HAYEK'S LIBERALISM: THE CONSTITUTION OF PERPETUAL PRIVILEGE

The Constitution of Liberty. By Friedrich A. Hayek (Chicago: University of Chicago Press, 1960). Pp. 570. $7.50.

Already the heading may strike admirers of this work as slanted and unfair, demonstrating this reviewer's prejudice against Hayek's Old Whig liberalism.' And I readily grant that privilege, *as Hayek defines this term, is* what he above all else wants his political system to do away with. "The essence of the liberal position," he writes, "is the denial of all privilege, if privilege is understood in its proper and original meaning of the state granting and protecting rights to some which are not available on equal terms to others."[2]

But why should the privileges that the state grants and protects be considered an unmitigated evil, while privileges created by the economic system and by inheritance are ignored, indeed, ignored *by definition?* It is not even proper, Hayek asserts in the passage just quoted, to define "privilege" in more general terms,-say, as any substantial advantage for some (classes of) individuals that are in fact denied to others.

Since it so happens that every stable social order tends to develop more privileged and less privileged strata, if I may be forgiven for using the broader but surely more common sense of "privileged," any state that is barred from tampering with incomes and properties, for example by way of trying to secure a decent life for the most underprivileged, is in fact destined to perpetuate the existing privileges of some and the existing miseries of others. Any philosophical defense of liberalism in this sense is also a defense of perpetual privilege,-and of perpetual misery and injustice.

I had first thought of heading this paper "Social Darwinism with a Human Face." But the more I reflected the more strongly

[1] **Hayek,** ***The*** *Constitution of Liberty, pp.* 408-410.

[2] Hayek, "The Road to Serfdom *After Twelve Tears," in* his ***Studies in Philosophy,*** *Politics* ***and Economics*** (Chicago, 1967), p. 222.

I felt that there is not very much concern for human beings in Hayek's philosophy of liberty. As will be documented, people are seen as essentially producers or servants of efficiency, with the ultimate aims left obscure; liberty, too, is basically a means, not an end in itself; and there is no real feeling for the suffering of the underprivileged. To be *born* to rags and malnutrition and despair is not, after all, to be underprivileged, according to Hayek's liberalism.

Mind you, as a gentleman and a scholar, Mr. Hayek not only has a human face but an engaging one, and his *Constitution of Liberty* has some important merits, as we shall see. For one thing, this volume is in a technical sense a masterpiece of careful, well documented scholarship. On this ground alone, even if there were no others, *The Constitution of Liberty* ought to be more widely used in the colleges and universities: here is a scholar at work, one who is at home in wide reaches of the literature, and who is eager to encourage his readers to follow his own paths to the sources, which are often rich and varied but nearly always relevant and illuminating to the points at issue.

And Hayek is exact in his references to an extent that is regrettably rare. Where else, for example, would one find page references to such widely quoted statements as Anatole France's on "the majestic equality of the law that forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread," or to J. M. Keynes's ironical rebuttal to "in the long run things will work out"-types of argument : "in the long run we are all dead."?[3]

I do not mean to damn the book by faint praise, and certainly not at the outset of my argument. Not just in particulars but in the whole sweep of his argument Hayek is admirably explicit and often lucid, and blessedly free from the pseudo-religious and other obscurantist appeals so common in conservative apologies for privilege. But then he insists, of course, that he is not a conservative, even though he sees the British Tories and other conservative parties as lesser evils than Labour and social democratic parties. A good book in defense of privilege is in my opinion always to be

[3] *Constitution of Liberty*, p. 493.
[4] *Ibid.*, p. 522.

welcomed, for the thinking on the left, too, suffers in the absence of exacting intellectual as distinct from facile emotional challenge.'

I shall now (II) attempt a brief restatement of what I take to be Hayek's essential argument in *The Constitution of Liberty*. *I* will make occasional references to his earlier, more popular and very much briefer book, *The Road to Serfdom,'* as well as to other works, but the scope of this paper is a critical analysis of the former volume only. I hope this part of my discussion will be unobjectionable to admirers as well as critics of Hayek.

My critique will begin (III) with points that are semantical as well as philosophical: Hayek's peculiar definitions of key terms, like "liberty," "coercion" and others, including "privilege," and the consequences of using artificially narrow definitions as if they were broad and "natural."

Then follows (IV) a brief critique of some of Hayek's basic substantive assumptions, including his conception of progress and the assumed relationships between general liberty, freedom of the market, and the rule of law.

In conclusion (V) I shall attempt to compare aspects of Hayek's argument to aspects of my own argument, as expounded in my *Structure of Freedom*.' While my book is no match to Hayek's in terms of economic, historical, or philosophical scholarship, I shall argue that my own work, unlike his, does clear some of the ground toward a civilized and humane design for a Constitution of Liberty, or a set of principles by which all men potentially can live in freedom and peace.

Friedrich August von Hayek was born in Vienna in 1899, served in the imperial Austrian army during the first world war, and subsequently became a student at the University of Vienna. He earned his Doctor of Law there in 1921, and his Doctor of

'There are not many good books in defense of conservatism but one notable exception, in my judgment, is Willmoore Kendall's *The Conservative Affirmation* (Chicago, 1963), which shares the present book's virtues of lucidity and the shunning of obscurantist appeals, and is bolder and more original in conception and argument. For an example of a bad book, in this sense, see Herman Finer's critique of **Hayek's *Road to Serfdom*** (London, 1944). *Road to Reaction* (Boston, 1946).

[6] See previous note.

[7] Stanford, 1970 (1958).

Political Science in 1925. His two most important teachers in economics were Friedrich von Wieser and that well-known advocate of *laissez-faire* capitalism, Ludwig von Mises.

Hayek and von Mises both left Austria; Hayek in 1931, to teach at the London School of Economics, where he remained till 1950 (von Mises taught in Geneva from 1934 to 1940, and has subsequently been living in New York; he taught for many years at New York University). From 1950 to 1962 Hayek was a Professor of Social and Moral Sciences at the University of Chicago. Then he returned to Europe to become a Professor of Economics at the Albert-Ludwigs-Universitat in Freiburg, West Germany. He retired in 1967, and lives in Freiburg.[8]

II

1. Perhaps we may begin with Hayek's "Postscript": "Why I Am Not a Conservative." By way of considering first this brief statement of his practical political point of view, we may provide a framework within which the assembling of his premises becomes more immediately meaningful, and certainly more interesting. Hayek calls himself *a liberal* although he has serious misgivings about this label. In America it has come to be appropriated by many radicals and socialists whose objectives are anathema to his own : to increase the government's role in the nation's economy, to favor the underprivileged at the expense of the freedom of private economic enterprise. In Europe, too, "the predominant type of rationalistic liberalism has long been one of the pacemakers of socialism."[10] Hayek has searched in vain, he says, for an alternate word "which describes the party of life, the party that favors free growth and spontaneous evolution"; he finds the word *libertarian* "singularly unattractive," and in the end settles for "liberal" but with the proviso that he is really "an unrepentant Old Whig-with the stress on the 'old'." And he quotes, in explanation, from Lord Acton: ". . . the notion of a higher law above municipal codes, with which Whiggism began, is the supreme achievement of

[8] Much of this information is found in Erich Streissler's "Introduction" to Streissler (ed.) ***Roads to Freedom.*** *Essays* ***in Honour*** *of Friedrich A. von* ***Hayek*** (London, 196'9).

[9] Pp. 397-411 *in The Constitution of Liberty*.

[10] *Ibid.,* p. 398.-In Canada, on the other hand, Hayek might be relatively comfortable in the Liberal Party.

Englishmen and their bequest to the nation," and, Hayek adds, to the world. It is the doctrine, furthermore, "on which the American system of government is based." [11]

Much as he seeks to dissociate himself from conservatism, *The Road to Serfdom* has made Hayek a hero among American conservatives, and he admits in this Postscript that liberals of his own persuasion "have little choice but to support the conservative parties," albeit as lesser evils." And it is significant that a fairly recent compilation entitled *What is Conservatism* included Hayek among "twelve leading conservative thinkers" (according to the dust jacket) with this same paper, "Why I Am Not a Conservative," as his contribution.[12]

Hayek sees his own brand of liberalism as a program for free growth, particularly in the economic life of the nation. Conservatives are usually too afraid of change, too fond of authority, and lacking in understanding of economic forces, he charges. As a result, they have tended to be oriented to the past, and conservative parties have tended to lack positive programs and have been prone to expedient compromises with the parties to the left. "Like the socialist, [the conservative] is less concerned with the problem of how the powers of government should be limited than with that of who wields them; and, like the socialist, he regards himself as entitled to force the value he holds on other people." [14]

The United States "on the whole still has free institutions," so that "the defense of the existing is often a defense of freedom," writes Hayek, and therefore his kind of liberals often must make common cause with conservatives. However, this "common resistance to the collectivist tide should not be allowed to obscure the fact that (the liberal's) belief in integral freedom is based on an essentially forward-looking attitude and not on any nostalgic longing for the past or a romantic admiration for what has been." [16]

The Constitution of Liberty has three main parts, entitled re-

[11] ***Ibid.,*** pp. *408-H.-The Constitution of Liberty,* unlike *The Road to Serfdom,* appears to be written with primarily an American audience in mind.
[12] ***Ibid.,*** p. *397.* In Canada, though, I imagine he'd vote Liberal; cf. note 11.
[13] Pp. 86-106 in Frank S. Meyer (ed.) *What is Conservatism,* (New York, 1964).
[14] *Op. cit.,* p. 401.
[15] *Ibid.,* p. *410.*

spectively "The Value of Freedom," "Freedom and the Law," and "Freedom in the Welfare State." Parts I and I.I stress general issues in social theory and in the history of ideas, while Part III stresses economic problems and takes up, one after another, a number of specific problems associated with socialist or welfare state-type government policies. The title of the volume is misleading, if or to the extent that it is taken to promise a constitutional scheme for a liberty-maximizing state; what the book does offer is a sustained argument to the effect that (I) liberty should be maximized ; (II) it can be maximized only by laws and, beyond laws, constitutions that strictly limit the powers of government; and (III) the modern trends toward the welfare state, accepted even by many conservatives, are bound to keep increasing governmental powers and to keep reducing our liberties, with the bleakest prospects of serfdom ahead for all of us, unless or until we return to principles of private enterprise limited only by universal laws.

2. "We are concerned in this book with that condition of men in which coercion of some by others is reduced as much as possible in society. This state we shall define throughout as a state of liberty or freedom." This is the opening statement in the first chapter, and Hayek concludes his last chapter on a related theme, to the effect that the essential importance of human development in its richest diversity is the leading principle toward which every argument in the book converges. Clearly, a more thorough, more comprehensive, more systematic *On Liberty* seems to be intended.

Hayek proceeds to make more precise his definition of "liberty," or (synonymously) "freedom," and to differentiate his usage from other usages in the literature. Thus, "freedom" to Hayek refers "solely to a relation of men to other men"; the term refers to each person's "independence of the arbitrary will of another."[16] A destitute person can still have his liberty, we may infer, if he is a victim of circumstances. A drug addict or a religious fanatic can presumably still be a free man; so can the man on the scaffold be, if he has been duly convicted in a fair trial according to just laws.

Then comes the justification of liberty: "the case for individual freedom rests chiefly on the recognition of the inevitable ignorance

[16] *Ibid.*, p. 12.

of all of us concerning a great many of the factors on which the achievements of our ends and welfare depends.' And our individual and collective ignorance is particularly abysmal concerning what are the best ways of living together; on this point Hayek is firmly on classical ground : If "the result of individual liberty did not demonstrate that some manners of living are more successful than others, much of the case for (liberty) would vanish." [18]

Progress is impossible unless there are people with means, who can experiment with new ways of living, whether in terms of material comforts or in intangibles; "those lower down profit materially from the fact that others are ahead." [19] Social inequality is good for you, even if you happen to be poor, Hayek appears to say.. Advanced welfare states like Britain and the Scandinavian countries tend to become static, if not stagnant, and to make everyone worse off than in countries like West Germany, Belgium, or Italy. [20]

Social equality is incompatible with liberty. A government can promote egalitarian aims only by reducing liberty; and a free society will encourage competition and produce inequality. But: "Equality of the general rules of law and conduct, however, is the only kind of equality conducive to liberty and the only equality which we can secure without destroying liberty." [21] As Hayek defines "justice," social inequality is not unjust if it is a by-product of a free society, rather than a result of "the deliberate treatment of men by other men,"-like a government granting or withholding privileges arbitrarily."

Then follows a chapter in which the concepts of liberalism and democracy are compared. Hayek argues that democracy is a good system only to the extent that it knows how to limit the powers of government firmly within rules of law and, furthermore, that an illiberal democracy cannot long endure. In a final chapter in this section, on "Employment and Independence," Hayek expresses forebodings about the dangers to liberty emanating from the fact that progressively larger numbers of citizens are becoming employees rather than self-employed, and prone to value conformity

[17] *Ibid., p. 29.*
[18] *Ibid.,* p. *85.*
[19] *Ibid.,* p. *46.*
[20] *Ibid.,* p. *49.*
[21] *Ibid.,* p. *85.*
[22] *Ibid.,* p. *99.*

above independence, and security above risk-taking, and to be intolerant of unearned privileges, or of the idle rich,-leisured groups that in Hayek's view serve vital innovative functions.[23] "A world in which the majority could prevent the appearance of all that they did not like would be a stagnant and probably a declining world."[24]

3. "Freedom and the Law", the second of the three main parts of the book, develops the theme that constitutes Hayek's central argument in this volume: that liberty depends crucially on the rule of law. And this is a proposition that receives a stronger and more sweeping endorsement in Hayek's work than in perhaps any other writer's, outside the legal profession. "Hayek's exposition is by far the most extensive and ambitious theoretical treatment of the subject," according to one of his critics, who adds that "Hayek leaves less room in his discussion of the rule of law for discretionary power in any system which qualifies as a government of law than that allowed by any of the other writers. To use Kenneth Davis' phrase, Hayek's is the most `extravagant version' of the rule of law."[26]

Once again Hayek begins by way of defining some key terms: "Coercion occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose."[23] "Power" refers to "the capacity to achieve what one wants," and Hayek takes issue with Lord Acton and others when he asserts that power as such is not an evil; it is coercion that is bad, "because it prevents a person from using his mental powers to the full and consequently from making the greatest contribution that he is capable of to the community."-Oppression should refer "only to a state of continuous acts- of coercion."-The "threat of force or violence is the most important form of coercion," but not the only means.[27]

[23] "... even the successful use of leisure needs pioneering and . . . many of the toys and tools of sport that later became the instruments of recreation for the masses were invented by playboys." *Ibid.,* p. 129.

[24] ***Ibid.,*** **p.** 150.

[25] Cf. Ronald Hammy, "Freedom and the Rule of Law in F. A. Hayek," forthcoming in II *Politico* (1971 *or* 1972); and Kenneth Davis, *Discretionary Justice: A-Preliminary Inquiry* (Baton Rouge, 1969), pp. *27-51.*

[26] *Op. cit.,* p. 133.

[27] *Ibid., pp.* 134-35.

Coercion emerges as the supreme evil. Its antidote is a guaranteed "private sphere," within which the individual is protected against coercion. Coercion cannot entirely be done away with, for coercion by the state may be needed to forestall private coercion. But the rules that distinguish lawful from arbitrary coercion must restrict the government in the same ways as they restrict all private individuals and interests, and there must consequently be courts truly independent of government policies available for settling all disputes about the lawfulness of specific coercive acts, including acts authorized by legislation.

Taxation is a rather special institution in Hayek's thought; it is the *only* coercive institution that every state requires for the support of non-coercive as well as coercive policies (what is to be avoided, however, is *progressive* taxation; see below, p. 106.); "Outside the field of taxation, it is probably desirable that we should accept only the prevention of more severe coercion as the justification for the use by coercion by government."[28] Fraud and deception, he allows, are similar to coercion in their effects, and must in this context be considered equivalent evils that governments must take coercive measures to combat. Indeed, to prevent or reduce coercion and of the kind of government that Hayek desires, but this is not its only task; there are many essential service activities as well, like "care for the disabled or the infirm and the provision of roads or of information." Unlike many conservatives, and although he says that J. S. Mill's distinction between acts affecting one's own interests only and acts affecting those of others as well "has not proven very useful," Hayek nevertheless adopts essentially that position: the state ought never to use coercion against moral evils that don't amount to actual harm to second or third parties."

Four of the eight chapters in this part of the volume are historical, and will be slighted in this summary, since my main concern is with Hayek's own theory; but these four (chs. 11, 12, 13, and 16) are in my opinion fine essays, readable and lucid, learned and yet sensible, which can be read with profit also by those who disagree profoundly with Hayek's position.

On the systematic side, having done with the concept and problems of coercion, Hayek's main concern is to clarify the kev

[28] *7bid.,* p. 144.
[29] *1bid., pp.* 144-47.

concept of "the rule of law" and its relationship to liberty. "The conception of freedom under the law that is the chief concern of this book rests on the contention that when we obey laws, in the sense of general abstract rules laid down irrespective of their application to us, we are not subject to another man's will and are therefore free . . . The true contrast to a reign of status is the reign of general and equal laws, of the rules which are the same for all, or, we might say, of the rule of *leges* in the original meaning of the Latin word for laws,-leges that is, as opposed to *privileges."* [30]

The opposite of laws are *commands,* which demand certain acts, while laws, ideally speaking, merely provide "additional information to be taken into account in the decision of the actor." Like laws of nature, the laws of the state in a free society merely set the stage for intelligent action; for, as Locke believed, to be free is to be restricted only by general rules. Indeed, if "to rule" means "to make men obey another's will, government has no such power in a free society." Citizens cannot be ruled in this sense, if they are free; they can be subordinated only to general rules, under the rule of law."

It is necessary but not sufficient that laws are general, or equally binding on all. Hayek hedges on David Hume's notion that there are "three fundamental laws of nature, that of the stability of possession, of transference by consent, and of the performance of promises." He, too, believes in some very general notion of a natural law, but seeks to establish certain general *attributes* of such law instead of general contents of such rules. He warns first of all against the notion that proper laws must lead to just results in every specific case; any utilitarian yardstick can be applied, if at all, only to the impact of the system as a whole, over the long run.[32]

Hayek calls the rule of law "a meta-legal doctrine or a political

[30] *Ibid.,* pp. 153-54.

[31] *Ibid.,* pp. 150-56.--Hayek quotes approvingly Chief Justice John Marshall's statement: "Judicial power, as contradistinguished from the power of laws, has no existence. Courts are mere instruments of law, and can will nothing." *Osborn v. Bank of United States, 22* U.S. *(9* Wheaton) 736, 866 (1824).

[32] *Op. cit.,* pp. 158-61.

ideal." " Much legislation, and indeed the bulk of modern welfare-type or regulatory legislation, negates this ideal. In a free state, or a state with "a constitution of liberty," all laws and all decrees, or the legal system as a whole, should have *all* of the following attributes : (1) they should be prospective, never retroactive; (2) they should be known and certain; (3) they should be equal,- every restriction must apply equally to all, including the state, whose *only* monopoly must be in enforcing the laws, without powers of discretion; (4) enforcing agencies must be separate from rule-making agencies, *at least* in the sense of a right to appeal particular cases to "independent judges who are not concerned with any temporary ends of government." [4]

And this right of appeal must not be limited to formal complaints only; courts must be free to sustain appeals from administrative decisions not just on charges of, say, discrimination or prejudice, but also on the ground that the proper limitations of the powers of government have been exceeded. Courts independent of government policies and commitments must, in other words, be able to call a halt to laws and policies, however democratically enacted, that would violate the 'Constitution of Liberty.

Such, then, are the general requirements of the rule of law. Hayek envisages a system in which all specific legislation is kept within the bounds of the general purpose of protecting the liberty, equally, of all individuals, as well as all corporations and organizations. No list of protected rights can be exhaustive, and he warns of new threats to rights of privacy in the years ahead, by way of drugs in the water supplies, for example.[3]" Also, he singles out one principle of justice, "no expropriation without just compensation," as particularly vulnerable to deepening inreads in a democratic age. Procedural safeguards, like resort to the courts, can be a mockery, he concludes, unless the courts have the freedom

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"Ibid., p. *206.*
"Ibid., pp. 210-11.
"Ibid., pp. 212-14.
"Hayek does not mention fluoride or, for that matter, chloride. I assume he would sanction the use of the latter drug, whose purpose is to protect everyone against hazards of contamination; while he would oppose fluoride, which at best is to the benefit of some, mainly children, whose parents might better teach them to be self-reliant and brush their teeth with fluoride toothpaste, or pay the penalty of tooth decay.

and the power to protect the citizen's private sphere against infringements by legally immaculate government policies and legislation.[37]

In a chapter on "Economic Policy and the Rule of Law" Hayek elaborates on the *general* implications of this position for the proper limits to the government's role in the economic system. The first cardinal principle is that no government measures, however expedient on other grounds, must ever tamper with the freedom of the market, the spontaneous forces of supply and demand. Hayek allows that limited state enterprise may be acceptable and advisable, so long as it does not become monopolistic or place actual or potential private competitors at a relative disadvantage.

Regulatory activities by the state are not necessarily incompatible with liberty, even though they nearly always will increase production costs. "Factory legislation" in the interest of health or safety, or the outlawing of hazardous products or production techniques, can be acceptable, advisable, or necessary, provided such legislation is general and inflexible enough to exclude discretionary powers for administrative agencies charged with controlling enforcement. This is the second cardinal principle: the individual or the corporation must know where he (it) stands, and never be beholden to or victimized by the arbitrary judgment of public officials, whether highly or lowly placed.

Hayek concludes that many categories of government action are completely incompatible with those basic principles: all direct price control, for one thing, and all quota systems, and all licencing systems that allow some and refuse others access to given trades,- with very few exceptions to be allowed.[38] Every system of price control violates both the cardinal principles just stated: arbitrariness is inevitable, and the market can no longer function freely. This goes for movable things, at least, though where property in land is concerned Hayek admits that matters are more complex : there

[37] *Op. cit.,* pp.214-19.

[38] These are important issues to Hayek, who accepts far-reaching consequences: Even a medical doctor should not require a licence to practice; as long as "M.D." is a protected title and thus a proof of professional qualification, the public is adequately protected. But he does allow that certain "intellectual and moral qualities" might legitimately be required of, say, people trading in poisons or firearms. *Op. cit.,* p. 227.

can be no complete liberty of land use, already because neighbors' interests can be at stake."

Hayek sees the increasing strength of the demands for social justice as one of the principal roots of the modern tendencies, in so many countries, toward *dirigisme* and welfare state measures, tendencies incompatible with the rule of law and with liberty, as he defines these terms. The government in a free society cannot use coercion, except in the enforcement of general rules, he concludes, and has therefore no business trying to "determine the material position of particular people or enforce distributive or 'social' justice . . the rule of law . precludes (for any government) the pursuit of distributive, as opposed to commutative, justice." [40]

4. As John Stuart Mill entitled the last chapter in *On Liberty* "Applications," so Hayek, too, devotes the third and last part of his treatise on liberty to practical applications of his general theory, chiefly in the realm of economic policies. "Freedom in the Welfare State" is the general heading, and the chapter headings run as follows: "The Decline of Socialism and the Rise of the Welfare State"; "Labor Unions and Employment"; "Social Security"; "Taxation and Redistribution"; "The Monetary Framework"; "Housing and Town Planning"; "Agriculture and Natural Resources"; and "Education and Research."

For my purposes not very much needs to be said about this part of the volume. I am concerned in this paper with Hayek's general political theory, and specific policy applications are of interest only to the extent that they illuminate the general principles.

Hayek disavows any ambition of expounding "a complete program of economic policy for a free society," but he wishes to consider in some detail various "comparatively new aspirations whose place in a free society is still uncertain" for the purpose of rescuing them "from the discredit. which over-ambitious attempts may well bring to all actions of the welfare state." [41]

Labor unions are engaging in coercive measures for the purpose of bringing wages well above their natural level as determined

[40] *Ibid.*, pp. 231-33.
[41] *Ibid.*, pp. 228-29.
[41] *Ibid.*, p. 262.

by supply and demand, Hayek argues. Economically this means increased unemployment, less efficient production, and a lower national product. Politically the monopoly powers of many unions mean a great deal of coercion, of workers no less than of employers. The more crucial the sector of the economy involved (the building trades are used as an example), the more the unions will stand to gain by ruthless pressure; and the gap between rich and poor unions will keep getting wider. Hayek wants union monopoly powers curbed, and warns that their present position cannot last, for the unions can function freely "only in a market economy which they are doing their best to destroy." [42]

In the field of social security, Hayek accepts as inevitable a public responsibility to provide for "the extreme needs of old age, unemployment, sickness, etc.," even though he would have preferred private insurance schemes to the widest possible extent. He warns against the increasing amount of dependency on giant bureaucracies with discretionary powers; also, he brands the purpose of income redistribution as illegitimate and tyrannical, with "a majority of takers who decide what they will take from a wealthier minority . . ." [43]

This last theme is further developed in the following chapter, on taxation, in which Hayek brands all *progressive* taxation -arbitrary and destructive of liberty. He does not object to slightly progressive tax *rates, up* to the point of compensating for the relatively higher proportion of *indirect* taxes paid by low-income classes. But any progression in substance must be arbitrary, he argues. The very idea of redistributing incomes or property relationships by way of taxation is destructive of law and liberty and "cannot be defended on grounds of justice." [44]

In a brief chapter on money, inflationary policies are seen as every shortsighted government's easy way out of budgetary problems, at the expense of most property owners and savers. Yet inflation, Hayek argues, "is probably the most important single factor in that vicious circle -wherein- one kind of government action makes more and more government control necessary." [45]

In a -chapter - on housing and town planning it is argued that

[42] *Ibid.,* p. *263* and Chapter *18.*
[43] ***Ibid.,*** *pp. 286, 289* and Chapter *19.*
[44] ***Ibid.,*** p. *322* and Chapter *20.*
[45] *Ibid.,* p. *338* and Chapter 21.

most systems of rent control, building regulations (beyond safety controls) and other measures of urban planning only compound the problems they seek to tackle, because the spontaneous energies and initiative of the free market are made inoperative; and people end up with fewer choices than they might have had. [48]

A similar argument is developed subsequently against proliferation of controls in agriculture and the use of natural resources. The "natural adjustment" to an increasingly urban industrial society is everywhere delayed, at great cost in money as well as incentives,- and this is one field in which Hayek charges that conservatives often have been as "guilty" as socialists, perhaps for sentimental or aesthetic reasons (to save family fanning as a way of life) as often as for economic reasons. Sentimental Hayek is not: "Indeed, we should be showing more respect for the dignity of man if we allowed certain ways of life to disappear altogether instead of preserving them as specimens of a past age." [47]

The self-interest of the private investor, operating without arbitrary interference from the government, offers the best hope for development also in the third world; and is also the best guarantee against the depletion of natural resources, in any economy, we are told. Forest depletion in the past was usually due to the fact that these resources were kept as public property and given over to private exploiters with no incentive for conservation. The gasoline motor "would never have revolutionized transport if its use had been limited to the then known supplies of oil ..." [48] Much of the modern argument for conservation rests on unreasoned fallacies, Hayek concludes; many natural resources should be considered expendable. All resource conservation "constitutes investment and should be judged by precisely the same criteria as all other investment ... To extend investment in the conservation of a particular resource to a point where the return is lower than the capital it uses would bring elsewhere would reduce future income below what it would otherwise be." And that, Hayek asserts, amounts to depriving, instead of providing for, the future. [49]

[47] *Ibid.,* Chapter 22.
[48] *Ibid.,* p. 364.
[49] *Ibid., p.* 370.
Ibid., p. 374 and Chapter 23.

5. Still following John Stuart Mill's example, Hayek devotes the last part of his discussion of applications to education, or, rather, "Education and Research. Like Mill, Hayek would like to minimize the role of the state in education, and he supports Milton Friedman's ideal of doing away with government schools "by giving the parents vouchers covering the cost of education of each child which they could hand over to schools of their choice." Hayek concedes the need for governmental schools in communities with too few children to keep the cost per child manageable for private enterprise, but for "the great majority of the population" private efforts should organize and manage the schools," with the government providing merely the basic finance and ensuring a minimum standard for all schools where the vouchers could be spent." [50]

Education is for Hayek a means to other aims rather than an end in itself, and he warns against educating more intellectuals than can profitably be employed, for an intellectual proletariat is a danger to any nation's political stability." If it were politically possible, as it might be with educational institutions mainly in private hands, the policy of prolonging education for large numbers should be reversed; "a society that wishes to get a maximum return from a limited expenditure on education should concentrate on the higher education of a relatively small elite ..." [52]

Yet, compulsory education for all, "up to a certain minimum standard," is desireable, for at least two purposes : (1) to communicate the knowledge and basic skills required "for the working of modern society," in job roles and citizen roles; and (2) to meet the "need for certain common standards of values,"-and here the successful policy of "Americanization" in the U.S. public school system is given as an admirable example, even though Hayek worries about the general dangers of public authority over educational institutions. [53]

On academic freedom his position is more complex. He would refuse tenure to Communists and to anyone else who "knowingly joins or supports any movement that is opposed to the very principles on which this privilege (tenure) rests"; and the in-

[50] ***Ibid.,*** **p.** 381; and Friedman, "The Role of Government in Education," in R. A. Solo (ed.) *Economics and the Public. Interest* (New Brunswick, 1955).
[51] *Op. cit.,* p. *383.*
[52] *1bid.,* p. *382.*
[53] ***Ibid.,*** p. *376-78.*

stitutions of learning must be protected "against the cruder kind of interference by political or economic interests .. . especially in the social sciences, where the pressure is often exercised in the name of highly idealistic and widely approved aims."[55] At the present time he sees the danger of outside interference receding, but he warns against the growing influence "of those who hold the purse strings," presumably the public and private foundations, in a period in which research keeps growing more costly. Marxist-inspired attacks in the 1930's "in the name of planning of science" have been repelled, says Hayek, but "it seems probable that the attempts to 'organize' scientific effort and to direct it to particular goals will reappear in new forms. The multiplicity of private foundations in the United States is reassuring to him, though."

Predictably, Hayek rejects considerations of "social justice" in educational policy. The fact that some youngsters are less gifted than others can be termed unjust, he argues, but a society that wishes to progress must adjust educational opportunity to individual capacity, rather than seek to hold the potential elite back. And parents with means who desire advanced education for their young should be free to push them ahead, since "a desire for knowledge is a bent that is likely to be transmitted through the family."[56] Besides, the rise of a meritocracy would be no blessing for those who fail to win out in the competition; in the words of D. V. Glass, "apparent justice may be more difficult to bear than injustice."[57]

But this last argument is a side issue to Hayek, I believe. The basic premises that guide his thought in the field of education, too, are not concerned with the feelings of individual losers, as much as with the potential contributions of those who are gifted and strong, and able to make the most of the blessings of liberty. Contributions to what? To progress? On these, more basic issues of general purpose Hayek is less than clear, and I am unable to push my attempt at a dispassionate interpretation of his position any further. I turn now to a critical evaluation of his argument.

[55] *Ibid.*, pp. 391-94.
[56] *Ibid.*, p. 386.
[57] *Ibid.*, p. 388; and D. V. Glass (ed.) *Social Mobility in Britain* (London, 1954), pp. 25-26.

III

Hayek seems blissfully unaware of being, as he in fact is, a special pleader for a particular class interest. His special pleading is firmly wrapped into the definitions of his key terms-first of all in his definitions of "liberty," "coercion," and "privilege."

A cynical critic might well have accused Hayek of dishonesty when he writes as if his were the only or the conventional or the "natural" definitions, on the assumption that he should know better. My own interpretation is that an eminent pupil of Ludwig von Mises and other leading Manchester-liberal economists may have come to feel so certain of knowing the answers to all economic problems that radical reflection about ethical or political value postulates have seemed needless. Liberals, too, can have an armor that no unpalatable idea can penetrate, and Manchester liberals may be more exposed to this hazard than most other kinds of liberals. A commitment to an "open society" is no guarantee of an open mind. In fact, Hayek's commitment to *laissez-faire* and to the cluster of preferred liberties associated with this doctrine appears to be held with a complete sense of certainty, even though he is able to discuss rationally certain very limited functions that he would allow for government in economic life (for example, providing care for the indigent, or providing efficiency information to farmers). Any evidence that large-scale free enterprise does not exist, or cannot work, seems to be ruled out. Social miseries resulting from competitive corporate enterprise, or from the absence of adequate social welfare legislation, are made tolerable to Hayek by his great learning, it would seem; and his ability to keep his humanitarian impulses in check reminds me of Rousseau's example of the philosopher who could go back to sleep after a murder had been committed under his window. [58]

Now it is true of any closed system of thought, whether capitalist

[58] "Nothing but such general evils as threaten the whole community can disturb the tranquil sleep of the philosopher, or tear him from his bed. A murder may with impunity be committed under his window; he has only to put his hands to his ears and argue a little with himself, to prevent nature, which is shocked within him, from identifying itself with the unfortunate sufferer. Uncivilized man has not this admirable talent, and for want of reason and wisdom, is always foolishly ready to obey the first promptings of humanity." Jean Jacques Rousseau, "Discourse on the Origin of Inequality," in *The Social Contract and Discourses* (New York, 1950; the essay first published 1754).

or socialist or vegetarian or what have you, that the key terms are chosen and defined shrewdly : in these definitions the seeds of the desired conclusions are not only planted but also safely sheltered from the winds of adverse facts. Mind you, this need not be a reflection on the shrewdness or the (dis) honesty of an individual writer. Most of us tend to gravitate toward the ideologies whose applications make us comfortable, or whose spokesmen we admire. It requires no base motives to be influenced by an eminent teacher, or to feel comfortable with an ideology that defends one's class interests. And so far I have not argued with the substance of Hayek's position; my immediate objective is only to expose the loaded terms he uses; and, further, his (objectively speaking) false pretense of presenting *a general* inquiry on liberty rather than one geared to special interests and to particularistic, not humanistic commitments.

"Freedom" and "liberty" are synonymous terms to Hayek. "Though I have a personal preference for the former, it seems that 'liberty' lends itself less to abuse." And he mentions Franklin D. Roosevelt's phrase "freedom from want" as an example of such abuse.[69] A state of liberty or freedom, Hayek defines, is "that condition of men in which coercion of some by others is reduced as much as is possible in society."[60] The criterion of freedom is one person's degree of "independence of the arbitrary will of another."—"In this sense 'freedom' refers solely to a relation of men to other men, and the only infringement on it is coercion by men. This means, in particular, that the range of physical possibilities from which a person can choose at a given moment has no direct relevance to freedom."[61] The needy and the poor are free if they are blessed with living in "a free country," one may infer.

The only evil that can negate the positive value of freedom is *coercion,* subsequently defined as "such control of the environment or circumstances of a person that, in order to avoid greater evil, he is forced to act not according to a coherent plan of his own but to serve the ends of another."[62] Or, in a briefer formulation,

[59] *Op. cit.,* note 1, p. 421.
[60] *Ibid.,* p. 11.
[61] *Ibid.,* p. 12.
[62] *Ibid.,* pp. 20-21.

coercion "occurs when one man's actions are made to serve another man's will, not for his own but for the other's purpose." [63]

We see right away an in-built preference for the demands of the strong, over the needs of the weak. Already Hayek's choice of definition of "freedom" (and of "coercion," its negation) makes it almost inevitable that he should consider the United States of today a country in which "the defense of the existing is often a defense of freedom." For an alternate view of America, which is based on a humanistic commitment, not a commitment to a parochial concept of freedom, take a recent statement by Edgar Z. Friedenberg: "American society is not designed to respond to needs, which is what losers have. Instead, it responds to demands, which are what winners are in a position to make." [64] Now, there are mountains of evidence, I think, with which Friedenberg's observation can be substantiated. Does it still seem reasonable to defend most American institutions, and in the name of *freedom?*

"Freedom" and "liberty" are emotion-packed words, and *The Constitution of Liberty is* presented as not just a scholarly treatise but also a plea to all academics, and those they can influence, to join in the noble crusade for liberty. The deception, of which the author is unaware, is manifest when "liberty" then is given a severely restricted definition, arbitrarily limited to liberties important mainly to those who are doing well within the system; the classes of people who dread interference with their further plans and ambitions, not the classes of people who desperately could use a little "arbitrary interference" to keep their children alive and well.

Reference has been made already to Hayek's use of the term "privilege," which is restricted to rights granted by the state to some and not to others. If the economic system, as in the United States, is stacking up enormous advantages to some classes, with the world as their playground, while other classes are doomed to "nasty, brutish, and short" lives, then this has nothing to do with "privilege" as Hayek uses this term, and is irrelevant to his crusade for liberty. Such considerations, to be more precise, are irrelevant, but his crusade is far from irrelevant to the plight

[63] *Ibid., p. 133.*

[64] "Bad Blood" (a review of Richard M. Titmuss, *The Gift Relationship.* New York, 1971), in *New Tork Review, May* 20, 1971, p. 8.

of the oppressed; his enemies are the champions of the poor and his aim is to perpetuate for others the blessings of the existing system.[65]

The word "oppression," Hayek proposes, "should refer only to a state of continuous acts of coercion."[66] It is resolved by definition, then, that the victims of an economic system cannot be oppressed; the only oppressed classes or individuals in the United States are those in whose business or pleasure government bureaucrats keep interfering. Abroad, the entire populations of the socialist countries are presumably, by his definition, oppressed, unlike those colonial or semi-colonial populations who are free to shift for themselves or to work at low wages for the owners of their countries. Actually, even the author may have felt that this particular definition will prove too hard to swallow, for the term "oppression" is dropped from further discussion as soon as it has been introduced.

It is unnecessary to document further the parochial nature of Hayek's key terms, or the fact that they are loaded in favor of the liberties of the strong and the wealthy. They evoke the spirit of liberty not of a Socrates but of a Callicles or a Thrysymachus.[87]

In Hayek's defense it must be said, though, that he is not in *favor* of poverty or social injustice. He just happens to believe that social inequality is essential to liberty, and that liberty, in his restricted sense, is necessary for the eventual abolition of poverty.

Liberty, then, is a means to something else, while also a value in itself. It is left obscure, unfortunately, what are the ultimate aims to be served. Hayek's faith in freedom rests, we are told, "on the belief that it will, on balance, release more forces for the good than for the bad."[67] Or, again: "It is wherever man reaches beyond his present self, where the new emerges and assessment lies in the future, that liberty ultimately shows its value."[68]

"His earlier, more popular *Road to Serfdom* (London, 1944) helped inaugurate an economic liberal revival in the United States," according to Murray N. Rothbard, in "Von Mises, Ludwig" in the *International Encyclopedia of the Social Sciences* (New York, 1968), Vol. 16, p. 381. Not before 1971 would a Republican president declare himself a Keynesian!

[66] *Op. cit.,* p. 135.

[67] Cf., respectively, Plato's *Gorgias* and his ***Republic.***

[68] *Ibid.,* p. 31.

[87] *Ibid., p.* 394.

In his bones Hayek is an aristocrat rather than a democrat. In so far as he assumes that wisdom will usually (unlike happiness) tend to be in richer supply in families and communities in which it is deliberately cultivated, I am inclined to agree with him. But in so far as he assumes, or even can tolerate such a notion, that a system that stymies and crushes and politically disarms its have-nots can be defended in the name of liberty for the haves, or even in the name of a hypothetical future liberty for the have-nots as well as the haves, I profoundly disagree. And I am appalled that a man with so much learning should not be wise enough to find room in his thoughts on liberty for the urgent needs of those who, in a competitive society, lose out in the struggle for affluence and education, or for their children. He occasionally acknowledges their existence but without a trace of compassion; the welfare of the losers appears expendable in his kind of a free society.

IV

Hayek's philosophy of maximal freedom for the affluent., is developed on the basis of loaded definitions, we have seen. It is also based on a number of substantive assumptions, a few of which will be examined now; assumptions about the nature of man and of social institutions and political processes. (Other assumptions, involving choice of aims and of value priorities, will be discussed in the concluding section of this paper).

About man's potentialities for generosity and individual responsibility Hayek takes, as also most conservatives do; a skeptical view. He is careful to distinguish, in Chapter 4, his kind of Burkean liberalism from the continental, rationalist school of liberalism 'based on a belief in the perfectibility of man. It is only within the framework of traditions, he asserts, "that human reason has grown and can successfully operate."'

But how do traditions emerge? Simply by proving themselves wise to the disinterested statesmen, scholars, or multitudes? In a reference to my *Structure of Freedom,* Hayek mistakenly refers to my interpretation of David Hume's position as if I were in agreement with Hayek's view: "Hume may be called a precursor to

7001j. cit., p. 57.

Darwin in the sphere of ethics. In effect, he proclaimed a doctrine of the survival of the fittest among human conventions-fittest not in terms of good teeth but in terms of maximum social utility." [71]

Hume is correct, I believe, but in our time it ought to be clear to any student of liberty that there is a next question to be considered: maximum utility in terms of whose interests? Institutions, like laws, reflect power structures and class interests; those that serve the interests of the powerful have a survival chance far above and beyond those that might merely serve the interests of the oppressed, in any social order. Essentially a social Darwinist himself, Hayek nowhere in his long book entertains the thought that some institutions might be very stable and perhaps centuries-old and yet be thoroughly oppressive. Karl Marx has called religion "the opiate of the people"; even those who hesitate to go that far might still concede that to praise traditions and to derogate the powers of reason of each new generation and of each individual is to blunt the cutting edge of every rebel's cry for an end to oppression and injustice.

Yet, Hayek goes further still, and insists, as we have seen, that unjust institutions are in the general interest, for "those lower down profit materially from the fact that others are ahead." Competition is the yeast of progress, he believes, and the only hope for a decent life for ordinary working people is in never-ending progress. He never, unfortunately, defines this key term, although he devotes his Chapter 3 to "the common sense of progress." The closest he comes to a definition is when he rejects "advance toward a known goal" and says he prefers "to think of progress as a process of formation and modification of the human intellect, a process of adaptation and learning in which not only the possibilities known to us but also our values and desires continually change. As progress consists in the discovery of the not yet known, its consequences must be unpredictable." [72]

What this view of progress amounts to, I think, is yet another line of defense against reason in politics. The "open society" is further fortified with "open criteria" for justifying whatever developments suit the country's economic rulers. Progress becomes,

[71] *Ibid.*, note 37 on p. 346, and *Structure of Freedom*. *Op. cit.*, p. 33.
[72] *Op. cit.*, p. 57.

in effect, what is good for General Motors and GM's competitors and customers. It becomes a truism, then, rather than an empirical observation to state, as Hayek does, that the enjoyment of personal success for large numbers depends on rapid progress, while stagnation or decline will lead to deprivation. [73]

Hayek may for all I know be a kindly man personally, but he could not care less, it would seem, about those in the third world who live in deepening poverty in a world dominated by the economic and military might of American capitalism. Human nature being what it is, Hayek writes, "we cannot feel (genuine concern) about the thousands or millions of unfortunates whom we know to exist in the world but whose individual circumstances we do not know."" Yet it is a political fact of life that the greater part of mankind "has only just awakened to the possibility of abolishing starvation, filth, and disease . . ." What can we do about this?- "Our task must be to continue to lead, to move ahead along the path which so many more are trying to tread in our wake . . . even a small decline in our rate of advance might be fatal to us.""

Let's use our elbows, then, and our napalm when necessary, and keep "progressing" ahead of the rest; this is the nature of a competitive world order, corresponding to the nature of competition in the free society of Manchester liberals. And the devil take the hindmost? That would perhaps be an unfair caricature of Hayek's position, for he says he believes that, eventually, the benefits of American and West European progress will trickle down to most of humanity (if they survive?). Yet precisely this thin humanistic veneer is what makes Hayek's message such a welcome boost to the forces of greed and oppression : like a promise of pie in the sky, the promise of *eventual* benefit to most of mankind provides a shallow justification, to many conservatives and liberals with shallow concerns for social or international justice, for continuing to enjoy the blessings and comforts of habitual middle-class liberties without guilty knowledge or a guilty conscience, or even much thought about the plight of others.

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[73] *1bid.,* pp. 41-42.
[74] *1bid.,* p. 84.
[75] *lbid.,* pp. *52-53.*

The most central part of Hayek's empirical argument is that a "free" market, in commodities and in wages, is essential to a "free" society. Part of this argument is true because it is tautological: every governmental interference, for example every fixing of a commodity price, violates the freedom of those immediately affected, but everybody else's also, by way of the precedent established. Only a "rule of law" that bars *any* discretionary powers to interfere can ensure a "free" market in commodities, as well as "freedom" from rule by a government with arbitrary discretionary powers.

Even the rule of law cannot, however, guarantee a free market in wages or salaries, although Hayek's argument seems quite contradictory on this issue. For workers are prone to organize and try to establish monopoly control of the supply of labor in given industries. Hayek warns them against doing this, but such behavior is not incompatible with a government's scrupulous adherence to principles of non-interference in economic processes. His remedy is to propose anti-trust laws directed against unions as well as against corporations; yet if such legislation were to keep wages down to "natural" levels of supply and demand it would have to ban any cooperation among unions that *might* coerce corporations, and there would not be much point in having unions. Could understandings on wage policies among corporations also be banned?

Only twelve years old, *The Constitution of Liberty* already seems like a very old book, describing conditions that long ago ceased to exist, even approximately. Excepting the tautological aspects, the proposition that "economic freedom" in Hayek's sense is a requirement of other liberties appears either false or irrelevant; false, in so far as extensive economic planning has gone on for a long time in most countries, without demonstrable reductions in the average citizen's liberties from arbitrary dictation in areas not directly affected by specific regulations. The average Swede, though he pays heavy taxes, is probably *at least* as protected in his privacy as is the average West German or American. Yet Hayek could always remind us that by "freedom" he means *not* placed at the mercy of social planners, and thus put his argument back in the realm of truisms again.

Mostly, I would argue, Hayek's argument for the freedom of the market is irrelevant in our time, in part because *his* priorities

of freedom make little. sense in human terms,[76] and in part because there is not and has not for a long time been a free market in most of the major commodities in the United States, let alone in Western Europe. There have been monopolies or oligopolies, and there have been government favors, not just occasional favors but structural favors, to pay political debts or to keep employment up or for any number of reasons. It is a pure illusion to assume, as Hayek does, that in *his* sense business in the United States operates mainly by an economics of the free market. Even the Republicans, as Adlai Stevenson once put it, have "been carried kicking and screaming into the twentieth century." Not Hayek.

There is also the problem that Hayek's "rule of law," admirably though his doctrine is related to past concepts and doctrines of legal and political theory, is an impossible concept to operationalize, as has been well demonstrated in a recent paper by Ronald Hamowy.[47] It is hard enough in criminal law to avoid entirely such miscarriages of justice as result from changes in society proceeding too fast for the law to keep up with them.[78] In commercial and other civil law it is plainly impossible to legislate with general rules about many new or potential conflicts and issues. What Hayek insists, though, is that there should be access to truly independent courts in all such conflicts,-courts with no commitments even to general principles of governmental policies. What *this* kind of rule of law ultimately amounts to, however, is not that arbitrariness in the solution of conflicts will be avoided but that the arbitrary decisions will be made, ultimately, by the Supreme Court rather than other branches of government. This may or may not be desirable, but Hayek's abstract defense of the rule of law does not offer much help in tackling the practical problems of which realms of conduct ought to be more and which less insulated from democratic controls,-"arbitrary" or not.

Yet I do not wish to deny *all* merit in Hayek's central argu-

[76] More important than a freedom from progressive taxation, I think most Americans would agree today, is a freedom from the indignities of suddenly being left with no income, regardless of whether this happens on account of the arbitrary decision of an employer or whether one is victimized by technological change.

[77] *Op. cit.*

[78] Cf. Warren Freedman. *Societal Behavior: New and Unique Rights of the Person* (Springfield, 1965).

ment. In sectors in the economy in which no basic human rights are at stake, and no urgent priorities of social justice, there is a valid argument for letting prices and wages loose, so that production and consumption levels can be left to regulate themselves. As long as basic human needs are protected, by all means let competitive and cooperative urges loose; let there be free markets in luxuries, and let there be ample opportunities to use leisure time in remunerative activities for those who so desire. Variety and experimentation are healthy in every society, and planners ought to study the free play of preferences in action, not just in questionnaires or by way of introspection. But the basic necessities of a decent life for all must come first, and that takes rational planning, with resources so large that only elected governments should be entrusted with them.

The rule of law is to be sure a desirable ideal to attempt to approximate, and the independence of the United States courts is one of the greatest achievements of the American civilization. Yet there have been periods in which the U.S. Supreme Court has been callous about human rights and solicitous only about privileged interests. Happily, the Warren Court inaugurated a period of somewhat increased concern for social justice in that branch of the government. There is much room for further improvement, however. In many other countries, to be sure, the room for improvement in the generality and the certainty of the law is even wider, including the socialist countries in which "socialist legality" has had a checkered history. Yet I can see no *necessary* contradiction between central socialist planning, decentralized administration, and a good approximation to the rule of law. Hayek's argument to the contrary is as unconvincing applied to an entirely socialist system as it is when applied, as he does, to more modest interventions by welfare state governments.

V

Anyone who sets out to write "on liberty" is bound to be a special pleader for certain liberties ahead of others. There is no such thing, of course, as an "objective" approach to basic value issues.

Now, value choices can be made implicitly as well as explicitly. It is the mark of honesty as well as of philosophical radicalism to

make as many value decisions as possible explicitly, and leave as few as possible implicit, whether by way of loaded definitions or by way of unquestioned assumptions. The ideal of honesty is within reach for all of us, and I certainly do not question Hayek's honesty. The ideal of philosophical radicalism, on the other hand, is one that can at best be approximated; we can never entirely escape unquestioned value assumptions or *some* terms that are loaded in desired and therefore sometimes unrecognized directions.

The Constitution of Liberty scores quite poorly on philosophical radicalism. Hayek himself would probably treat such a charge lightly; the word "radicalism" is presumably unattractive to him in most contexts and, what is more important, I doubt that he is committed, to the extent that I am, to the view that "unexamined assumptions are not worth having," if I may paraphrase a Socratic credo. Hayek's Burkean persuasion may well to some extent make a virtue of keeping one's mind within some of the more basic confines of the conventional wisdom. Who is Hayek, or Bay, to question whether traditional institutions and laws are, generally speaking, in the public interest?

Yet I believe most social scientists in our time will agree that all empirical statements, at least, however entrenched and hallowed by the conventional wisdom, in principle should be questioned as well as tested, and modified or discarded if disconfirmed. Not Hayek. His speculations about the inevitability of the destruction of liberty, or of the inescapable coming of totalitarian government, as the result of price controls or other government planning, are nowhere supported or hampered by evidence, nor clouded by suggestions of what kinds of evidence it would take to disconfirm his statements.

In *The Structure of Freedom I* did not set out to prove the merits of a particular economic system, but to investigate (1) how "freedom" could best be defined, in relation to human needs and to other basic values, and (2) what empirical knowledge seemed available in the social sciences about processes and institutions that tend to enlarge or diminish individual spheres of freedom. I did not, unlike Hayek, discover any economic system that would resolve all major problems of liberty. And in my subsequent work I have remained skeptical about all *isms* that would offer self-contained systems of empirical knowledge, invulnerable to research

in their central aspects (as distinct from research on peripheral problems of application).

Yet my conception of philosophical radicalism goes far beyond the notion that all factual beliefs should be subject to the challenge of research. I think all value statements, too, need to be open to question, *except* one: the intrinsic value of every human life. Formulations and delimitations must be questioned, of course (when, if ever, can warfare be justified? capital punishment? abortion? euthanasia?), but I would not sense any community of discourse with, or have any patience to discuss with, any person opposed to the *principle* of the sanctity of human life. Some fascists, particularly, have taken this position; I would in peacetime, at least, support their freedom of expression but would not wish to talk with them unless I had hopes of converting them to a more humane point of view.

The trouble with Hayek and perhaps with most Manchester liberals is not that they are fascists; quite clearly they are not. They would no doubt all *in principle* agree to the basic premise of the sanctity of life. Yet they would also agree to other, competing basic value principles, and, in Hayek's case at any rate, not acknowledge the contradictions or the need for explicit decisions about basic value priorities.

The first main part of *The Structure of Freedom* attempts to sort out some of the key normative and empirical issues involved in deciding on priorities among freedoms, and between freedom demands.[79] And quite deliberately "freedom" is defined broadly enough to encompass, in principle, *all* of man's most pressing needs, beginning with the need to stay alive.[80] Only by this approach, I believe, is it possible to conduct an inquiry on liberty that will be potentially useful to all men, as distinct from an inquiry

[79]Today I would be more comfortable with the term "freedom needs" in that context. See *Structure of Freedom*, pp. 126-36; and my "Needs, Wants, and Political Legitimacy," in *Canadian Journal of Political Science*, vol. I (1968), *pp.* 241-60.

[80]Barbara Wootton, a critic of the *Road to Serfdom*, agrees with Hayek's view that "freedom from want" is a misuse of the term "freedom." Hayek quotes Joan Robinson's reference to Franklin D. Roosevelt's phrase as a "noble pun." *Constitution of Liberty*. *Op. cit., p.* 421; Wootton, ***Freedom Under Planning*** (London, *1945)* p. 11; and Robinson, ***Private Enterprise or Public Control*** (London, 1943).

into special liberties appealing more to some than to others, or more needed by some than by others.

Hayek's book pursues a scholarly inquiry into ideas of freedom and justice and related concepts in the literature, classic and more modern, but nowhere attempts any philosophically radical questioning of the merits of his chosen definitions, in terms of the purposes to be served by his inquiry. As we have seen, "liberty" is to Hayek sometimes perhaps an end in itself, but also and mainly a means to "progress" and other vaguely conceived values. But the worst of it is that Hayek limits "liberty" to quite a narrow concept (above, section III), a concept whose relatedness to the whole range of needs of man is severely limited and, in any event, is left entirely unexplored. And yet he takes the liberty of calling his volume of special pleading "*The* Constitution of Liberty"!

My own volume, too, can be called a book of special pleading, to be sure. But my "special plea" is for the freedom of all men equally, not for the liberties favored mainly by certain classes of already favored individuals. I have referred to my attempt to relate the concept of freedom to the whole range of human needs; in addition, I introduce in my book the premise of the equal worth of every human life (which really follows, I believe, from the assumption of the sanctity of every human life), and draw the conclusion that the freedoms of the less free must take precedence, to the extent that there are conflicts, over the liberties of those who are better off. Or, in other words, in a society aspiring toward freedom, the most basic freedoms, or human rights, must take precedence over the less basic freedoms, as well as all social privileges. And I stipulate that the first priority concern of every government must be to protect and enlarge the basic freedoms of the least free, by way of expanding and enforcing human rights. Thus construed, the "cause of freedom" requires freedom from physical violence, and freedom from severe want, prior to freedom to invest, and prior to freedom from confiscation of many categories of property."

[81] *Structure of Freedom*. *Op. cit.*, chapters 1, 3, and 7; see also, for an approach to the term as well as the concept of *liberalism* that differs from Hayek's, my "Liberalism: Human Rights and Behavioral Science," in *Centennial Review*, vol. 4 (1960), pp. 331-53.-Unlike **Hayek,** I have in recent years gradually come to give up on the term "liberal" as a designation for my own position; see "Foundations of the Liberal **Make-Believe,**" **in** ***Inquiry,*** vol. 14, No. 2 (Summer, 1971).

On the issue of social justice the contrast between Hayek's position and mine is extreme. I incorporate the idea of social justice into my concept of freedom, by asserting the primacy of the freedom of the least free. Hayek, as we have seen, limits his conception of injustice to harm done by "the deliberate treatment of men by other men," and thus defines away any notion that contrasts in wealth or standards of living are as such unjust. His concept of justice has as little to do with degrees of human fortune or misery, then, as have his concepts of liberty and coercion. And it is made plausible that we should have as little government planning and indeed as little government as possible, to Hayek's followers at any rate, once the *problem* of social injustice, or justice, has been defined out of existence, almost, and the problem of coercion, or liberty, in effect has been *defined as* involving (mainly) governmental intereference in the business world. So narrow is Hayek's conception of "justice," and yet so oblivious is Hayek to the possibility of any merit in alternate concepts of justice, that he is able to say that the principle favoring progressive taxation "cannot be defended on grounds of justice." [82]

Hayek's lack of philosophical radicalism in the process of developing his key concepts makes perfect sense, of course, if his book is intended as an academic brief in behalf of the liberties of the private entrepreneur, rather than a study of the prerequisites of liberty in a broader sense. And that may well be where the issues should be left. Yet one would then be bound to ask, why did Hayek not write another popular book instead, another *Road to Serfdom,* instead of investing so much research into this volume; did he believe that a philosophically shallow argument for certain class interests could be made more persuasive by a conspicuous display of his impressive learning? Is this, too, a way of being a Burkean : to impress the reader in his solitary study with the rich traditions from which the author's own argument emerges?

The narrow confines of Hayek's humanistic imagination are nowhere as embarrassingly clear, it seems to me, as in his occasional references to the international scene, or in his last chapter,

[82] *Constitution of Liberty. Op. cit., p.* 322.

(before the Postscript) on education and research.-I have already made reference to Hayek's lack of concern for the long-suffering peoples in the colonial and postcolonial world. But he goes further, and actually attempts to scare his readers with what the consequences could be internationally, if once it were conceded, in the name of justice, that "citizenship or even residence in a country confers a claim to a particular standard of living": "Once the right of the majority to the benefits that minorities enjoy is recognized on a national scale, there is no reason why this should stop at the boundaries of the existing states."[83] This, but in reverse, sounds like Martin Luther King's "I had a dream."

In his chapter on education, Hayek makes it clear that he does not see education as an end in itself, or as, actually or even potentially, a means to enlarging the liberty of the individual. To get a maximum return from limited expenditures on education we should concentrate on educating a "comparatively small elite," he writes; and we should be careful to avoid educating more intellectuals than can profitably be employed.

Can it be made any clearer that human beings are seen as means rather than as ends in themselves,-as willing employees of the system, some to be kept busy by profitable employment, and the rest to be kept uneducated, or at least to be kept from becoming intellectuals? "There are few greater dangers to political stability than the existence of an intellectual proletariat who find no outlet for their learning."[84] Indeed, there are few greater dangers to perpetual privilege, we may hope, than philosophically radical political inquiry, provided critical thought is followed by political action. And provided each new generation insists on its right to make its own attempts, unencumbered by the myths and traditions of privilege, to build a more humane world.

The new force of this insistence, in so many of our schools and universities, represents to me the promise of a new, philosophically more radical political education in America in the 1970's.

Christian Bay

University of Alberta

[83] *Ibid.*, pp. 101-02.
[84] *Ibid.*, p. 383.