Humane Studies Review

Volume 4, Number 1 *Winter 1986 – 87*

Inside HSR:

- What are the critics of classical liberalism saying? What are liberals saying in response? Chandran Kukathas surveys the key communitarian criticisms and suggests how liberals can reply.
- Leonard P. Liggio discusses the new interest in legal evolution in a review essay.
- Crosscurrents.

Reviews

An Economist Looks at His Science
by Tom G. Palmer

The Rhetoric of Economics
by Donald McCloskey
(Madison: University of Wisconsin, 1985)

In his remarkable work on the method of the social sciences, *Theory and History,* the Austrian economist Ludwig von Mises sought to demonstrate the firm scientific grounding of the sciences of man. He did so by insisting on a methodological dualism, one method for the sciences of nature, another for the sciences of man. The latter, notably economics, seeking to repeat the successes of the "hard sciences," notably physics, had embraced the account of scientific progress most commonly associated with that success: positivism.

Positivism was the philosopher's attempt to legislate for the scientific practitioner, to demarcate science from nonscience, sense from nonsense, and thereby to reclaim the traditional crown of the "Queen of the Sciences" for philosophy. Mises, fully aware of the dangers of this legislative effort for the rigor and fruitfulness of the science of economics, opposed this movement by setting

(continued on page 12)

Current Issues in History

Tax Revolts in American History
by David T. Beito

The United States owes its birth to a tax revolt. Even so, the history of taxpayer protests has been virtually ignored by historians. Remarkably, few studies deal with the politics of taxation — much less tax revolt — after the post-Revolutionary era. The comparison with labor history is especially revealing. Newsletters of myriad unions, sometimes very obscure, have been preserved with diligence. Secondary literature, manuscript collections, and oral interviews abound for the interested researcher. Labor union officials can draw on a rich folklore and tradition, which historians have documented, fortified, and expanded. The organizers of today's taxpayer protests know next to nothing about their precursors in the eighteenth, nineteenth, and twentieth centuries. By contrast, one would have to search long to find a major union leader who has never heard of Samuel Gompers or the sit-down strikes of the 1930s. The lack of historical writing in this area does not stem from a paucity of potential source material. Preliminary work in the field of taxpayer history points to a treasure trove of unexploited opportunities.

Dall W. Forsythe's *Taxation and Political Change in the Young Nation, 1781-1833* (1977) remains the best overview of federal tax protest in the early national period. Forsythe traced the machinations of nationalists like Alexander Hamilton, secretary of the Treasury under George Washington. Hamilton believed that a national debt was a "blessing" because it instilled an "habitual sense of obligation" of the people toward the new central government. To finance the debt created by his policies, Hamilton shepherded into law an excise tax on whiskey.[1]

This particular tax sparked the Whiskey Rebellion, the first political crisis in the postindependence period. Rebellion against the tax ranged far and wide but proved strongest in the rural areas of western Pennsylvania. Angry farmers tarred and feathered tax-collectors and erected liberty poles — the traditional American call for revolution. In the main, however, resistance took the form of nonviolent refusal to pay. The federal government initiated most of the violence. President Washington ordered the states to raise an army of 13,000 to suppress the rebellion. Hamilton, the *de facto* commander of the forces, proclaimed in Wagnerian terms: "Whenever the

(continued on page 2)

IHS The Institute for Humane Studies

at George Mason University

Tax Revolts in American History (continued from page 1)

government appears in arms, it ought to appear like a Hercules, and inspire respect by the display of Strength. The consideration of expense is of no moment compared with the advantages of energy." Rent by internal factionalism and overwhelmed by the superior force of federal troops, the rebellion collapsed. The troops

During the Whiskey Rebellion Hamilton proclaimed, "Whenever the government appears in arms, it ought to appear like a Hercules, and inspire respect by the display of Strength."

obliterated the organized resistance by arresting the ringleaders of the rebellion.[2]

The historiographical literature has, on the whole, pictured the whiskey rebels in a highly negative light. Writers on the subject have fostered the stereotype of these resisters as cranky malcontents addicted to hard liquor. Actually, western farmers depended on whiskey for a variety of basic needs. They gave it a prominent place as both a medicinal drug and as a unit of currency.

Forsythe employed a provocative theoretical schema in his historical account. He underscored the violence inherent in taxation; in fact, he dubbed the whiskey levy an "initiative in extraction." As Forsythe put it, "'[e]xtraction' is an ugly but necessary term that neatly summarizes the complex strategies governments adopt to assure themselves adequate flows of revenues. Once so stated, it seems quite obvious that rulers cannot develop a central state apparatus without some degree of capacity to extract revenues from the subject population of a nation."[3]

Historians have only begun to unearth information revealing an extensive pattern of tax protest in the nineteenth century. Until recently, most work dealing with government financing during this period centered around the perennial debates over the tariff. The limited scope of historical study had unduly shifted attention from the main arena of tax resistance in the nineteenth century — the states and localities.

Unfortunately, chroniclers and interpreters of local history have been equally culpable of skirting around taxation issues. Until the 1950s, historians took their cues from the Charles Beard school of economic determinism. In the 1960s and 1970s, Paul Kleppner and Lee Benson, the so-called ethnoculturalists, shifted the center of debate toward the role of religious affiliation and ethnic background. Although the ethnoculturalists have added a new dimension to our understanding of American history, their work has not remedied the neglect of tax revolt. Neither economic class nor ethnic and religious categories apply well to the most debated, and frequently most explosive, issues at the local level: where and how government levied and distributed tax money.

John C. Calhoun, an antebellum U.S. Senator and political philosopher, pointed the way to a theory of tax revolt. Calhoun asserted in his *Disquisition on Government* that the State, by its fiscal action, created two classes in society: "the net-taxpayers" who "bear exclusively the burden of supporting the government" and the "net tax-consumers" who are the "recipients of their proceeds through disbursements and who are, in fact, supported by the government." Accordingly, "the effect of this [government taxation policy] is to place them in antagonistic relations . . . every increase is to enrich and strengthen the one and weaken the other."[4]

In recent years a small but growing contingent of historians have turned their attention to the history of tax protests in the nineteenth century. Two books stand out in this still sparse field, the *Secrets of the Tax Revolt* by James Ring Adams (1984) and *The Money Machines: The Breakdown and Reform in Governmental and Party Finance in the North, 1860-1920* by Clifton Yearly (1970). Yearly wrote from the perspective of a professional historian; Adams is a journalist with the *Wall Street Journal*. Although neither evoked Calhoun, both in their own way buttressed the empirical weight of his taxpayer/tax-consumer dichotomy. Adams's insights about the political struggles over proposals for tax subsidies for canal building are a welcome contrast to the many historians who depict the proponents of tax-financed canal projects as vaguely visionary statesmen who realized the need for government to promote industrialization.

Looking more closely at the historical record, Adams found that backers of tax-funded schemes, like the Erie Canal, usually seemed more motivated by parochial concerns than by a disinterested long-term strategy of economic development. Opponents of these projects, on the other hand, often proved prophetic in their warnings about the dangers of government's subsidizing one form of transportation at the expense of another.

Unlike Adams, Yearly did not focus on tax resistance *per se*. Instead, he explored at length the uneasy and complex relationship between big-city political machines and middle-class taxpayers. In most urban areas during the nineteenth century, owners of real estate — usually a minority of the citizens — paid virtually all the local taxes. These taxpayers resented having to pay for the spending programs voted in by the majority of nontaxpayers. According to Yearly, political machines depended on nontaxpaying voters for their base of support. Nontaxpayers not only included the poor but also the wealthy owners of untaxed personal property. As Yearly put it, owners of real estate had become convinced that "they were financing both the revels of the new wealth and bread and circuses of the new democracy."[5]

The relationship between municipal annexation and taxpayers' resistance stands out as another prime research opportunity for historians. Annexation describes the standard municipal predilection to expand territorially into the municipal outskirts. Municipal annexation frequently took place against the expressed wishes of the inhabitants in the territory to be annexed. The annexation wave hit its peak in the late nineteenth and early twentieth

(continued on page 4)

Bibliographic Essay

Liberalism and Its Critics
by Chandran Kukathas

But such is the nature of the human mind, that it always lays hold on every mind that approaches it; and as it is wonderfully fortified by an unanimity of sentiments, so it is shocked and disturbed by any contrariety.
— David Hume, "Of Parties in General,"
Essays Moral, Political and Literary

Human beings disagree. Within and across all societies people display differences of outlook or inclination when confronted by questions about matters of fact or of value. Indeed, they differ over the very nature of such questions: over whether or not matters of fact *are* questions of value. Over some of the most important questions, their disagreements have manifested themselves in violent conflicts: in wars and in civil wars. Over less important issues, their disagreements appear as more or less amicable debates about policy and practice. What is to count as an important issue is itself, of course, an important issue.

Perhaps none of this is really so surprising. For all our disputes reflect our preoccupation with what might be called Socrates's question: the question of how one should live. And that, Socrates (or Plato) tells us, is no trifling matter. (*Republic* 352d)

Plato, as a philosopher, had his own answer to offer. But moral and political theorists continue to disagree and to put forward different answers to the great question of practical philosophy. It is at once difficult and all too easy to categorize philosophers and their answers. Nonetheless, in order to assess a contemporary debate among philosophers about some of the fundamental questions of moral and political philosophy, I propose to distinguish two kinds of answers. The answers are characterized by their attitudes toward the fact of human disagreement.

The first kind of answer is troubled by the existence of disagreement, by the plurality of values evident in a society. And it says, in effect, that the good society must be one in which there is agreement about substantive (as against mere procedural) values. The polity is thus seen as a *community*, united by a shared moral outlook and sustained by institutions that embody its moral values. To the extent that (fundamental) values are plural, the polity is in danger, for if there is no shared conception of human ends or purposes, of what is to count as rational choice, or of how life should be lived, community will break

***Humane Studies Review** is published three times during the academic year by the Institute for Humane Studies at George Mason University.*
Editor: Tom G. Palmer
Managing Editor: Sheldon L. Richman
Contributing Editors: Walter E. Grinder, Leonard P. Liggio, Ralph Raico
Art Director: Margo Reeves

down. And the individual will be left rootless, alone, and unable to seek the good life in any meaningful sense.

The second kind of answer also recognizes the fact of human disagreement. And it acknowledges that disagreement can lead to conflict that threatens the very survival of society. But, unlike the first kind of answer, it does not suggest that any probable polity must be a community that shares a substantive moral view of the proper ends of human life. Rather, it emphasizes that human ends must be *chosen*. And the proper function of the polity is to provide the forum within which to prevent or settle the conflicts that might arise because people choose otherwise incompatible ends. In this picture the polity is an association of *individuals* or communities, joined not so much by a shared view of the proper ends of life as by agreement to coexist in peace, according to certain norms, despite their differences. Political association, on this view, is an *artifice* and the product of individual *will*. (For a fuller discussion of this see Patrick Riley, *Will and Political Legitimacy*.)

The conflict between these two kinds of answers has been brought into sharp focus in a recent controversy in Anglo-American social and political theory. The publication (in 1971) of John Rawls's *Theory of Justice* generated a new interest in (and a considerable literature on) substantive questions of political theory. It also brought to the fore a series of critics who have given louder voice to the challenge that no liberal, individualist answer to the fundamental questions of political theory can be coherent or plausible. Some have gone further. They would assert that no political society whose institutions are imbued with individualist presuppositions can endure, let alone flourish. Those who see greater coherence in the liberal stance disagree.

This controversy is very much a current one. And an examination of its literature should afford us a clearer picture of the debate between liberalism and its critics: of the character of the arguments put against the liberal stance, of the quality of those arguments, of the adequacy of the liberal response, and, perhaps most importantly, of what work needs to be done by those approaching social and political theory from a liberal point of view.

A recent book offers some clues as to what most concerns the critics of liberalism. *Habits of the Heart: Individualism and Commitment in American Life* by Robert N. Bellah, *et al.* (Berkeley and Los Angeles: University of California Press, 1985), warns that while Americans appear to cherish freedom as their most important value, their "individualism" and lack of any "common conceptions of the ends of the good life" tend to isolate them from one another "and thereby undermine the conditions of freedom." Without a public philosophy that aims directly at securing the public good, this individualism, already grown "cancerous," will spread and destroy what little remains of America's public culture. What individualism does is encourage the pursuit of *private* success at the expense of any concern for the preservation of "a more genuinely integrated societal community." This is already evident in the "extreme fragmentation of the modern world"; what is not so evident to Americans, Bellah and his colleagues argue, is

(continued on page 6)

Tax Revolts in American History (continued from page 2)

centuries. Historian Kenneth Jackson has accurately dubbed this practice "urban imperialism."[6]

Unfortunately, Jackson, like many other urban historians, underrates the crucial common denominator of annexation campaigns: the search for an expanded tax base. As downtown areas decayed, city politicians turned to annexation as a means to extract tax money from more prosperous taxpayers. That the annexation movement finally stalled by the 1920s and 1930s was due in no small part to taxpayers' resistance. As taxpayers in outlying areas increased in number and improved their economic status, they were in a better position to blunt the territorial designs of municipal neighbors.

The annexation movement was closely connected to the demise of the special assessment. Until at least the turn of the century, Americans had generally adhered to the policy that the cost of road building, repairs, and many other city services should be paid for by the individuals directly affected and not by the taxpayers as a whole. Invariably, these costs were met by user-based special assessments. In most localities, a special assessment could not even be levied without the consent of three-fourths of the parties directly concerned. The substitution of general-tax financing for the special assessment made urban annexation campaigns much easier to wage.

In most respects, however, the period between 1900 and 1929 represented a lull in tax resistance. Taxation, though always an important issue at the local level, did not bite hard enough to incite substantive tax rebellions of either a legal or illegal nature. Tax strikes do not seem to have been contemplated, much less practiced, and legal limits on property taxation — which had been all the rage in the late nineteenth century — did not enjoy a renaissance.

The 1929 crash introduced many Americans, who had previously taken matters of public finance for granted, to the painful realities of an unprecedented tax burden. Real-estate values plummeted while assessments and tax rates stayed high. Taxes as a percentage of national income nearly doubled from 11.61 percent in 1929 to 21.5 in 1932. In my dissertation, "Striking Against the State: Taxpayer Revolts During the American Great Depression, 1930-1935," (University of Wisconsin — Madison, 1986) I explored how this rising tax load sparked one of the least studied tax protest movements in American history.

Between 1932 and 1934, seven states put into place overall limitations on the general property tax; six through popular referenda and initiative, and one by a vote of the state legislature. Several dozen limitations won enactment at the local level. In addition, every state and hundreds of counties witnessed the formation of taxpayer and economy leagues. Measured by the yardstick of numbers of organizations, three thousand by one reliable estimate, the tax revolt of the 1970s looks puny by comparison.

By far the largest, and most publicized, tax strike took place in Chicago. The group that led the strike, the Association of Real Estate Taxpayers (ARET), boasted thirty thousand members. Essentially, ARET, founded in 1930, operated as a cooperative legal service. Each member paid the association one percent of his tax bills plus a legal fee of $10 ($5 for taxes under $200). In return, ARET hired lawyers to challenge the constitutionality of high real-estate tax assessments. Pending a decision by the U.S. Supreme Court, ARET's leaders recommended that members not pay any taxes.

Predictably, ARET's actions outraged local politicians. Mayor Anton Cermak, the founder of the Democratic political machine later controlled by Richard Daley, tried to paint ARET's executive board as a "board of racketeers." Cermak and other local politicians repeatedly portrayed the strikers as "anarchists" and "public enemies." Irvin A. Wilson, the president of the Chicago Principals Club, called the strike the "most dangerous form of terrorism and public disorder." Noting that Chicago's tax delinquency had reached 40 percent of levies, he charged "[f]orty percent citizenship is no less dangerous and perilous to the government of America today than it was in the days of Benedict Arnold."

The 1929 crash introduced many Americans, who had previously taken matters of public finance for granted, to the painful realities of an unprecedented tax burden.

Politicians, bureaucrats, and municipal creditors branded the strike as a conspiracy of wealthy "speculators." Using assessment records and the city directory, I discovered the inaccuracy of this characterization. Strikers were more likely to be skilled blue-collar workers and small proprietors. The foes of the strike, on the other hand, fit well ARET's characterization of a "tax spender" class.

The strikers downplayed concrete political proposals of any kind and staked their hopes on court litigation. Nevertheless, their campaign had genuine antistatist overtones. The president of ARET called for slashing the city government's budget by one-third. John J. Mangan, a member of ARET's Board of Advisors, supported a reduction of 60 percent. Mangan regarded the strike as the best way to force politicians to "relinquish the powers they have built up through governmental machinery and the allotment of jobs . . . which have no natural part of government. The only time the politician understands the people mean business is when the money is shut off. So shut the money off!"

For a while, the strikers enjoyed enormous success with their legal strategy. A Cook County judge invalidated all property taxes for a period of months. The city government went to a hand-to-mouth existence, depending on loans from local banks and "tax anticipation warrants" payable in future levies. The consumers of local taxes formed campaigns to break the strike. The teachers' unions and the leading bankers in the city cooperated to promote laws to prohibit tax strikes and abolish the elective assessor, and supported criminal prosecution of the strikers. The banks, of course, depended on restored tax levies to insure repayment of their loans to the city government.

To suppress the strike, the city council passed a remarkably anticivil-libertarian law that approved cutting off water to strikers and denying them all access to "public property," including roads, sidewalks, switchtracks; in other words, the right to do any business at all. The mayor even wrote a letter to the Federal Radio Commission (the predecessor of the FCC) urging that strikers be forced off the radio for "obstructing" government. Buffeted by political coercion and torn by internal factionalism, the strike collapsed in 1933. Many leaders of ARET saw their property fall under government management through a "tax receivership" law enacted by the Illinois state legislature at the behest of the city government.

From the beginning, ARET's leaders made critical strategic errors. They miscalculated by gambling everything on court litigation. In a fight like this, the checks and balances of government could be shunted aside. As tax-consumers, politicians and judges alike shared a common interest in destroying, not in protecting, ARET. As Hayden Bell, Cook County's States Attorney, put it, "Such citizens [tax strikers] stand willfully opposed to government. They would not have much legal standing in court." ARET particularly erred in not formulating a fallback strategy. Consequently, when litigation failed, it had no other recourse.

The strikers lacked a well-articulated program. ARET called for reducing government's size, but avoided specifics. Considering the radical implications of its tax reduction program, such a strategy had obvious shortcomings. Had ARET been more forthright, it may have stood a better chance of winning more support from elements friendly to tax reduction in the business community and the press.

ARET's biggest blind spot was its inability to frame a convincing defense of nonpayment. For a while, it could take refuge in trumpeting the questionable legal basis of tax levies. When the courts ruled against this premise, strikers were left without an alternative justification of nonpayment. Adverse rulings left them at a still greater loss to answer the allegation that the tax strike led to anarchy.

Tax protesters elsewhere in the country generally resorted to less radical strategies, like tax limitation. Nevertheless, the contours of the debate paralleled the confrontation in Chicago. Wherever proposed, tax-reduction and -limitation initiatives ran into predictable opposition from state employees, municipal reformers, and others who depended directly or indirectly on tax money. Teachers associations and municipal leagues formed the core of unsuccessful campaigns against property-tax referenda in Michigan, Ohio, Indiana, and Washington.

In nearly every case, resisters advanced a theory of class very much in the Calhounian mould of taxpayers vs. tax-consumers. Harley Lutz, a leading public-finance economist and enemy of tax revolts, seemed taken aback by the degree to which resisters played up the class theme. He singled out their penchant "of speaking and perhaps thinking, of the taxpayers as one group, and of those responsible for public policy as another quite different group."

The federal government mobilized against local tax delinquency and resistance. It loaned money to homeowners through the Home Owners' Loan Corporation, thus co-opting many potential recruits to the tax-protest movement. The Public Works Administration (PWA) denied subsidies to several local and state governments because they had enacted tax-limitation laws. Throughout the country municipal bondholders, politicians, teachers, and other tax-consumers formed "pay your taxes" campaigns to stimulate taxpaying. These efforts emulated the propaganda techniques of the World War I liberty-bond campaigns.

By 1935, the tax revolt was in serious decline. Tax strikes almost disappeared and tax limitations lost increasingly at the polls. More than any other factor, resistance collapsed due to its own internal weaknesses. Like their colleagues in Chicago, tax-resisters avoided specifics about spending reductions and contented themselves with issuing vague calls against government "extravagance." The antistatist aspects of the revolt, though quite genuine, never had time to jell into a well-thought-out ideological program. Even so, the tax-rebels of the 1930s are proof of a deeply held and durable American popular suspicion of paternalistic bureaucracy and the expansionist state. Antistatism survived, indeed thrived, during the worst years of economic decline in the country's history.

Few fields other than taxpayers' history have such potential to shake up American historiography. The interested researcher has almost limitless opportunities to do publishable work on the general subject of taxation history — not to mention taxpayer revolts. Classical liberal historians are in a particularly advantageous position to offer new insights into this long-neglected field. They can lay the necessary groundwork to make taxpayers' history into a pathbreaking subdiscipline in American history.

Notes

[1]Dall W. Forsythe, *Taxation and Political Change in the Young Nation* (New York: Columbia University Press, 1977), p. 22.

[2]Forsythe, p. 48.

[3]Forsythe, p. 1.

[4]John C. Calhoun, *A Disquisition on Government and Selections from the Discourse* (Indianapolis: Bobbs-Merrill, 1953), p. 17.

[5]Clifton Yearly, *The Money Machines: The Breakdown and Reform of Governmental and Party Finance in the North, 1860-1920* (Albany: State University of New York Press, 1970), p. 250.

[6]Kenneth T. Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985), p. 145.

David Beito is a Postdoctoral Fellow of the Institute for Humane Studies at George Mason University.

Liberalism and Its Critics (continued from page 3)

that it is this fragmentation "that really threatens our individuation; that what is best in our separation and individuation, our sense of dignity and autonomy as persons, requires a new integration if it is to be sustained."

Habits of the Heart is not a work of philosophy in any conventional sense. Written by self-conscious followers of Tocqueville, it focuses on the morés, opinions, and attitudes (the "habits of the heart") of the American people. It is cast as a report of and commentary on some 250 extended interviews conducted with white, middle-class, professional Americans. The conclusion it reaches on the basis of this curious sample is that Americans share few common values and are unable to offer "adequate" reasons for holding them. Part of the problem is the very language of individualism which, as "the primary American language of self-understanding, limits the ways in which people think." Thus even when not seeking purely material goods, Americans dissatisfied in the context of their "damaged social ecology" find the "allure of the packaged good life" too strong to resist.

As a work of political philosophy *Habits of the Heart* is scarcely worth a second glance since it contains little more than assertion, and nothing approaching a sustained argument. As social theory it is of no value for much the same reason. And it has little of interest to say about the way out of our present "predicament" except to warn, somewhat melodramatically, that we hover on the "very brink of disaster," "slide toward the abyss," and that "unless we begin to repair the damage to our social ecology, we will destroy ourselves long before natural ecological disaster has time to be realized."

What this book does offer, however, is evidence of the persistence of what we might call the communitarian *crie de coeur*: that a society composed of a diversity of moral traditions, embracing different values, united only by individualist principles or norms, is no kind of society at all. And it indicates clearly that, for communitarians generally, the most favored solutions to our ills involve the creation of institutions concerned directly to sustain and preserve traditions and communities.

For a more rigorous and sustained *analysis* of the inadequacy of individualism, however, we must look elsewhere: to the philosophical writings of Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer.

In his widely discussed book *After Virtue: A Study in Moral Theory* (London: Duckworth, 1981; revised edition 1986), MacIntyre offers grim counsel: "What matters at this stage is the construction of local forms of community within which civility and the intellectual and moral life can be sustained through the new dark ages which are already upon us." The demise of what he calls the "tradition of the virtues" has led to our being governed not by any rational moral tradition but by a politics that amounts to little more than "civil war carried on by other means": the barbarians no longer strain against our frontiers but "have already been governing us for quite some time." *After Virtue* presents a philosophical history of Western moral theory that depicts the advent of the Enlightenment as the crucial chapter in the demise of a rational moral tradition. In this period, MacIntyre suggests, morality rightly understood was transformed, fragmented, and ultimately displaced. For this period saw a "change of belief" that was manifested, not only in the secularization of Protestantism, but also in a change in "the modes of belief." These social and philosophical changes raised key questions about the justification of belief, especially moral belief. "Morality" became "the name for that particular sphere in which rules of conduct that were neither theological nor legal nor aesthetic are allowed a cultural space of their own." And it was when moral theory was distinguished from theological, legal, and aesthetic doctrine that the project of an independent rational justification of morality became the central concern of Northern European culture.

For a more rigorous and sustained analysis of the inadequacy of individualism we must look to the philosophical writings of Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer.

MacIntyre's thesis is that the breakdown of this project provided the historical background against which the predicaments of our own liberal individualist culture become intelligible. And he offers two critical observations. First, that the project of justifying morality *had* to fail because of its very nature. And second, that it is the very fact that we continue to engage in this hopeless undertaking that constitutes our predicament. It is implausible to expect that social arrangements be assessed from some disinterested, impartial, external point of view and still hope that they be judged by standards that have genuine moral or aesthetic worth. Thus, in a more recent article ("Moral Arguments and Social Contexts," *Journal of Philosophy*, 80, October 1983) he observes: "Only within a community with shared beliefs about goods, and shared dispositions educated in accordance with those beliefs, both rooted in shared practices, can practical reason-giving be an ordered, teachable activity with standards of success and failure."

The evidence he offers to defend this account of "our predicament" is, once again, the existence of disagreement or, as he puts it, "intellectual and social dissensus." He, for one, is troubled by the fact that Lester Thurow gives us one explanation of our economic ills while Thomas Sowell offers us another — for we seem to have no clear standards by which to decide between them. And the persistence of disagreement about such issues as nuclear armament and abortion, for MacIntyre, further indicates that liberal society has no shared moral first principles by which its conflicts can be resolved.

Michael Sandel's much less ambitious book, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), expresses some similar concerns,

but also defends the claim that the problem with liberalism lies in its aspiration to make *justice* its first principle. For, as he makes clear in a later article ("The Unencumbered Self," *Political Theory*, 1984), he thinks that a polity governed by principles of procedural justice is neither a coherent nor a plausible ideal.

Sandel's book appears initially as a study of Rawls's political theory; but to so describe it would be misleading. For he takes Rawls as the proper focus for study only because the crucial presuppositions of liberal theory can, he thinks, be found in Rawls's theory of justice. Thus Sandel makes many more general claims about liberalism in the conclusion, which is reprinted in a collection, edited by him, entitled *Liberalism and its Critics* (Oxford: Blackwell, 1985). What liberalism asks of us, he says, is that we view ourselves as creatures of a certain kind, related to our circumstances in a certain way: as separate selves, independent of the real interests and attachments we may have at any moment, "never identified by our aims but always capable of standing back to survey and assess and possibly to revise them." From this perspective, he says, liberalism asks us to *construct* principles of justice, and requires us to accept allegiance to these principles as the first of the virtues. Such a demand could only be made in a world without any objective moral order: "Only a world ungoverned by a purposive order leaves principles of justice open to human construction and conceptions of the good open to individual choice."

What Sandel finds deeply implausible in all this is that liberalism's requirement that the self be independent is no mere psychological matter. It is not simply asking us to summon the detachment necessary to stand outside our values and ends. Rather, it insists that we regard ourselves as the bearers of selves distinct from our values and ends. This is an epistemological claim. But once the bounds of the self are no longer fixed by its "constitutive" attachments, it is no longer possible to distinguish clearly between the public and private dimensions of individual life. For what kinds of selves (public? private?) are individuals without interests or attachments? It becomes impossible to describe the liberal polity as an association of private *selves*. And as a contractual association it is impossible to say what the terms of its agreement might be since we cannot even identify the character of the contracting parties, let alone specify what bargains they might strike in constructing a political order.

This distancing of the self from its ends is the root of liberalism's difficulties, in Sandel's argument. For it fails to recognize that the self is not an independent construct but, in some important sense, a political construct. "By putting the self beyond the reach of politics, it makes human agency an article of faith rather than an object of continuing attention and concern, a premise of politics rather than its precarious achievement."

Similar charges are laid at the door of liberal theory by Charles Taylor. Less rigorous and consistent than Sandel and less interesting and imaginative than MacIntyre, Taylor is nonetheless widely regarded as a significant critic of liberalism. Two volumes of his *Philosophical Papers*, containing several essays criticizing liberal individualism, were published recently: *Human Agency and Language: Philosophical Papers*, volume 1 (Cambridge: Cambridge University Press, 1985), and *Philosophy and the Human Sciences: Philosophical Papers*, volume 2 (Cambridge: Cambridge University Press, 1985).

Taylor's fundamental charge is that liberal theory gives priority to the individual's choice of ends and, thus, places individual rights above the claims of society. The unwarranted assumption of liberal thought, in Taylor's view, is that man can be regarded as self-sufficient, rational and autonomous, independent of society. Indeed, liberalism conceives of man "atomistically" and is, for this reason, unable to adequately explain the fact of human sociability.

This failure has more important implications. Because liberal institutions are founded on a mistaken account of man, those institutions themselves have an "atomizing" effect on individuals. For, by focusing so much on individual "rights," liberal institutions fail to consider the importance of sustaining the capacities that make individual choice possible. To do this, in his view, would require institutions that were concerned much more to ensure that the social context within which individuals operate is one that helps to nurture these capacities.

These three critics of liberalism share a common pedigree. All consider themselves to be challenging liberal individualism from the standpoint of a superior moral tradition: an Aristotelian tradition that emphasizes man's social and political character, and stresses his rootedness in his own peculiar *historical* traditions. For Sandel and Taylor, this also means viewing the modern world of liberalism in the light of Hegel's criticisms of market society. All three repudiate the idea of reconstructing society or institutions in accordance with first principles chosen through some philosophical construction embodying the assumptions of a *voluntarist* ethics.

In this last respect, they share something with yet another critic of individualism, Michael Walzer, a philosopher who approaches moral and political theory not as an adherent of the Aristotelian tradition of the virtues but as a democrat suspicious of philosophical construction. Walzer, it must be noted, does not describe himself as a critic of liberalism. But there are good reasons for regarding him as one. In his widely discussed book, *Spheres of Justice: A Defense of Pluralism and Equality* (Oxford: Blackwell, 1983) he states clearly his view that "The appropriate arrangements for our own society are . . . those of a decentralized democratic socialism." And an important chapter of that book was included among a series of essays critical of liberalism, in the volume *Liberalism and its Critics*, edited by Sandel. Moreover, in another much discussed essay ("Philosophy and Democracy," *Political Theory*, 1981) Walzer puts forward an argument that is essentially a critical attack on the claims of liberal political philosophers who seek to reconstruct social institutions in the light of philosophical principles.

As a democrat, Walzer argues for a brand of pluralism which holds that there are many communities and that the answer to the question "What is the appropriate structure

(continued on page 10)

Crosscurrents

Advances in the Theory of the Firm
Former Institute for Humane Studies Resident Research Fellow Donald J. Boudreaux, now teaching economics at George Mason University, successfully defended his doctoral dissertation, "Contracting, Organization, and Monetary Instability: Studies in the Theory of the Firm" (Auburn University, 1986) in August. Boudreaux's dissertation is a collection of five independent essays, linked by the common theme that the price system is not "ideal" in the sense used in models of "perfectly competitive equilibrium," but that real uncertainty requires institutional devices other than the price system, such as long-term contracts and the firm.

Boudreaux reveals the general-equilibrium foundations of Coase's theory of the firm and the resulting blindness of the theory to dynamic forces that are operative in the establishment of firms in the real world. Entrepreneurial decisions regarding what to produce are examples of the type of "dynamic" forces overlooked in standard theory. Boudreaux also attempts to model — theoretically and empirically — the effects of monetary instability on the extent of vertical integration in a firm. ♦

Stability of Competitive Banking Examined
A recent dissertation by former IHS Claude R. Lambe Fellow George Selgin, now an economist at George Mason University, compares the relative stability of the money supply under free banking with central banking. "The Theory of Free Banking: A Study of the Supply of Money under Competitive Note Issue" (New York University, 1985) is the first comprehensive study of the macroeconomic implications of free banking. Written under the supervision of NYU's Lawrence H. White, an IHS Fellow and author of *Free Banking in Scotland: 1800-1845* (Cambridge University Press, 1985), the dissertation 1) shows how a free-banking system evolves and what institutional features it is likely to have; 2) analyzes in detail money-supply processes under free banking, especially when the demand for money is changing; 3) compares free banking with central banking as a means for promoting economic stability; 4) examines the various criticisms of free banking, and 5) suggests a practical procedure for converting the present U.S. banking system to a free-banking system. The study concludes that free banking is not only more stable, but also more efficient than central banking, and that a free-banking reform could easily be implemented. ♦

Marxian Theory of Proto-Industrialization Scrutinized
A recent dissertation by IHS Claude R. Lambe Fellow Sheilagh Ogilvie, "Corporatism and Regulation in Rural Industry: Woolen Weaving in Wurttemberg, 1590-1740" (Trinity College, Cambridge University, 1985) mounts the first comprehensive criticism of a recent Marxian theory known as the theory of "proto-industrialization." This theory claims to fill the celebrated gap in the Marxian theory of history, that is, the question of how the transition from feudalism to capitalism took place, or is still taking place in some parts of the world. The theory argues that a certain form of production in the eighteenth century — dense cottage industry for foreign markets — was the key to Europe's subsequent industrial revolution.

Ogilvie shows, through extensive archival and other research, that only in the northwest corner of Europe did dense cottage industry take a "capitalistic" form. In the rest of Europe, coercive institutions (the State, merchant cartels, producer corporations) remained in control of the economy and that no transition to capitalism took place until these institutions were rendered powerless. Ogilvie argues that economic historians must take institutions (especially the State) into account, and that if they do so they will discover that apparently irrational human behavior can be explained in terms of the operation of individual rational choice in distorted markets.

Ogilvie, whose dissertation has been accepted for publication by Cambridge University Press, is currently working on a Ph.D. in economics under an IHS Claude R. Lambe Fellowship at the University of Chicago. Her work at Trinity College was also sponsored by the Claude R. Lambe Fellowship program. ♦

Advance in Taxpayer History
David Beito successfully defended his dissertation, "Striking Against the State: Taxpayer Revolts During the American Great Depression, 1930-1935" (University of Wisconsin, Madison, 1986), in October. Beito, currently a postdoctoral fellow at the Institute, has made an impressive contribution to understanding the role of taxation in history.

Beito focuses on the tax-revolt movements of the 1930s, which centered around the general property tax, especially as it affected owners of real estate. The resisters linked their campaigns to a non-Marxian conception of class and class conflict.

In his history of the antitax movement in Chicago, Beito makes extensive use of primary sources (city directories, tax and property records, and so forth) and explodes the "speculator" stereotype of the tax-strike leaders propagated by local politicians, bureaucrats, and municipal creditors. The results of Beito's work, some of which are briefly presented in his contribution to this issue of *Humane Studies Review,* provide an impressive demonstration of the fruitfulness of the application of classical liberal class theory to political and social history.

Beito, whose research was supported by an IHS Claude R. Lambe Fellowship, is currently preparing his work for academic publication. ♦

Relation Between Utility and Rights Explored
One of the commonplaces in intellectual history is that during the first half of the nineteenth century the "metaphysical" theories of natural law and natural rights were refuted and replaced by the "scientific" utilitarianism of Jeremy Bentham and John Austin. It is also a common view that after this critique, considerations of utility and of individual rights could not both be accommodated within a coherent moral and political theory. A recent dissertation by IHS Fellow Emilio J. Pacheco, "Utility and Rights: The Science of Morals in Britain in the First Half of the Nineteenth Century" (St. Antony's College, Oxford University, 1986), argues that the "victory" of the utilitarians was less complete than is often assumed, and that, in response to Bentham's critique of natural-law and natural-rights theories, several writers presented moral theories in which utilitarian considerations support strong theories of rights.

Pacheco's work examines the theories of the young Herbert Spencer, especially his *Social Statics,* placing it in the wider intellectual context of the "empirical theories of morality" developed in the first half of the nineteenth century. Pacheco develops some aspects of modern theories of natural law and natural rights, especially the relationships between rationality and morality, and between expediency and justice. Attempts to integrate utility and rights, such as that of the political economist Thomas Hodgskin, are also explored. Pacheco concludes that Bentham's utilitarianism was not the only, nor even the prevailing, type of "science of morals" in Britain during this period, and shows how a science of human nature and a theory of social change were used to support a consequentialist theory of individual rights.

Pacheco, the 1985-86 R. C. Hoiles Postdoctoral Fellow at the Institute, is now associate professor of politics at the Catholic University in Caracas, Venezuela, as well as head of the Department of Education and Information of the Banco Central de Venezuela and editor-in-chief of Venezuela's leading economics journal. ♦

Two New Hayek Studies
Two recent dissertations by IHS Fellows Hannes Gissurarson and Chandran Kukathas explicate and extend the classical liberal social and political theories of F. A. Hayek. Gissurarson, a former IHS Claude R. Lambe Fellow now teaching at the University of Iceland in Reykjavik, presents Hayek's philosophy as combining the best of conservative insights with liberal ideas, offering a more sophisticated version of liberalism than the straw man often criticized by antiliberal thinkers. Gissurarson's work, "Hayek's Conservative Liberalism" (Pembroke College, Oxford University, 1986), explores the foundations of Hayek's thought in the writings of Carl Menger and defines Hayek's position in terms of five elements, the most important being coordination without coercion. Gissurarson also gives an account of Hayek's political philosophy in terms of Hayek's theory of spontaneous order.

A version of Gissurarson's dissertation will be published by Garland Publishing Company of New York.

Chandran Kukathas, the R. C. Hoiles Postdoctoral Fellow at IHS, recently submitted and will soon defend his dissertation, "Hayek and Modern Liberalism: A Study of His Theory of Justice" (Linacre College, Oxford University, 1986). Kukathas, a contributor to this issue of *Humane Studies Review,* argues that the common charge that liberalism lacks a full account of human nature, though applicable to such thinkers as John Rawls, does not apply to Hayek. As Kukathas shows, Hayek's political philosophy is explicitly grounded in an extensive social theory that draws on both the tradition of liberal sociology beginning in the Scottish Enlightenment and the tradition of moral theory founded by Immanuel Kant. As Hayek sees the matter, the philosophies of Kant and David Hume, far from being incompatible, are complementary.

Kukathas argues, however, that Hayek's attempt to reconcile these two thinkers within the context of an overarching and coherent liberal political theory ultimately fails because of an incompatibility between the Humean arguments in Hayek's work and the Kantian claims he wishes to defend. ♦

New Book on Markets
The Market in History, B. L. Anderson and A. J. H. Latham, eds. (Croom Helm, 1986)

This is a collection of papers presented at a Liberty Fund symposium at Windsor Castle in 1984. It is the nature of these sorts of collections to be uneven at best. Nevertheless, given the impressive list of attendees, one would have hoped for more.

One very useful paper, however, stands out: B. L. Anderson's "Entrepreneurship, Market Process and the Industrial Revolution in England." Here the author explicitly uses the concept of entrepreneurship as perhaps the key analytical tool in rendering the process of economic development understandable. He draws heavily on the work of economist Israel M. Kirzner and historian Neil McKendrick. ♦

Essay on Marx's Critics
Critics of Marxism, David Gordon (Transaction Books, 1986)

In this Original Paper No. 6 written for the Social Philosophy and Policy Center, the author presents in bibliographical-essay form a very useful overview of Marx's critics. These include the following: 1) the anarchists, such as Max Stirner and Mikhail Bakunin; 2) the economists, especially Eugen Böhm-Bawerk and Ludwig von Mises, and 3) the liberals — Karl Popper, Isaiah Berlin, H. B. Acton, and John Plamenetz.

The splendid bibliography is particularly helpful to those who wish to pursue the subject further. ♦

Conference Examines Formalism and Freedom
A conference sponsored by the Liberty Fund in New York November 8-10 explored the complex issue of intellectual formalism and freedom. Participants from the fields of sociology, law, economics, history, and philosophy discussed the question of the relationship between highly formalistic models of human behavior and human freedom, with "freedom" denoting both "man's ability to transcend his environment, that is, his ability to be creative, *and* . . . the absence of political or legal constraint." Directed by New York University economics professor Mario Rizzo, the seminar addressed such related issues as the French philosopher Henri Bergson's idea of "creative evolution" (contrasted with Newtonian-style mechanical models), the limits to the ability of explicit formal models to capture "tacit" knowledge, creativity and the market process, and formalism and the legal order. Readers of *HSR* can look forward to new ideas about liberty emerging from this seminar. ♦

Liberalism and Its Critics (continued from page 7)

for the community and its government?" must be different for each different society. He is suspicious of philosophy, which, he thinks, aspires to recast each and every political community in the same mould, and thus deny the importance of each society's historical and cultural particularity. For Walzer, moral values are not universal but local; they are manifested in the "understandings" or "social meanings" we share. What (liberal individualist) philosophers wish to do is judge all social arrangements by extra-social standards. (See, on this, the interesting exchange between Walzer and Ronald Dworkin in the *New York Review of Books* in 1983. The exchange followed Dworkin's highly critical review of *Spheres of Justice* in that journal on April 14, 1983.)

Walzer's own theory inclines him to favor institutions that extend the use of democratic decision procedures — particularly within the United States. And it also makes him hostile to what he considers the undue incorporation of philosophical principles into the law, whether by interpretation or amendment. (Once again this offers a clear contrast with Ronald Dworkin's defense, from a putatively liberal point of view, of a principled judicial activism through the moral philosophical interpretation of the law.) For Walzer, this route can lead only to authoritarianism or tyranny: philosophical construction will, more often than not, lead to the imposition on an unsuspecting community of alien and, ultimately, dislocative standards.

Thus far the communitarian manifesto; how, and how adequately, has liberal individualism replied? In my view, the communitarian case is a weak one. And this is most evident in the fact that none of the critics of liberal individualism has put forward a theory of social institutions to describe how the aims of community might be realized. (Walzer's book makes some attempt to fill this need, but in the end deals more with why different social goods ought to be distributed by different criteria, than with the question of how this might be done.) Moreover, they have failed to recognize the extent to which liberal societies do exhibit a remarkable amount of consensus: how much the reconciliation of conflict is sought peacefully, through established channels, in which arguments, and not weapons, are deployed. Indeed, the communitarians have not seen that the liberal commitment to the peaceful resolution of disagreement, through reasoned debate in public forums, is a commitment to a substantive public morality.

Nonetheless, the liberal response has not been a strong one. This is so for two reasons: first, in seeking to accommodate many of the claims of the communitarians, some liberal theorists have moved too far across into the communitarian camp; and, second, in failing to address important questions of social theory, liberal theorists have themselves failed both to show the inadequacy of communitarian assumptions about the operation of social institutions and to offer an account of what kinds of institutions would sustain the liberal polity.

Richard Rorty, for example, has recently emerged as a self-proclaimed defender of liberalism in several short political philosophical essays articulating the political implications of a Deweyan (and Heideggerian!) pragmatism. (See, for example: "Postmodernist Bourgeois Liberalism," *Journal of Philosophy*, 80, October 1983; "Habermas and Lyotard on Postmodernity," *Praxis International*, 1984, and his collection of essays, *Consequences of Pragmatism, Essays: 1972-1980*, Brighton: Harvester Press, 1982 — particularly the Introduction and chapters 1, 11, and 12.) For Rorty, liberalism is to be defended not by some abstract, external standard but rather because it is "ours": the product of the Western intellectual and historical tradition of which we are inescapably a part. And as such we should "celebrate" it. What we cannot do, in his view, is offer an ahistorical, philosophical justification for liberalism. The inadequacy of this stance becomes apparent as soon as one asks why we should "celebrate" or embrace liberalism, for, in Rorty's terms, no answer can be given. When Rorty does try to offer reasons why liberal social institutions are "better" he thus lapses into incoherence, as he is forced to maintain that they are better, not by any *standard* "but just better in the sense that they *seem* clearly better than their predecessors."

Rawls, however, has tried to defend the liberal point of view without endorsing Rorty's pragmatism. His most recent published paper ("Justice as Fairness: Political not Metaphysical," *Philosophy and Public Affairs*, 1985) is presented, in part, as a response to the criticisms of Walzer and Sandel but cast as a reinterpretation of his own political philosophy. The most important point he makes is that his is a *political* conception of justice, and one which is in no way dependent on any particular metaphysical conception of the self. Although this point does not come out clearly enough in the article, Rawls holds out the possibility that the metaphysical incoherence with which he is charged is not present in his theory because the bargaining parties in the Original Position are not selves or persons but *citizens*. While it may be implausible to ground a political theory on a conception of a *person* as a "disembodied subject" (to use Sandel's terminology), as an agent independent of his interests and attachments, it may not be so implausible to ground a theory on such a conception of a *citizen*. For it is precisely the claim of liberal theory that a citizen cannot ask that his private or personal interests be favored, or even considered, in the construction of public standards. Unlike persons, all citizens are, from the point of view of a liberal public philosophy, identical. Whether or not such a move will do enough to rescue Rawls from the other charges laid against his theory is another matter.

One charge that he cannot escape, however, is that of having moved too far into the communitarian camp. For one point he concedes in this recent essay is that the task of political philosophy is primarily to theorize about the institutions of existing political society. Thus he also redefines his theory, not as a *critical* endeavor to *evaluate* existing institutions against particular moral standards, but as an *interpretative* endeavor to *describe* those institutions. The movement of his thought in this particular direction was perhaps already evident in his Dewey Lectures ("Kantian Constructivism in Moral Theory," *Journal of Philosophy*, 1980); and further evidence of this change is to be found in his recent Oxford lecture "Political Philosophy in a Democratic Society" (June 1986, not yet published). If the opponents of the communitarian philosophical outlook concede that they can only describe but never defend the moral first principles implicit in the institutions of their society, then there can be no case for liberalism. For liberalism is nothing if not a universalist moral philosophy, which maintains the superiority of one type of answer to the great question of political philosophy.

One other writer who has attempted to say how liberalism might be defended requires consideration. James Fishkin, in his book *Beyond Subjective Morality: Ethical Reasoning and Political Philosophy* (New Haven and London: Yale University Press, 1984), tries to confront the charge that liberal theory is unable to offer satisfactory resolution of moral problems because, lacking as it is in any normative commitment to substantive ends, its reasonings lead only to subjectivism. Fishkin's point is essentially that the abandonment of absolutist claims need not push liberalism into a relativist position. What he calls for is a change in our expectations about the character of an objective morality. What precisely this means, or would involve, at this point remains obscure. (He is, I believe, writing another book dealing with this question.)

What liberals need is to develop arguments explaining why the appropriate social institutions are those that accord to individuals, not just particular liberties, but freedom to choose in some less restrictive sense.

The most concerted effort to deal with the communitarian challenge from a self-consciously liberal (even if not classical liberal) point of view has, undoubtedly, been that of Ronald Dworkin. The most important recent works to be consulted are his collection of essays, *A Matter of Principle* (Cambridge, Massachusetts and London: Harvard University Press, 1985) and his treatise on legal philosophy, *Law's Empire* (Cambridge, Massachusetts: Harvard University Press, and London: Fontana Press, 1986). What Dworkin succeeds in showing is that in any polity in which there is disagreement over the character of the good life, any commitment not to simply enforce one conception of the good requires an attendant commitment to respect certain individual rights. The single most glaring inadequacy of the communitarian philosophy has been its failure to offer any nonauthoritarian solution to the problem of dealing with human disagreement. It is not enough to decry the absence of a tradition of the virtues, without considering whether or not such a tradition can have place in the *modern* world, and what kinds of institutions might secure such a tradition.

But Dworkin's response to the communitarians is not wholly adequate either. For while he is on strong ground when arguing that any society in which individuals are allowed to pursue their own conceptions of the good must also recognize certain individual rights, he is on weaker ground when specifying those rights. Although he accords to individuals various liberties such as freedom of speech and freedom of worship, he gives no special recognition to the right to hold *property*. Yet it remains obscure why laws invading speech, for example, injure us more seriously (as Dworkin maintains) than do laws restricting rights of property. For limiting property rights by allowing government to override our choices (even if in the name of the public interest) constrains us from pursuing certain conceptions of the good no less than does limiting our right to speak.

These failings make clear the tasks confronting liberalism's defenders. What liberals need is to develop arguments explaining why, if the question of how life should be lived is an important one, the appropriate social institutions are those that accord to individuals, not just particular liberties, but freedom to choose in some less restrictive sense. This, as John Gray has suggested in his recent book, *Liberalism* (Milton Keynes: Open University Press, 1986) would take us away from the "revisionist" liberal agenda that has dominated the twentieth century.

If this is to be done successfully, then what will be needed, more specifically, is argument showing why giving significant place to a conception of liberty that emphasizes the importance of property rights is, first, not incompatible with recognizing some of the values communitarians defend and, second, essential if individuals are allowed to pursue their own conceptions of the good life. Some important work, developing the first of these two kinds of arguments, has been completed by Harvard Government Professor Stephen Macedo, whose dissertation on the liberal virtues and the liberal theory of community offers perhaps the first substantial classical liberal response to communitarianism. (Elements of Macedo's argument appeared in his earlier paper, "The Public Morality of the Rule of Law: A Critique of Ronald Dworkin," *Harvard Journal of Law and Public Policy,* volume 8, number 1, 1985.) Work on the second argument, articulating the importance of property for liberal community, is perhaps even more urgently needed.

The position classical liberals would defend in responding to the communitarian critique is, in the end, an uncomplicated one, for it simply asserts that the good society is one in which the individual is free, not merely to speak or worship or enter politics, but to *act*. Constructing arguments to show this, however, will require from liberal scholars more substantial and persuasive reasoning. It will require us to show more fully what Tocqueville stated more simply, that:

> Freedom is, in truth, a *sacred* thing. There is only one thing else that better deserves the name: that is virtue. But then what is virtue if not the *free* choice of what is good?

Chandran Kukathas is the R. C. Hoiles Postdoctoral Fellow of the Institute for Humane Studies at George Mason University.

McCloskey's thesis is that methodology in general, in attempting to legislate in advance for a science, blinds science to its own real character and impoverishes the quality of the scientific conversation.

An Economist Looks at His Science (continued from page 1)

forth his own method, a method of rigid *a priori* deduction of apodictically certain truths from the axiom of human purposiveness. The grounding axiom of action, in good neo-Kantian fashion, was a category (or pure concept) of mind, directly accessible to us and justifiable by means of a kind of transcendental deduction.

The Misesian position is an attractive one, since economists do not in fact "live up" to the standards established for them by positivism, and *cannot* do so and still have anything really interesting to say about man's economic life. But a reading of some of Mises's own work in economics (e.g., *The Theory of Money and Credit* [1912] and *Nation, State, and Economy* [1919]) reveals that he too "failed" to live up to the standards of his own methodology, that his work was in fact richer than his own account of it.

A new book by economist Donald McCloskey, editor of the *Journal of Economic History* and an important player in several debates in economic theory and history, helps to explain this gap between the practitioner's account and his actual practice. *The Rhetoric of Economics* is a notable performance, weaving together insights plucked from McCloskey's study of philosophy, rhetoric and literary criticism, the history of science, mathematics and statistics, and economic theory, and the debates that have rocked the profession in the last hundred years.

McCloskey's basic thesis is that methodology in general — and positivism in particular — in attempting to legislate in advance for a science, blind science to its own real character and impoverish the quality of the scientific conversation. By claiming to know in advance what will or will not count as good science, methodology is hubristic: "It would be arrogant to suppose that one knew better than thousands of intelligent and honest economic scholars what the proper form of argument was." (p. 139) By claiming to eliminate the taint of "subjectivity" and to separate "facts" from mere "values," positivism attempts the impossible, the elimination of the scientist from science. And by claiming that the history of science corresponds to its vision of proper science, positivism falsifies history.

With what would McCloskey replace positivist methodology? With a better understanding of the rhetoric of science. Rhetoric, he is quick to point out, need not be trivial (although it is one member of the *trivium* in the classical division of arts), for it emerges in the course of his book that rhetoric is the art of conversation, which McCloskey, along with many other modern and classical philosophers, identifies with rationality itself. "Rhetoric," writes McCloskey, "in the sense used here . . . is reason writ large." (p. 118)

Good science is not algorithmic, i.e., a set of unthinking rules for generating results, but is instead good conversation, conforming not with the rigid dictates of methodology but with the standards of civil discourse and persuasion. "What distinguishes good from bad in learned discourse, then, is not the adoption of a particular methodology, but the earnest and intelligent attempt to contribute to a conversation." (p. 27) Good conversation means the attempt to persuade (and, conversely, the willingness to be persuaded), and that means rhetoric. To abandon methodology for rhetoric is not to open the gates to barbarian hordes of subjectivists and irrationalists, for the move "is not an invitation to irrationality in argument. Quite the contrary. It is an invitation to leave the irrationality of an artificially narrowed range of argument and to move to the rationality of arguing like human beings. It brings out in the open the arguing that economists do anyway — in the dark, for they must do it somehwere, and the various official methodologies leave them benighted." (p. 36)

McCloskey is at his best when, having cleared a space for his work by showing the failure of positivism as an account of the sciences, he embarks on an examination of the rhetoric employed in economic discourse. His inspections of several seminal contributions to economics, notably an article by John Muth on rational expectations and Robert Fogel's historical work, *Railroads and American Economic Growth,* reveal a rich dimension of "tacit" knowing at work and display unacknowledged rhetorical appeals that are inconsistent with the official positivist methodology to which the authors offer their allegiance. Notable also is his chapter on "The Rhetoric of Significance Tests," where he unveils the way in which the notion of statistical significance is passed off in the literature as equivalent to economic significance. McCloskey the statistical expert demolishes the scientistic appeal to statistics as a substitute for human judgment.

What the book is about, in essence, is the necessity for according a role for human agency in all human endeavors, or, in other words, recognizing that there is no rule for the application of a rule. Ultimately, a human agent has to decide — whether tacitly or explicitly — whether something is significant, good, persuasive, etc. Aristotle was well aware of this when he warned us in his *Nicomachean Ethics* against seeking a set of exhaustive rules (an algorithm) for good moral conduct; there are no absolute rules for living well, but there is the *phronimos,* the wise man, and the *spoudaios,* the good man, and action should be oriented toward the lives such men lead.

But in embracing this understanding and insisting on the recognition of human agency, McCloskey goes, well . . . too far. "A science," insists McCloskey, "is a class of objects and a way of conversing about them, not a way of knowing truth." (p. 105) "The very idea of Truth — with a capital *T,* something beyond what is merely persuasive to all concerned — is a fifth wheel, inoperative except that it occasionally comes loose and hits a bystander. If we decide that the quantity theory of money or the marginal productivity theory of distribution is persuasive, interesting, useful, reasonable, appealing, acceptable, we do not also need to know that it is True."

There are, of course, persuasive things that are not true, e.g., those slippery and commonly committed logical fallacies, and this would seem to indicate that some role for truth should be retained. There are good reasons for rejecting the concept of Truth inherited from Neoplatonism, in which Truth is hypostasized and made timeless, but can't we hold on to truth with a small *t,* even a very small *t*?

McCloskey is clearly aimed in the right direction when he states, "The scale . . . is of man, not of God." (p. 152) Man is a finite being and cannot be held to standards appropriate to the infinite, but that does not imply that truth as the goal of discourse should be abandoned altogether. A slight emendation, however, reinstating truth with a small *t,* dynamic and emergent rather than static and timeless, would leave the bulk of McCloskey's case standing.

There is a further problem with McCloskey's argument. McCloskey is ambiguous on just what the implications of his argument are for the actual practice of economics, or of any other science.

On the one hand, McCloskey argues that "the absorption of rhetorical thinking in economics will not precipitate any revolution in the substance of economics." (p. 174) On the other hand, he argues that "predicting the economic future is, as Ludwig von Mises put it, 'beyond the power of any mortal man.' What says it is beyond his power is the very economics used to make the prediction. The economist for a big bank predicts that interest rates will fall after Christmas. If before making the prediction he has not placed his net worth in margin loans on bonds . . . he is behaving either irrationally or self-deceivingly. He claims to know the expected value of the future, yet for some reason chooses not to take the unlimited wealth that such Faustian knowledge can bring. He is willing for some reason instead to dissipate the opportunity by the act of telling others about it. If he does not really know the future, then he does not face such an opportunity. But then he has perhaps no business talking as though he does." (p. 16-17)

If McCloskey is willing to eliminate such forms of discourse as prediction of the future (and there are others), then his approach would indeed change the character of economic science. And the admission of forms of inquiry (sources of truth) such as introspection into economic discourse would also significantly change the character of the science. McCloskey may be too modest in the payoff he claims for his effort; the character of economic science may indeed be revolutionized by the kind of philosophical questions raised in *The Rhetoric of Economics*.

A few comments may also be in order on the implications for political economy of the case McCloskey makes. McCloskey is eager to allow all forms of rational discourse into the tent, extending his open-mindedness to the political conflicts arising from economic investigation

We should recognize that open-mindedness is itself a stance, just as the argument for freedom of speech is a positive stance ***for*** *liberty, and not merely a skeptical claim to be unable to choose among arguments.*

(whether free trade is good or bad, whether wage labor is exploitative, etc.). McCloskey does not disguise his own preference for liberty and liberal capitalism, but shows his willingness to be open-minded to the arguments for competing systems.

But does not his own approach, his own elevation of conversation to the ethical standard by which rationality is to be judged, itself lean him toward liberalism? For the market economy *is* a kind of a grand conversation, a forum for persuasion (and not merely for information exchange). Adam Smith asked (rhetorically) in *The Wealth of Nations* whether "the propensity to truck, barter, and exchange one thing for another" was an original principle of the mind or, what he held to be "more probable," "the necessary consequence of the faculties of reason and speech . . . ." (Oxford University Press, 1976, p. 25) In his lecture of March 30, 1763, he was more forthcoming: "If we should enquire into the principle in the human mind on which this disposition of trucking is founded, it is clearly on the natural inclination everyone has to persuade. The offering of a schilling, which to us appears to have so plain and simple a meaning, is in reality offering an argument to persuade one to do so and so as it is for his interest. Men always endeavour to persuade others to be of their opinion even when the matter is of no consequence to them." *(Lectures on Jurisprudence,* Oxford University Press, 1978, p. 352)

Of course we should be open-minded toward the arguments for socialism and other coercive arrangements, but we should recognize that this very open-mindedness and tolerance are themselves a stance, just as the argument for freedom of speech is a positive stance *for* liberty, and not merely a skeptical claim to be unable to choose among arguments.

The Rhetoric of Economics is a very rich book, one that should be read by social scientists of all sorts who seek to improve the scientific character of their discipline. Philosophers will learn something of the practicality of philosophical speculation from the work, while others in the humane sciences will benefit from the extended discussions of the rhetoric of science. And McCloskey's superb and entertaining writing style (only occasionally marred by overly clever swipes at positivism) itself stands out as an example of good writing.

Tom Palmer is the editor of Humane Studies Review

Review Essay

Legal History
by Leonard P. Liggio

Current public debates over the proper role of the judiciary have demonstrated a profound need for a firmer understanding of the history of law. This is so not only because of the historical issues that have arisen, for example, whether the founders of the American republic intended the U.S. Constitution to provide a charter of liberties or merely a framework for a majoritarian democracy, but also because an understanding of the *history* of law can help us to understand the law's relations with other institutions as well as its proper role and content.

This expanding field is a fertile one, as recent publications have shown. This brief review, while attempting to paint a broad picture of the history of thinking about legal evolution in the last few hundred years, will focus on two notable scholars: Peter Stein and Donald R. Kelley.

In the later nineteenth century, English legal historians, such as Henry Maine and Frederick Pollock, were largely unaware of the predecessors to their own work on the evolution of law. Peter Stein, now Regius Professor of Civil Law at Cambridge University, first became interested in earlier ideas on legal change as an editor of Adam Smith's *Lectures on Jurisprudence*. Stein, himself a scholar in the field of Roman Law, noted Smith's background in Roman Law in the Scottish philosopher's considerations of legal evolution. (See Peter Stein, "Adam Smith's Theory of Law and Society," in R. R. Bolgar, editor, *Classical Influences on Western Thought: A.D. 1650-1870*, Cambridge: Cambridge University Press, 1979, pp. 263-272.)

On the eve of the eighteenth-century Scottish Enlightenment, there was already a vast body of writing contributing to an understanding of legal evolution. The central figure was Hugo Grotius, whose vast and detailed knowledge of law and legal history mightily strengthened his arguments on behalf of a natural basis for the law.

Grotius was succeeded in the natural-law tradition by members of the Late Protestant Scholastic tradition, such as Samuel Pufendorf and John Locke. (See Henry Veatch's bibliographical review essay, "Natural Law," *Literature of Liberty,* 1978.) For his historical understanding of classical law, Adam Smith drew from Johann Gottfried Heineccius. The debates over the state of nature, the origins of private property, and the role of consent in grounding political institutions were closely interwoven with historical investigations into the emergence of law and its evolution. As Heineccius asked in his *Elementa iuris naturae et gentium,*

> Why might not the more simple societies have produced all the advantages of union, since in these every one was at liberty to acquire what he pleased and there would be none of those tributes, taxes, imposts, upon persons or estates there, which now eat up the property and estates of subjects in civil governments?[1]

Since Scottish law was based on Roman Law rather than English Common Law, there was much interest in legal history in Scotland, an important fact in understanding the emergence of the Scottish Enlightenment. Francis Hutcheson, professor of moral philosophy at Glasgow (1729-1746), set the foundation for Scottish attention to the development and growth of legal institutions, just as he did in the related sciences of economics, contracts, and morals. Hutcheson, in Stein's words, emphasized "the importance of other men's sense of approval and disapproval in determining the rightness and wrongness of conduct and the need to submit disputes to 'unbiassed arbitrators'. . . ." Stein argues,

> Hutcheson felt that earlier writers, such as Hobbes, had exaggerated the disadvantages of a pre-political society. Man in the state of nature was not a solitary being fighting for survival against everyone else, but was part of a large family unit, in which there could be much happiness and even improvement of the arts. He investigates at length how controversies should be decided in natural liberty (*System*, II.141-7) and concludes that they would be submitted to an arbitrator, chosen by the parties, to whom they must submit the dispute absolutely.[2]

Although he did not deal directly with legal development, the Scottish philosopher David Hume did develop important implications for the law through his concept of unintended consequences. (See F. A. Hayek, "The legal and political philosophy of David Hume," *Studies in Philosophy, Politics, and Economics,* Chicago: University of Chicago Press, 1967.)[3]

Among French writers, important work was also being done. Montesquieu's *De l'esprit des lois* (1748; London, 1752), while significant for English and American political and legal thought, did not have a strong impact in the author's own country until the beginning of the nineteenth century. Antoine Yves Goguet (councillor of the Parlement of Paris) published *De l'origine des lois, des arts, et des sciences, et de leurs progres chez les anciens peuples* (1758; Edinburgh, 1761), where he took issue with earlier writers who had focused on property in land and had argued that property was not natural but artificial. Goguet emphasized that even without agriculture, laws were required regarding rights of property in moveables, and consequently, in marriage and criminal laws. As Stein concludes, "Goguet showed that the materials collected by Montesquieu could be so arranged as to suggest a scheme of development."

Other significant contributors to the study of legal history in the Scottish Enlightenment include D. M. MacCormick (for example, "Law and Enlightenment," in R. H. Campbell and A. S. Skinner, *The Origins and Nature of the Scottish Enlightenment,* Edinburgh: J. Donald, 1982) and Knud Haakonssen, whose *Science of a Legislator: The Natural Jurisprudence of David Hume and Adam Smith* (Cambridge: Cambridge University Press, 1981) provides an excellent introduction to the legal thought of the Scottish Enlightenment. Haakonssen has examined the contributions of John Millar, who continued the work of Grotius and other natural-law thinkers, as well as Montesquieu and Smith, in the application of the historical study of law to jurisprudence. (See also Haakonssen, "Hugo Grotius and the History of Political Thought," *Political Theory,* 13 [1985], and "John Millar and the Science of a Legislator," *Juridical Review,* 1985.)

The development in continental Europe of bureaucratic, centralized regimes in the eighteenth century culminated in the French Revolution and Napoleon. As Tocqueville pointed out in his *Old Regime and the Revolution, the ancien regime,* the bureaucratic state of the monarchy, was the father of the Jacobin bureaucracy of the Revolution and Napoleon. The centralization in law represented by the Prussian Code of 1794, the Code of Napoleon of 1804, and the Austrian Code of 1811 were the final ruptures with the traditional legal systems of the European peoples. There was much opposition in Germany to this "French" centralization, especially at the University of Gottingen in Hanover (then united to England in the person of the king). English and Scottish ideas were strong in Gottingen, and Benjamin Constant, a former student in Edinburgh, found an intellectual home in Gottingen while exiled by Napoleon.

Karl Friedrich von Savigny (1779-1861) was the founder of the German Historical School of Law. While building on Montesquieu's rule that good law developed only from the spirit and customs of a society, Savigny was also strongly influenced by Edmund Burke's emphasis on the English Common Law and the historical continuity of the English constitution as the foundations for individual liberty. Savigny saw language and law as parallel social developments. Each developed through their constant usage, with practice indicative of what was useful and what was not. Savigny pointed out that the Romans had developed a great law in the same way as the English, through the application of principles to problems. The Justinian Code, the basis of European Continental Law, was the law of the period of decline: "And when, in the sixth century, all intellectual life was dead, the wrecks of better times were collected to supply the demand of the moment." (Savigny, *On the Vocation of our Age for Legislation and Jurisprudence,* London, 1831, p. 51.) Savigny emphasized the importance of law as custom and practice over the centuries and attacked legislation, statutes, and codes as assaults on law.[4]

Donald Kelley's work, *Historians and the Law in Postrevolutionary France* (Princeton: Princeton University Press, 1984), analyzes the impact of historical studies such as those discussed above on the law in France. Basing his own work on that of Lord Acton and Sir Herbert Butterfield, Kelley examines what the French classical liberal historian Augustin Thierry called a "historical revolution." Thierry, author of *The History of the Conquest of England by the Normans* and other works, as well as editor of an important collection of medieval town charters, was a leader of what he called the "new historical school" that emerged in France during the Restoration (1814) and continued during much of the nineteenth century. The precursors of the "new history" of the Restoration era, according to Kelley, are the Ideologue historians associated with Destutt de Tracy (author of a commentary on Montesquieu, which was translated into English by Thomas Jefferson) and Condorcet, including C. F. Volney, Pierre Daunou, and Claude Fariel. In addition, Thierry viewed as his own predecessors the sixteenth-century historians Claude de Seyssel and Francois Hotman, as well as the seventeenth-century natural-law thinkers, whom Thierry considered the leading creators of "modern liberal thought."

Thierry, who was also influenced by Sir Walter Scott and by David Hume's six-volume *History of England*, had begun to raise the challenge of a new history in his articles in the *Censeur Europeen* (1817-1820), edited by two legal scholars who became economists and legal historians under the influence of Jean Baptiste Say, Charles Comte, and Charles Dunoyer. With the suppression by the government of the *Censeur*, Thierry was able to publish his articles in the *Courrier Francais* in the summer of 1820. Thierry was the most important of the French classical liberal historians of the first half of the nineteenth century, a group which included such figures as Francois Guizot, Adolphe Thiers, Prosper de Barante, and Francois Mignet.

Through the sea change in historical studies wrought by Thierry and others, and through the impact of German historical legal studies, a major school of French legal historians emerged, including C. J. B. Giraud at the University of Aix, and Edouard Laboulaye, regarded by Acton as the only worthy disciple of Savigny. Like Pellegrino Rossi, professor of political economy at the College de France, Laboulaye believed that economics was central to a historical analysis of law; his major contribution was a history of property law in western civilization.

Kelley's chapter on "The Question of Property" provides an especially fruitful source for further studies in legal history. The important studies on the institution of property in nineteenth-century France became part of the wide-ranging debates in history and law, notably the work of Fustel de Coulanges (for example, his *Histoire des Institutions Politiques de l'Ancien France*).

The richness of research possibilities into Thierry and other "new historians" of the nineteenth century, including the new legal historians, should make Kelley's book necessary reading for classical liberal scholars.

Notes

[1]Translated by George Turnbull as *A Methodical System of Universal Law* (London, 1763) and cited in Peter Stein, *Legal Evolution: The Story of an Idea* (Cambridge: Cambridge University Press, 1980), p. 7.

[2]Stein, p. 11.

[3]The implications of Hume's insights have been drawn out by Hayek himself. See *The Constitution of Liberty* (Chicago: University of Chicago Press, 1960), and his three-volume work, *Law, Legislation, and Liberty* (Chicago: University of Chicago Press, 1973, 1976, 1979). See also Bruno Leoni, *Freedom and the Law* (Princeton: Van Nostrand, 1961).

[4]See Stein, pp. 56-65.

Leonard P. Liggio is president of the Institute for Humane Studies at George Mason University.

IHS

Institute
for Humane
Studies

George Mason
University

4400 University Drive
Fairfax, Virginia 22030

NON-PROFIT ORG.
U.S. POSTAGE
PAID
Permit No. 391
Fairfax, VA