political Thought Since the Revolution. New York: Harcourt, Brace & World Inc., 1955.
- Hume, D. A Treatise of Human Nature, in ed. A. MacIntyre, Hume's Ethical Writings: Selections from David Hume. New York: Collier Books; London: Collier-Macmillan, 1965.
- Kuhn, T. H. The Structure of Scientific Revolutions. 7th edition; Chicago and London: University of Chicago Press, 1969.
- Lakoff, S. A. Equality in Political Philosophy. Cambridge: Harvard University Press, 1964.
- MacIntyre, A. A Short History of Ethics: a History of Moral Philosophy from the Homeric Age to the Twentieth Century. 2d printing; New York: Macmillan, 1966.
- . "Hume on 'Is' and 'Ought'", in V. C. Chappell, ed., Hume: a Collection of Critical Essays. Modern Studies in Philosophy Series. New York: Doubleday and Company Inc., 1966, pp. 240-64.
- . Secularization and Moral Change. London: Oxford University Press, 1967.
- Macpherson, C. B. "Democratic Theory: Ontology and Technology", in D. Spitz, ed., Political Theory and Social Change, New York: Atherton Press, 1967, pp. 203-20.
- . The Political Theory of Possessive Individualism: Hobbes to Locke. 3d edition; Oxford: Clarendon Press, 1965.

- . The Real World of Democracy. The Massey Lectures, Fourth Series. 3d impression; Toronto: Canadian Broadcasting Corporation, 1967.
- Marshall, T. H. "Citizenship and Social Class", in his Citizenship and Social Class and Other Essays. Cambridge: University Press, 1950, pp. 1-85.
- Perkin, H. The Origins of Modern English Society, 1780-1880. London: Routledge & Kegan Paul; Toronto: University of Toronto Press, 1969.
- Prosch, H. The Genesis of Twentieth Century Philosophy: the Evolution of Thought from Copernicus to the Present. 2d edition; New York: Doubleday & Company, Inc., 1966.
- Stone, J. Human Law and Human Justice. Stanford: Stanford University Press, 1965.
- Tussman, J. Obligation and the Body Politic. 4th printing; New York: Oxford University Press, 1965.
- Walker, J. L. "A Critique of the Elitist Theory of Democracy", The American Political Science Review, LX, no. 2 (June, 1966), 285-95.
- Warrender, H. The Political Philosophy of Hobbes: His Theory of Obligation. 1st printing, 1957; reprinted, 1961, 1966; Oxford: Clarendon Press, 1966.
- Wolin, S. S. "Paradigms and Political Theories", in P. King and B. C. Parekh, eds., Politics and Experience: Essays Presented to Professor Michael Oakeshott on the Occasion of His Retirement. Cambridge: University Press, 1968, pp. 125-52.
- . Politics and Vision: Continuity and Innovation in Western Political Thought. 2d printing; Boston and Toronto: Little, Brown and Company, 1960.

P A R T O N E

N A T U R A L R I G H T S

- Carnes, J. R. "Whether There Is a Natural Law", Ethics, LXXVII (1967), 122-29.
- Danto, A. C. "Human Nature and Natural Law", in S. Hook, ed., Law and Philosophy: a Symposium. New York: New York University Press, 1964, pp. 187-99.
- Hart, H. L. A. "Are There Any Natural Rights?", in A. Quinton, ed., Political Philosophy. Oxford: University Press, 1967, pp. 53-66.
- Macpherson, C. B. "Natural Rights in Hobbes and Locke", in D. D. Raphael, ed., Political Theory and the Rights of Man. London, Melbourne, Toronto: Macmillan, 1967, pp. 1-15.
- Nielsen, K. "The Myth of Natural Law", in S. Hook, ed., Law and Philosophy: a Symposium. New York: New York University Press, 1964, pp. 122-43.
- Plamenatz, J. "Rights", Aristotelian Society Proceedings, Supplementary Vol. XXIV (1950), 75-82.
- Ritchie, D. G. Natural Rights: a Criticism of Some Political and Ethical Conceptions. 5th impression; London: George Allen & Unwin Ltd., 1952.
- Strauss, L. Natural Right and History. 5th impression; Chicago and London: The University of Chicago Press, 1965.
- Wright, B. F., Jr. American Interpretations of Natural Law: a Study in the History of Political Thought. 1st edition, 1931; reissued, 1962; New York: Russell & Russell, Inc., 1962.

THE PURITAN REVOLUTION

Primary Sources

[anon.]. Tyranipocrit Discovered, in G. Orwell and R. Reynolds, British Pamphleteers. London: A. Wingate, 1948-1951, pp. 81-112.

Haller, W., ed. Tracts on Liberty in the Puritan Revolution, 1638-1647. 3 vols. 1st edition, 1934; reprinted, 1965; New York: Octagon Books, Inc., 1965.

Wolfe, D. M., ed. Leveller Manifestoes of the Puritan Revolution. New York, London: Thomas Nelson and Sons, 1944.

Woodhouse, A. S. P., ed. Puritanism and Liberty: Being the Army Debates (1647-9) from the Clarke Manuscripts with Supplementary Documents. 2nd impression; Chicago: University of Chicago Press, 1965.

Secondary Sources

Brailsford, H. N. The Levellers and the English Revolution. Edited and prepared for publication by C. Hill. London: The Cresset Press, 1961.

Gibb, M. A. John Lilburne: a Christian Democrat. London: Lindsay Drummond Ltd., 1947.

Hill, C. "Recent Interpretations of the Civil War", in his Puritanism and Revolution: Studies in Interpretation of the English Revolution of the 17th Century. 2d printing; New York: Schocken Books, 1967, pp. 3-31.

McIlwain, C. H. The High Court of Parliament and Its Supremacy: an Historical Essay on the Boundaries between Legislation and Adjudication in England. New Haven: Yale University Press; London: Humphrey Milford; Oxford: University Press, 1934.

- Macpherson, C. B. The Political Theory of Possessive Individualism: Hobbes to Locke. 3d edition; Oxford: Clarendon Press, 1965.
- Pease, T. C. The Leveller Movement: a Study in the History and Political Theory of the English Great Civil War. 1st edition, 1915; reprinted, 1965; Gloucester: Peter Smith, 1965.
- Perry, R. B. Puritanism and Democracy. 6th printing; New York: The Vanguard Press, 1944.
- Petegorsky, D. W. Left-Wing Democracy in the English Civil War: a Study of the Social Philosophy of Gerrard Winstanley. London: Victor Gollancz, Ltd., 1940.
- Robertson, D. B. The Religious Foundations of Leveller Democracy. New York: Columbia University, King's Cross Press, 1951.
- Sabine, G. H. A History of Political Theory. 3d edition; New York: Holt, Rinehart & Winston, 1961.
- Schenk, W. The Concern for Social Justice in the Puritan Revolution. London: Longmans Green & Co., 1948.
- Zagorin, P. A History of Political Thought in the English Revolution. 1st published, U. K., 1954; 1st published, U. S. A., 1966; New York: The Humanities Press, 1966.

J O H N L O C K E

Primary Sources

- Locke, J. Essays on the Law of Nature. Edited with introduction, notes and translation of Latin text by W. von Leyden. 1st edition, 1954; reprinted from corrected sheets of 1st edition, 1958, 1965; Oxford: Clarendon Press, 1965.

----- . Of the Conduct of the Understanding. Works, 10 vols. New edition, corrected, London, 1823; reprinted, 1963; Aalen, Germany: Scientia Verlag, 1963. III, 203-89.

----- . The Reasonableness of Christianity As Delivered in the Scriptures. Works. 10 vols. New edition, corrected, London, 1823; reprinted, 1963; Aalen, Germany: Scientia Verlag, 1963. VII, 1-158.

----- . Two Tracts on Government. Edited with an introduction, notes and translation by P. Abrams. Cambridge: University Press, 1967.

----- . Two Treatises of Government. Edited by P. Laslett, John Locke: Two Treatises of Government: a Critical Edition with an Introduction and Apparatus Criticus. Revised edition; Toronto: The New American Library of Canada Limited, 1965.

Secondary Sources

Ashcraft, R. "Locke's State of Nature: Historical Fact or Moral Fiction?", The American Political Science Review, LXII, no. 3 (September, 1968), 898-915.

Dunn, J. "Consent in the Political Theory of John Locke", The Historical Journal, X, no. 2 (1967), 153-182.

----- . The Political Thought of John Locke: an Historical Account of the Argument of the 'Two Treatises of Government'. Cambridge: University Press, 1969.

Macpherson, C. B. The Political Theory of Possessive Individualism: Hobbes to Locke. 3d edition; Oxford: Clarendon Press, 1965.

Rousseau, J. J. A Discourse on the Origins of Inequality. Everyman's Library; London: J. M. Dent & Sons Ltd.; New York: E. P. Dutton & Co. Inc., 1955.

Seliger, M. The Liberal Politics of John Locke.
London: George Allen and Unwin Limited, 1968.

von Leyden, W. "John Locke and Natural Law", Philosophy,
XXVI, no. 1 (1956), 23-35.

Yolton, J. W., ed. John Locke: Problems and Perspectives:
a Collection of New Essays. Cambridge: University
Press, 1969.

----- . "Locke on the Law of Nature", Philosophy,
LXVII (October, 1958), 477-98.

T H O M A S J E F F E R S O N

Primary Sources

Jefferson, T. The Commonplace Book of Thomas Jefferson:
a Repertory of His Ideas on Government. Introduction
and notes by G. Chinard. Baltimore: Johns Hopkins
Press, 1926.

----- . Notes on the State of Virginia. Introduction
by T. P. Abernethy. New York, Evanston, and London:
Harper & Row, Publishers, 1964.

----- . The Jeffersonian Cyclopaedia: a Comprehensive
Collection of the Views of Thomas Jefferson. 2 vols.
Edited by J. P. Foley with introduction by J. P. Boyd.
1st published, 1900; reissued, 1967; New York:
Russell & Russell, 1967.

----- . The Papers of Thomas Jefferson. c. 50 vols.
(in process). Edited by J. P. Boyd. 3d printing;
Princeton: Princeton University Press, 1969. (Note:
I undertook comprehensive study of Vol. I; I also
consulted Vols. VIII, XV).

----- . The Political Writings of Thomas Jefferson:
Representative Selections. Edited by E. Dumbauld.
Indianapolis and New York: The Bobbs-Merrill Company,
Inc., 1955.

Secondary Sources

- Bailyn, B. The Origins of American Politics. 1st published, 1967; New York: Alfred A. Knopf, 1968.
- Beard, C. A. Economic Origins of Jeffersonian Democracy. 1st edition, 1915; New York: The Free Press; London: Collier-Macmillan Limited, 1965.
- Becker, C. L. The Declaration of Independence: a Study in the History of Political Ideas. 1st edition, 1922; New York: Random House, 1942.
- . "The Political Philosophy of Thomas Jefferson", in M. D. Peterson, ed., Thomas Jefferson: a Profile. 2d printing; New York: Hill and Wang, 1968, pp. 41-60.
- Chinard, G. Thomas Jefferson: the Apostle of Americanism. 2d edition, revised; Ann Arbor: University of Michigan Press, 1966.
- Hartz, L. "The Rise of the Democratic Idea", in J. R. Pole, ed., The Advance of Democracy. New York, Evanston and London: Harper & Row, Publishers, 1967, pp. 15-27.
- Hofstadter, R. The American Political Tradition and the Men Who Made It. 1st edition, 1948; New York: Alfred A. Knopf, 1967.
- Koch, A. Jefferson and Madison: the Great Collaboration. 4th printing; New York: Oxford University Press, 1967.
- . Power, Morals, and the Founding Fathers: Essays in the Interpretation of the American Enlightenment. 5th printing; Ithaca: Cornell University Press, 1967.
- Mims, E., Jr. The Majority of the People. New York: Modern Age Books, Inc., 1941.
- Pole, J. R. Political Representation in England and the Origins of the American Republic. London: Macmillan; New York: St. Martin's Press, 1966.

PART TWOUTILITY

J E R E M Y B E N T H A M

Primary Sources

Bentham, J. A Fragment on Government. Edited with introduction by W. Harrison. 1st printed, 1948; reprinted, 1967; Oxford: Basil Blackwell, 1967.

----- . An Introduction to the Principles of Morals and Legislation. Edited with introduction by W. Harrison. 1st printed, 1948; reprinted, 1967; Oxford: Basil Blackwell, 1967.

----- . The Works of Jeremy Bentham. 11 vols. Edited by J. Bowring (1838-43). Reissued, 1962; New York: Russell & Russell, 1962.

(Vols. specifically consulted as follows):

----- . ----- . I. Principles of the Civil Code, 297-364.

----- . ----- . II. An Examination of the Declaration of the Rights of the Man and the Citizen Decreed by the Constituent Assembly in France, 491-534.

----- . ----- . III. Pannomial Fragments, 211-230.

----- . ----- . Plan of Parliamentary Reform, in the Form of a Catechism, 433-552.

----- . ----- . Radical Reform Bill, with Extracts from the Reasons, 558-597.

----- . ----- . Radicalism Not Dangerous, 599-622.

----- . ----- . VIII. Essay on Logic, 217-293.

IX. The Constitutional Code.Secondary Sources

- Burns, J. H. "Bentham and the French Revolution", Royal Historical Society Transactions, 5th Series, XVI (1966), 95-114.
- Gunn, J. A. W. "Jeremy Bentham and the Public Interest", Canadian Journal of Political Science, I, no. 4 (December, 1968), 398-413.
- Halévy, E. The Growth of Philosophic Radicalism. Translated by M. Morris with preface by A. D. Lindsay, 2d edition reprinted with corrections; London: Faber & Faber Limited, 1952.
- Hall, E. W. "The 'Proof' of Utility in Bentham and Mill", J. B. Schneewind, ed., Mill: a Collection of Critical Essays. New York: Doubleday & Company, Inc., 1968, pp. 145-78.
- Hart, H. L. A. "Bentham: Lecture on a Master Mind", Proceedings of the British Academy, XLVIII (1962), 297-320.
- Mack, M. Jeremy Bentham: An Odyssey of Ideas, 1748-1792. London: Heinemann, 1962.
- Manning, D. J. The Mind of Jeremy Bentham. London: Longmans, Green & Co. Limited, 1968.
- Mill, J. S. "Bentham", in John Stuart Mill on Bentham and Coleridge. Introduction by F. R. Leavis. 1st edition, 1950; New York: Harper & Row, Publishers, 1962, pp. 39-98.
- Peardon, T. P. "Bentham's Ideal Republic", Canadian Journal of Economics and Political Science, XVIII (1951), 184-203.
- Plamenatz, J. The English Utilitarians. Reprint of 2d, revised edition with minor corrections; Oxford: Basil Blackwell, 1966.

Pratt, R. C. "The Benthamite Theory of Democracy",
Canadian Journal of Economics and Political Science,
 XX (February, 1955), 20-9.

P A R T T H R E E

T H E C O M M O N G O O D

T . H . G R E E N

Primary Sources

Green, T. H. Lectures on the Principles of Political
 Obligation. Introduction by Lord Lindsay of Birker.
 Ann Arbor: University of Michigan Press, 1967.

----- . "On the Different Senses of 'Freedom' As
 Applied to Will and to the Moral Progress of Man",
 published with Green, Lectures on the Principles of
 Political Obligation, op. cit.

Secondary Sources

Holloway, H. "Mill and Green on the Modern Welfare State",
Western Political Quarterly, XIII (June, 1960), 389-405.

Richter, M. The Politics of Conscience: T. H. Green and
 His Age. Cambridge: Harvard University Press, 1964.