



# PROGRESSIVISM, INDIVIDUALISM, AND THE PUBLIC INTELLECTUAL

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# PROGRESSIVISM, INDIVIDUALISM, AND THE PUBLIC INTELLECTUAL

BY

TERRENCE P MCGARTY

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## *Preface*

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There is a great deal of confusion over the ideas of liberals and conservatives. Then we add libertarians, which often sound interesting but when carried to their ultimate ends oftentimes results in less than reasonable solutions. This work was prepared to address a simple question: what are the two extremes in our current society, how are they characterized and what intellectual basis does each have.

We all know that we have a debt of gratitude to men such as John Locke and Thomas Paine. In a small park in Morristown just a short distance from where I live and write, there is a statue of Paine, hidden in a small niche of a duck pond surrounded by Canada Geese. I doubt if anyone ever visits there, except perhaps me, from time to time, but it is the largest such statue in the US. Paine wrote *Common Sense* and Washington read Paine's famous script to his soldiers before crossing the Delaware. But Paine also was the first to suggest income taxes, health care, retirement plans. Paine saw the Government having this role, but this was conceived when he was assisting the French, well after he left the new United States. Thus in many ways Paine was the first Progressive, looking at society and at the Government providing support to all. In contrast Locke was the influence on the founders, looking at the individual and the sanctity of property. Individualism versus Progressive theories, two extremes which influence the underpinnings of our current society. To understand these better is why I have attempted this book.

The approach I have taken is to focus on the thoughts of several of the key players on both sides. This is not a complete list in any manner. It reflects clearly a personal bias based upon some forty years of considering these issues from a variety of perspectives. For example, I first had to deal with Rawls more than a dozen years ago in the context of a discussion on telephone universal service. To understand certain regulators and to understand the positions of certain advocacy groups one need to understand Rawls. To some that would sound extreme but it is akin to psychiatry, one needs to understand more than just what meds to use to calm the patient down, the history is important also as is the patients world view.

A second issue to try and place one's self in the mind of the other side. For example, Progressives have such a strong belief in the Government. Having spent my tour in Washington and in and around the Carter Administration, I often wonder why anyone would trust Washington to do anything, even control traffic lights in the District! But that is my view and that would not solve any problem of understanding the Progressive. I also have another problem relying upon Government, it changes. The people "solving" your problem today may not be there in a month, a year, whatever. Thus how could one therefore rely on Government given its changeability. Again one must try to understand the side which believes that. From whence did that belief arise. What basis do they have for believing that their position has sustainable applicability?

A deeper understanding of the personality of each of the individuals we present herein may be worth a study. What were they like as individuals, what characteristics did they have which made them act and think the way they did. For example, what makes a true socialist? Not that we speak of socialists but to be one requires a certain mind set and world view. What makes a full Libertarian? By this I mean the extreme Ayn Rand type libertarian, not one which I speak of herein, one where we establish and protect individual rights, but one which takes the rights and then individually disregards all others to benefit themselves alone.

Thus there are many dimensions in allocating positions to all of these political nametags. It is not a simple linear left to right, liberal to conservative layout. It is much more complex. Thus one of the objectives herein is also to explore that multidimensionality. The strange thing that I have noticed is the current Progressives speak of having the Government intervene on behalf of society, the people, with corporations to ensure that the corporations are doing no harm. There is still the belief that large corporations have evil intents and that the people need protection. In my experience there is little evil intent, other than perhaps with certain players on Wall Street who could financially benefit from evil, yes there can be hedges on good versus evil. Most non-financial entities are at best as bureaucratic as Government. There are Enron and World Com, but for the most they are benign, they need customers, and there is little market control of the Trust days.

This is a book which supports the principles of individualism, in the context of Mill more than of Spencer. It is a book with a belief in the principles of the founders and a dislike for the arrogance of those who presuppose that they know better. It supports the entrepreneur rather than the bureaucrat. Thus what follows has a strong bias and a point of view.

Thus this work explores these many issues. Not all the answers are readily available. Insight is there which adds to what is already known, and the list of significant players is much longer than what I have provided. Hopefully this is a start.

Terrence P McGarty  
Florham Park, NJ  
December 2010





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## 1 INTRODUCTION

There has been a continuing tension between those who believe in the sanctity of the individual versus those who view the amorphous entity called society as the compelling form of convergence. In a governmental structure we have three elements; the individual, the society, and the state. The individual is clearly the well defined articulation of each and every person, having certain rights and in turn responsibilities. There is no ambiguity or lack of clarity in determining who or what is an individual. Then there is the society, the social amalgam which makes up the group, oftimes the majority, and just as oftimes the minorities, separately or in collusion with one another. The society has fluidity in that it presents the view of the group to all others, and in a democracy or a republic it is often the majority or the ruling party.

The state then is the embodiment of the ruling society formed according to the rules then current. For example it may be the party in power and the President, or Congress, or Prime Minister. The state is the reflection of the society's ruling class. In some cases it may be the minority group which may have attained power through military control. In other cases the state may be a conflicted collection of entities as if found in the US where the element of checks and balances is at play.

We look at two groups of political thinkers, the individualists and the progressives and then we look at their current successors. In simple terms the individualists are those who cherish the individual and the individual rights even to the extent of considering them as natural rights. The second class we call the progressives, and we use that term in the context in which it was used in the late 19th century and early 20th because in many ways the progressives were a societal movement where the individual was subsumed to the group, the society.

The individualists can be viewed simply as a group who firmly believe in the sanctity of the individual, with the extreme being the individual supreme to the group, yet there being a group, and the individual being alone, anonymous if necessary, with the right to be left alone as Brandeis was wont to state in his famous paper on privacy.

In contrast the essence of the progressive movement is that it contains two elements as underpinnings. First, the group, the society as defined by this group, can determine what the norm is for all, and second can then via the power of a central government enforce its will on all. This group centered defining of standards, whether they be how property is handled, how pollution is dealt with, how health care is provided, is the cornerstone of the progressive mindset. The individualist would let the individual make the decision whereas the progressive will have the group, the society in charge, make the decision, and then have the Government enforce it.

There is a conflict of visions on the political front that is driving the economic agenda in the United States which in many ways is a confrontation of two views of the country which have been around for over two centuries. The views are those of the Individualists, who were basically the Founders and their followers and the Progressives and their followers. Simply they are visions which on the one hand respect the individual and the individual's rights versus the "community" and its rights. Progressivism was a result of the change in industrial structure as well as an overall economic restructuring following the Civil War.

It was a middle class movement which in many ways paralleled the development of socialist movements which had migrated from Europe. In contrast the Individualists are those who maintain the ideas which led to the original Constitution, a view focused on individualism and the minimalist view of the Federal Government. This paper looks at these two movements, as they were at their conception and now as they seem to be competing with each other in the public market place of political thought.

## **1.1 INDIVIDUALISM**

Individualism is the basic belief in the rights, dignity, and social sanctity of the individual per se. That is the individual exists and that any society is nothing more than an amalgam of individuals, that is groups a transient entities assembles for the purpose at hand and generally have little if any sustaining capabilities.

Individualism is built around the Bill of Rights, that portion of the Constitution that expressly states what the individual's rights are at a minimum, and that the Bill of Rights is an open set of individual rights built around an expansive view of the natural law.

Individualism does not deny the existence and benefits of groups or associations.

Individualism is also based upon the concept of contracts, expressed or implied, between individuals or persons through which commitments are made between or amongst individuals for specific purposes with mutual obligations and mutual benefits accruing therefrom.

Individualism is not conservative or libertarian.

Individualism believes that the individual through their efforts can obtain value and that such accrued value is by definition property which the individual can protect, use, and transfer for something of value.

Individualism believes that the purpose of the state, the government, is primarily to protect the rights of the individual in their property and to take all reasonable means as a government to defend the country against any foreign aggressors.

Individualism makes no claims upon any individual in terms of their obligations to other individuals. Such claims may be made in a democratic manner, through personal and individual choice or as a result of some form of religious belief.

Individualism does not consider the existence of any minorities and thus minority rights as compared to majority rights are non-existent. However Individualism believes in individual rights, and every individual having the same set of rights, thus the need for group, minority, protected class, gender, or any other such segmented rights are unnecessary and in fact are conflicting.

Individualism believes that the costs of externalities between individuals based upon actions taken by one party resulting in a cost to a second party can be remedied via remediation via the Coasian method of inter-party litigation, and that it is the duty of the Government to enforce those resulting claims<sup>1</sup>.

Individualism believes in individual responsibility and liability for harm caused by any individual upon others. It is the purpose of the Government to remedy these claims.

Conservatives and Libertarians take these positions and modify, expand, or delimit them. Thus Individualism may find itself in the confines of many camps.

Individualism as we define it herein is not the individualism that Hofstadter applies in his diatribe against Social Darwinism<sup>2</sup>. It is not a laissez faire view of a society. In fact it is just the opposite. It assumes equality amongst individuals and a preservation of those individual rights and a process of remediation for any diminution or infringement on those rights. The purpose of the Government in an society of Individualism is to ensure the rights of equality and to take any and all means as may be necessary to protect them on a pari passu basis.

Thus the concerns of Hofstadter would be without merit in a true sense of Individualism. There is no theory of survival of the fittest, no principles of allowing the most aggressive to prevail, and in fact aggressive that in any way delimits individual rights would be dealt

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<sup>1</sup> See <http://american.com/archive/2009/october/coase-vs-the-neo-progressives/> they state in this article the following summary of Coase: "*Although considered heresy at the time, Coase's article began a wholesale rethinking of the Progressive paradigm that had dominated political thought since the turn of the century. By the 1980s, Coase's ideas had gone from radical to mainstream. Free market advocates, then in the ascendancy, embraced such Coasian principles as:*

(1) *The existence of a market failure or externality does not in and of itself justify government intervention; indeed, government is often the underlying cause of the problem.*  
(2) *Government intervention is seldom either administratively efficient or politically neutral; to the contrary, it often results in what Coase called the "mal-allocation" of resources.*  
(3) *Government control of the economy is a threat to political liberty; for example, government control of the broadcast spectrum has consistently been used to limit free speech."*

<sup>2</sup> In Hofstadter SD he sets up the straw man of social Darwinism and Darwinian individualism as the example of individualism as he defines it to be the sine qua non of all individualist principles and then proceeds to tear it down.



with by direct Government intervention. The Government is there to protect the rights of each individual, no interfere with them and not to allow others to do so.

Individualism is not the strict equality of the theory of distributive justice. Individualism admits the differences amongst people but establishes the underpinning of the individual rights, rights that protect individuals from what could be termed unjust expropriation of their rights and property.

## 1.2 PROGRESSIVISM

Progressivism can be viewed historically and a movement on the later 19th century driven by the excesses of business and the changes occurring in the middle class or as an ongoing movement wherein the role of Government and citizens as a society rather than individuals are what is essential to the people.

As Weinstein states<sup>3</sup>:

*"Progressives are strongly **attached to the government**; they tend towards **state intervention**.*

*Yet, they also believe in citizen participation and grassroots action. Perhaps more than any other political classification, progressives hold onto the ideal of **direct democracy**.*

*They heartily embrace the tensions between what Isaiah Berlin called negative and positive freedoms, or freedom from and freedom to, respectively. For Berlin, the freedom from hindrance, or "negative" liberty, trumps the freedom to self-actualize, but progressives disagree.*

*Today's progressives might argue that, while liberty is important, **it is incoherent without entitlements**.*

*The state must provide social, political, economic, and cultural assistance to those who are denied access to an equal playing field.*

*Progressives claim that one cannot have liberty without **cultivating capabilities**."*

In many ways this is the most telling definition of Progressivism one may find. It lays out all of the elements in succinct detail. It is basically a big Government environment with entitlements. The fundamental flaw is that the entitlements take from those who may not agree with the Government and distribute them to chosen classes. The question is one which asks why denial means. Are you denied a PhD from Harvard because you are just plain stupid? What if you are poor and cannot afford to go. What if you were a terrorist?

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<sup>3</sup> <http://www.und.edu/instruct/weinstei/jweinstein%20-%20meaning%20of%20the%20term%20progressive.pdf>

Are there any reasonable grounds for denial of benefits? If the majority distributes the benefits what if the majority becomes conservative and they decide on minimal benefits. Is that still progressive or is progressive only the diffusion of unlimited benefits to all?

One must read and re-read Weinstein's description of current day Progressivism. In many ways it surpasses the older definitions and the classic Progressive mindset. The drivers of this thought process were a hundred years ago the Trusts and the poor shape of labor in labor intensive industries. It was the child labor and the denial of equally rights to all, women, blacks and others. Yet today the drivers of classic Progressivism are no longer present and we then ask what are current Progressives trying to remedy that this program should be followed?

Nugent gives a simple definition of Progressivism<sup>4</sup>:

*"...there were many varieties of Progressivism...they held in common, however, a conviction that society should be fair to its members...that governments had to represent "the people" and to regulate "the interests"... It went without saying that there was such a thing as "society"...Progressives...shared a belief in society, a common good, and social justice, and that society could be changed into a better place."*

There are several elements capsulated in the above:

1. There exists a "Society": This was a key element of Progressivism. It was not the individual, it was the society, and the problem was that the society as it was defined was frequently exclusive. It is also not clear what the difference was between society and people. Were they the same or was society a subset of those with interests.
2. Government had to represent "the people": The Progressives are firm believers that one cannot defend one's own interest but that the role of defender rests solely on the Government. In a sense this would imply that Tort laws would eventually be unnecessary because there would be a Government regulation for everything and a Government agency for everything.
3. Common Good: Progressives believed in the existence of a common good to be sought after by the society for all people, not as individuals, but as a collective. It frankly denies the existence of the individual and the individual good, especially if such a good contradicts what those who have defined the common good have determined.
4. Social Justice: Social justice is the concept of applying justice, in its broadest possible meaning, including the establishment of a level field in socio-economic areas, rather than individual justice. It is justice across a Progressive society not the justice one seeks as an individual in court. It is a justice mandated by Government as a matter of course, not a justice as a result of a remedy. It was part of the Progressive plan supported by Father

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<sup>4</sup> See Nugent, Progressivism, p. 5.

Ryan and others with the publication of Ryan's book, *Distributive Justice*. Whereas Social Justice is justice in some manner across society, distributive justice is the same amorphous principle applied across the purely economic realm, namely the assurance of what could be called the equitable distribution of wealth. Ryan focused on the issue of a minimum wage.

We may further clarify Progressivism from the time of its original inception. Quoting from John Dewey we have<sup>5</sup>:

*"Liberty in the concrete signifies release from the impact of particular oppressive forces; emancipation from something once taken as a normal part of human life but now experienced as bondage. At one time, liberty signified liberation from chattel slavery; at another time, release of a class from serfdom. During the late seventeenth and early eighteenth centuries it meant liberation from despotic dynastic rule. A century later it meant release of industrialists from inherited legal customs that hampered the rise of new forces of production. Today it signifies liberation from material insecurity and from the coercions and repressions that prevent multitudes from the participation in the vast cultural resources that are at hand."*

Thus to Dewey and the original Progressives, they had extended the freedom of the individual to do what they sought to the freedom of the group from external deprivation. One can see in Dewey's writings on education that his view is to use the schools as the training ground just for such principles.

In further clarification, the Center for American Progress ("CAP") states<sup>6</sup>:

*"Progressives argued that rigid adherence to past versions of limited government had to be discarded in order to promote genuine liberty and opportunity for people at a time of concentrated economic power."*

*Progressives challenged excessive individualism in social thought and politics, promoted an alternative to laissez-faire economics, and replaced constitutional formalism with a more responsive legal order that expanded American democracy and superseded the economic status quo with a stronger national framework of regulations and social reforms."*

The points in this quote are in many ways even more telling. First, Progressives abhor individualism. The individual has neither merit nor meaning. The individual and the negative rights attributed thereto are the anathema of the Progressive. Yet one wonders where an economic understanding would come in. The entrepreneur, an individual apparently never mentioned by the Progressives, is the driving engine of the American

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<sup>5</sup> John Dewey, "Liberalism and Social Action." In Jo Ann Boydston, ed., *The Later Works of John Dewey, 1925-1953, Volume 11: 1935-1937* [electronic edition] (Carbondale, IL: Southern Illinois University Press, 2003), p. 35-6.

<sup>6</sup> See [www.americanprogress.org](http://www.americanprogress.org)

economy and in fact the American way of life. The entrepreneur is perforce an individual, one willing to displace any gratification, assume tremendous personal risk, and apply extraordinary effort to make something where there was nothing before. The Chairman of a massive corporation never takes such a risk and never provides such a return. Government worker frankly take no risk and have imputed costs. Entrepreneurs would never exist in a Progressive world; they would be destroyed as expressive of extreme individualism. Their own words say just that.

To continue, the replacement of "*constitutional formalism*" is then the destruction of individual rights. It would destroy the negative rights critical to the individual. The Progressives assume that there is a benevolent Government which looks out for the citizens and that the citizens belong in some way to this Governmental society. However are you were to believe differently, if you were to believe in the Constitution, if you were to believe in individual rights, then you would be victimized by those who believe differently. The Progressives also rely upon as yet fully developed positive rights, as we shall show later with Sunstein and his Second Bill of Rights.

The CAP further states:

*"Progressives sought above all to give real meaning to the promise of the Preamble of the U.S. Constitution—"We the people" working together to build a more perfect union, promote the general welfare, and expand prosperity to all citizens.*

*Drawing on the American nationalist tradition of Alexander Hamilton and Abraham Lincoln, progressives posited that stronger government action was necessary to advance the common good, regulate business interests, promote national economic growth, protect workers and families displaced by modern capitalism, and promote true economic and social opportunity for all people."*

To the Progressive, it is the Government, which by regulating business will create the common good. But business is in many ways the individual, the entrepreneur who takes risk, creates value, hires people, and creates wealth.

The Progressives reject the Constitution, and they view it at best as a platform upon which to build their world view. As Herbert Croly is quoted in CAP<sup>7</sup>:

*Herbert Croly denounced the static, conservative interpretation of the Constitution in Progressive Democracy as retrograde and insufficient for the modern age:*

*"The particular expression of the conservative spirit to which progressivism finds itself opposed is essentially, and, as it seems, necessarily doctrinaire and dogmatic. It is based upon an unqualified affirmation of the necessity of the traditional constitutional system to the political salvation of American democracy."*

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<sup>7</sup> Croly, *Progressive Democracy*, p. 20.

The denouncement of the Constitution is an arrogant expression that these "select" people have been granted a vision of what is right and proper. The fundamental flow of the Progressive mantra is that it is the Government which then controls individuals, and the control is based upon some changing philosophy and as the Government changes so too does the philosophy.

Progressivism has morphed into neo-Progressivism. It has kept the essential elements of the Progressivism of a century ago; governmental control, society over individual, social and distributive justice, common good versus individual benefit. Yet now the drivers for this plan are not monopolies but the banks, not the slaughter houses but CO2, not the wealth trust owners but the money hungry Wall Street bankers. It is not the new immigrants in tenements but illegal aliens wandering US cities.

### **1.3 THE KEY QUESTION**

As one looks at the two positions, extremes in many ways, one asks a key question; why do people think so differently from one another? Why do we have groups who want individualism, albeit with a limited Government, whereas others want an all controlling central Government. This question may go well beyond the issue a century and a half ago regarding states rights versus the Federal Government. What makes people come up with such drastically differing beliefs? In many ways, we try to explain these two belief sets, place them in some historic context, but we fail to answer the driving question, why do people think, believe; exist in such different belief sets?

After we review the original individualists and progressives and then their "neo" versions we come back to this question using a framework based upon a world view as deconstructed from the architecture of their proposed plans. Our approach is based upon Kuhn and his understanding of how science works, how new ideas are promulgated. They all begin with that new experiment, the result that simplifies and summarizes a belief set, the paradigm. Thus for Progressives of a century ago it was the Trusts and Tenements, those who got more than they deserved and those who were disenfranchised from society. They believed a century ago that all had changed since the time of the Constitution and that they, the Progressives, had a new way, a better idea.

To some degree it would be a push back to the Socialists, which for various reasons were shunned, mostly because they reflected a foreign theory of Government and in addition they were composed with a significant numbers of immigrants and Jews. The Progressives were for the most part main line Protestants and the religion played a key role in their ideas. They in many ways hated the Catholics, yet there was Father Ryan, and they saw the immigrants as people to be managed, and with the Jews it was an on and off again relationship. After all many of the Jews were bankers and the bankers were part of the problem as well.

Thus deconstructing what makes a Progressive or neo-progressive and further the same for individualist is an important issue to pursue.

## 2 THE PUBLIC INTELLECTUAL

There has arisen in the past century and a half in the United States especially what is now called the public intellectual. This entity, individual, is a creation of many factors, prime amongst them is the ability for them to get their opinions aired and then followed. They are creatures of the times and of the media which create them. In many cases they are academics who eschew the pages of the professional journals at times for the editorial pages of the prominent newspapers, the screens of television sets, and the pages of the Internet.

They are opinion creators, promulgators, and promoters. In some ways they are akin to the 19th and early 20th century wandering preachers spouting forth their view of a future and what will happen in the event that their special advice is not followed. They are viewed as experts, yet frequently their expertise, and often they have some depth, may be far afield from where they preach.

There is a quote in Peter Drucker's book recounting various people he had met along the way about Marshall McLuhan. Drucker referred to the presentation of McLuhan's doctoral thesis at which for some reason he was attending in Canada and there is a discussion and McLuhan is quoted by Drucker as follows<sup>8</sup> :

*"Movable type, rather than Petrarch, Copernicus, or Columbus was the creator of the modern world view..."*

*"Did I hear you right," asked one of the professors as McLuhan had finished reading, "that you think printing influenced the course s the universities taught and the role of the university, altogether?"*

*"No, sir," said McLuhan, "it did not influence; printing determined both, indeed, printing determined henceforth what was going to be considered knowledge."*

The last sentence has substantial truth in it and especially in today's world where we have begun to displace the printed word in books and journals and the newspapers with the Internet and the fluid word which is electronically and pervasively distributed. Today anyone can write a book, a paper, prepare a video, and audio, any multimedia presentation and then have it memorialized on the Internet accessibly by all. The concept of viral transmission is new and dramatically destabilizing. Its true impact is yet to be determined.

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<sup>8</sup> See Drucker, p. 250

Into this world we see the evolution of the public intellectual. In the past century it would have taken the public intellectual to have access to a news paper or magazine or to go and give talks and presentations. The idea would spread slowly. Today the idea can rapidly progress across the world in nearly no time. Thus the current public intellectual will undoubtedly have a changing characteristic and influence. It is that change that we are yet to see and those of whom we speak here are much of the classic era. The newer ones are yet to be fully appreciated.

Let us take a look, however, at what the public intellectual has been viewed as. In a section of the book on Hayek edited by Feser, there is a section by Scruton which discusses Hayek and his conservatism. He specifically discusses the role of intellectuals. Scruton states<sup>9</sup>:

*"In an article first published in the University of Chicago Law Review in 1949, Hayek addressed the problem of "The Intellectuals and Socialism" and made the following suggestion. First there is a distinction, of recent provenance, between the scholar and the intellectual.*

*The scholar is interested in knowledge for its own sake, and is often master of some narrow outwardly unexciting and in any case publicly inconspicuous field.*

*The intellectual is a "second hand dealer in ideas" interested in exerting his mind in the public sphere, who will "be naturally drawn to those theories and ideas that make thinking the avenue to action.*

*He will prey to visionary and utopian conceptions, and drawn to those theories and ideas that give to the intellectuals a special role in the redemption of mankind. Hayek points out that no socialist ever loses credibility with his fellows by the impracticality or extravagance of his ideas, while liberals (in Hayek's sense of the term) who are dependent on the good will of existing institutions and have no utopian formula for their improvement, will instantly damn themselves by an impractical suggestion."*

Hayek's description hits home on a great deal of what we will argue herein. There is a scholar and a public intellectual. And at times the scholar abandons their duty to their field and takes up the sword of the intellectual to do battle with the world of politically potent ideas. It gives the new intellectual a platform to espouse their beliefs but more importantly it plays to their ego, a much more powerful draw.

In this section we look at the public intellectual as an evolving creature. The characters we examine herein, on both sides, progressivism and individualism each, are examples in the context of political systems.

## 2.1 THE FUTURE OF THE MEDIA

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<sup>9</sup> See E. Feser, Hayek, Cambridge Press, p.222.



The media is in change. Thus one must briefly understand some of the changes under which it sees itself and how the status quo seeks to keep it that way. In the Nation there is a follow up article stating that we taxpayers should bail out the journalism which we are no longer buying because it is good for us, at least those journalists that the Government approves<sup>10</sup>. McLuhan would be rolling over in his grave. They state:

*The implications are clear: if our policy-makers do nothing, if "business as usual" prevails, we face a future where there will be relatively few paid journalists working in competing newsrooms with editors, fact-checkers, travel budgets and institutional support. Vast areas of public life and government activity will take place in the dark--as is already the case in many statehouses across the country. Independent and insightful coverage of the basic workings of local, state and federal government, and of our many interventions and occupations abroad, is disappearing as rapidly as the rainforests.*

*The political implications are dire. ... Popular rule doesn't work without an informed citizenry, and an informed citizenry cannot exist without credible journalism. This is more than academic theory; it is how the Supreme Court has interpreted the matter. As Justice Potter Stewart explained in 1974, the framers believed the First Amendment mandated the existence of a Fourth Estate because our experiment in constitutional democracy cannot succeed without it. That is hardly a controversial position, nor one that is necessarily left wing. It should be inviting to readers of the Wall Street Journal and Business Week, as markets cannot work effectively or efficiently unless investors, managers, workers and consumers have the credible information produced by serious journalism. .... We need to take a dose of our own medicine, and fast. Unfortunately, misconceptions about the crisis and the proper relationship between government and media warp the debate. ...*

*The most dangerous misconception has to do with journalism itself. Journalism is a classic "public good"--something society needs and people want but market forces are now incapable of generating in sufficient quality or quantity. ... **The public-good nature of journalism has been largely disguised for the past century because advertising bankrolled much of the news, for better and for worse, in its efforts to reach consumers.** Those days are over, as advertisers no longer need or seek to attach their appeals to journalism to connect with target audiences. Indeed, to the extent commercial media can scrap journalism standards to make the news "product" more attractive to advertisers, the cure will be worse than the disease.*

Frankly the form of journalism is changing and yes people buy newspaper or access other forms of information based upon their likes. I remember growing up in New York City when your political beliefs were transmitted by the paper you bought. My father was an avid reader of the Telegram, he would never read the News, The Journal American, the Sun, the Mirror, or Times and the Post was a "communist" paper. You see I read the Post secretly in College, and never really understood why.

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<sup>10</sup> <http://www.thenation.com/issue/january-25-2010>

There must have been more than a dozen daily papers, morning and afternoon. Then they disappeared replaced by Television. No one screamed then.

Today newspaper are still political, the Times in New York, well we all know its bent, fair and balanced is not in their lexicon, nowhere, but since we know it we filter accordingly. You see I actually get the Times every day, my lovely wife reads the paper and I read the on line version. As expected I find it easier, I never liked the big sheets of paper.

But calling the newspapers a public good, which is a bit too much. News is always going through a set of changes. We have seen broadsides, pamphlets, town meetings, the local pub, radio, telegraph, and now the Internet. In fact the Internet allows direct access to news from afar, yes it is biased, just read Pravda from Moscow, but I know that. I read China Daily, knowing how it is filtered, but I still get information. I do not need the Times to tell me. In fact, I gather the information well before the Times, in most cases. And I do not have to filter a slant atop a slant.

The authors continue:

*By ignoring the public-good nature of journalism and the roots of the current crisis, too many contemporary observers continue to fantasize that it is just a matter of time before a new generation of entrepreneurs creates a financially viable model of journalism using digital technologies. By this reasoning, all government needs to do is clear the path with laxer regulations, perhaps some tax credits and a lot of cheerleading. ...*

This public good issue is truly annoying. There is no public good because there is no true unbiased news, and in fact people all too often seek just to have their own ideas reinforced. Just look at Glenn Beck, I do not understand him, but he is a Father Coughlin of 2010s.

The authors continue:

*Our research suggests that press subsidies may well have been the second greatest expense of the federal budget of the early Republic, following the military. This commitment to nurturing and sustaining a free press was what was truly distinctive about America compared with European nations that had little press subsidy, fewer newspapers and magazines per capita, and far less democracy. This history was forgotten by the late nineteenth century, when commercial interests realized that newspaper publishing bankrolled by advertising was a goldmine, especially in monopolistic markets. Huge subsidies continued to the present, albeit at lower rates than during the first few generations of the Republic.*

Yes indeed they want us to subsidize the Press. Well frankly folks where does freedom of the Press go when the Government subsidizes it. I listen to NPR when in northern New Hampshire because there is nothing else in the day time and then at night I switch to

French Canadian stations, and yes it does keep my French up to date albeit with a twang, "away is the way they say "oui" for those of you who have not been there.

The authors finally end with:

*In our new book, **The Death and Life of American Journalism**, we offer proposals for long-term subsidies to spawn independent digital journalism. But we do not claim to have all the answers. What we claim--what we know--is that it is now imperative that emergency measures be proposed, debated and implemented. People need to see tangible examples of "public good" interventions, or the discussion about renewing journalism will amount to little more than fiddling while Rome burns. The point now is to generate popular participation in and support for a small-d democratic response.*

*The starting point could be a debate about "bailouts" to keep struggling commercial news media, especially newspapers and magazines, afloat. As a rule, we oppose bailing out or subsidizing commercial news media. We believe subsidies should go primarily to nonprofit and noncommercial media. We are not doctrinaire on this point and believe it should be subject to debate, especially for short-term, emergency measures. If subsidies do go to commercial interests, the public needs to get something of substance in return. But the lion's share of subsidies must go now and in the future to developing and expanding the nonprofit and noncommercial sector. Journalism needs an institutional structure that comports with its status as a public good.*

Journalism may really be dying and information may be its doing. You see we can access information, albeit biased, on the Internet and we do not need an intermediary to tell us what the facts are, colored by their viewpoints and values. Journalism is an old craft where the reporter goes out and seeks out a story; the reporter creates out of what is before them a tale that is of interest hopefully to the readers so that the paper may sell and print ads. Reporters are generally incompetent in many of the fields they report upon; law, medicine, science, technology, and the list go on. The typical reporter gets quotes, records some facts, worthwhile or worthless, and then writes them up in a generally acceptable manner. The reporting is constrained by the reporter's bias, judgment, and the editorial philosophy of the paper. To call this a public good is a bit much.

The Internet is a new medium, in McLuhan terms the medium determines what is fact, and with the new medium the users of it are redefining facts. The "facts" of the old journalism world are no longer valid, so just let the stinking corpse be buried, why should we be taxed to have the smell stay around. Better yet, build a funeral pyre!

## **2.2 HERESIES AND EARLY VERSIONS OF PUBLIC INTELLECTUALS**

In the fifth and sixth centuries (450-600 AD) there were a plethora of Christian heresies running amok in the Roman Empire. There were Monophysites, Monothelites, Nestorians, Arians, Sabellians, Appolonarians, and even more, each proposing a new view of Christ and his relationship to God. These heresies were all based upon the attributes associated with the nature, person, will, soul, essence and even more of Jesus.

Did he have one nature or two, were the natures melded as one or standing separate, did he have one will or two, were there two persons or one, and it went on and on. The Emperors and Empresses from time to time got into the fray, as of course did the bishops and other prelates.

Moreover, it is written that even the street vendors, military conscripts, slaves and prostitutes had strong and often well thought out opinions on the Christological issues at hand. One could not go to the market in Constantinople without having the spice merchant, the silk merchant, the street-walker, asking you what you thought was the case and then expounding their view before you had an opportunity to respond<sup>11</sup>.

In this period, one could view the many monks, bishops, and others as we do the public intellectual today. They argued not about progressivism or individualism, cap and trade or free markets, but about God and his attributes. This is strange in a way since one would have envisioned the Church after Constantine as having the Church as a more controlling force than the state, yet one dare not consider alternatives to the Emperor whereas one all too commonly spoke of the alternative attributes of God. The Almighty was safer territory to debate upon than the purple.

Yet there were ways to settle the disputes. The solution, declare the view a heresy, then the Emperor would step in and from that point on the heretic would be in some hot water. There was a process to reach the point of a belief becoming a heresy. Councils of the Church were called, witnesses, other Public Intellectuals were called, and a vote taken. Even though these were decisions on the nature of God, the decisions were made by man in a majority vote procedure! The result could dictate your eternity, yet at the time a nice majority vote counted.

What does this little historical fact have to do with the current public intellectual? It merely demonstrates the continual existence of a class of purveyors of ideas, of causes, no matter in what context, demonstrating three facts. First, there is always an audience for the ideas, and that audience often becomes a following. Second, the ideas are often ones which resonate with what the community can debate on, God rather than the Emperor. Third, there is no process to ascertain which Public Intellectuals position is right or wrong. There is no majority vote, there is no declaration of heresy, and the ideas just keep rolling around.

As a current day example, consider the debate on the topic of Internet Neutrality? There are bigger ones, health care, global warming, taxation, even term limits, but I chose this one because it has simplicity to describe yet intensity in terms of the various positions, to use as an example.

This, for some then, may be an obscure and limited debate amongst the players on the Internet. However, if one just looks at hits on Google than the marketplace for public

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<sup>11</sup> See Davis, L. D., *The First Seven Ecumenical Councils (325-787)* Liturgical Press (Collegeville, MN) (1983).

discussion of Net Neutrality, as of the time of this writing, shows that there are over 3,000,000 references to Net Neutrality, growing at the rate of about 10,000 new ones per day! The marketplace of “ideas”, if that is what one calls all of these hits, is massive. There are only 300,000 hits on the “War on Terror”. Thus, one could assume that Net Neutrality is ten times more important than the War on Terror! One could look at other more interesting hits. There are only 1.2 million hits on the Beatles! Yet there are 42 million hits on “God”. Thus, God is by this metric of relevance only seven times more relevant than Net Neutrality! Yet God has been around a bit longer than Net Neutrality<sup>12</sup>.

Thus, in today’s world, one may assume that the issue of Net Neutrality is having somewhat the same type of existence in the marketplace of ideas as did the nature, person, will, essence of Christ in the sixth and seventh Century. For each day there are hundreds, if not thousands, of blogs opining on what is Net Neutrality and how it should be treated. Those doing the opining are generally just people “off the street”, in many ways like the people opining on the nature of God in the sixth and seventh centuries.

The question, however, is there a set of individuals that we, the voters and consumers, should be turning to in an attempt to seek guidance and advice as to how best to view this important topic and what we should be demanding of our legal representatives. Is there a Council of Nicea, a Council of Constantinople, to resolve the issues, to frame them, to define them, and do we have the equivalent of the learned bishops and patriarchs to assist us poor folk in determining where we should seek the correct answers.

Are the incumbents like Comcast, Time Warner, Cablevision and Verizon to be viewed as the twenty first century versions of the Huns, the Slavs, the Avars, the Vandals, or are they just benign businesses who are seeking to maximize their shareholder value in an open and competitive capitalist market?

The class of people who we would typically turn, an often self appointed group, is what Judge Posner has recently characterized in some detail as the Public Intellectual<sup>13</sup>. The Public Intellectual has been around for quite a while in society, this individual is one who seeks a public platform, the Press, the Courts, certain Government Institutions, to present their views on a certain topic.

Let me bring in to the discussion a prototypical Public Intellectual, Noam Chomsky. He is a brilliant professor of linguistics at MIT who takes positions on many global political issues and does so through his writings and presentations. He is a compelling author and his positions take to the extreme. Yet, as one reads him in detail, he is in many ways a classic sophist, and he can take "facts" roll them into whatever result he desires. He all

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<sup>12</sup> This is the Posnerian approach, which we shall discuss latter, of using Google hits as a measure of societal importance see Posner, Public Intellectual, Harvard, 2000.

<sup>13</sup> See, Richard Posner, Public Intellectuals, Harvard (Cambridge) 2000.

too often starts with the conclusion, a political position, and then gets the "facts" to justify the position. Yet he does so brilliantly and with saber like precision.

Noam Chomsky rose to some type of fame for his opining on the War in Vietnam and then American Politics in general, although as an MIT Professor he specialized in the field on linguistics, as was especially prominent in that field as well. Yet Chomsky has remained on the periphery as a Public Intellectual, perhaps because his positions are often a bit extreme. Yet he exemplifies the qualities of a good Public Intellectual. He is intelligent, articulate, crafts his positions succinctly, defends them in writing and on the stump, and has managed to have a following who believe in him strongly. In a sense, Chomsky can be used as an acid test for other Public Intellectuals. He tackles broad problems of a global nature, albeit with his biting approach.

At the other extreme there are smaller but as intense a set of issues that the class of public intellectuals deal with on a day by day basis. We will look at one specific one here because it has the characteristics that make for an interesting and explanative investigation. The issue is that of Net Neutrality or Internet Neutrality and this somewhat arcane and parochial issue has spawned a collection of these people, many of whom in earlier lives were doing their public intellectual opining in related areas, such as telecommunications law, public policy on intellectual property, and the like. These public intellectuals have all come to the table to deal with this problem of Net Neutrality. The problem of Net Neutrality for our discussions can be simplified as follows:

*"Net Neutrality relates to the issue of what control if any does the local internet transport provider, the local Internet carrier, have over the messages that utilize their local networks? Does the local Internet carrier have the right to examine any of the contents of the messages transported and then to make decisions on how to handle such message flow independent of and with no agreement of then person or persons to whom the communications is meant to go to?"*

This is not a Chomsky like question of world peace, yet it has engendered as much discussion as any other flowing around the world of the public intellectuals. We will use this issue as a platform to further understand the Public Intellectual.

We now ask three questions related to the public intellectual, their role, and the influence that they purport to have;

First, who are these people and should we listen to them. The prime question is always "what is the basis of your opinion?" In our discussion of public intellectuals we have said that there is really no qualification to become one. I have seen many non-technical folks get into the Internet Neutrality debate and say things that just do not make sense. I recently saw a world famous economist get in front of a debate on Obesity and Type 2 Diabetes and make statements which are just outright wrong<sup>14</sup>. To be a good public

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<sup>14</sup> See Mankiw and his Opinion piece: <http://www.nytimes.com/2010/06/06/business/06view.html>

intellectual one must also know the facts, one must be educated in them and one must back up statements with facts. We will show that all too often the public intellectual gets well ahead of themselves and that is when trouble begins. It is for this reason that we use the Internet Neutrality example, it has strong technical content. Health Care is much too broad, and Internet Neutrality is quite specific;

Second, if they are truly “sellers” of ideas, what should we as consumers of their ideas be made aware of so that we can reliably assess whether we should accept what they are saying as valid. What I mean by sellers is that all too often the purported public intellectual is being remunerated by a third party and a party with some interest in the policy debate. A recent example was Prof Gruber at MIT who had done many models for health care and published many articles supporting the administration. It comes to be that they the good Professor were a paid consultant to the White House which was using his "unbiased" analysis to show how good their plans are. There are many public intellectuals who are "sellers" of ideas. The "think tanks" are a typical example but not as blatant as the Gruber one. ;

Third, if not from the current crop of Public Intellectuals, where else should we seek information, namely is there any reliable information in these millions and millions of hits on the Google searches. Is there "truth" to be found anywhere in cyberspace? The answer is that with the wealth of information one should explore as much as possible always looking for the basis and always looking to see who is "selling". The buyer beware is always good advice.

The persons who we, the public, frequently seek advice and guidance from, is the Public Intellectuals. These people are the class of Americans who frequently find themselves in Academia or even in Think Tanks and who have demonstrated over years of writing and lecturing and study that they are experts in some area which may be somewhat germane to the public topic being discussed.

Thus, these Public Intellectuals may be Lawyers, Political Scientists, Historians, and in such a technical area as Net Neutrality, they may be Engineers or even Scientists. Public Intellectuals are, by their very nature, allegedly deep thinkers in their own fields, and have been recognized by the Academy or some other vetted body of approval that they have passed the peer review mechanisms that are so common in their fields. Further, their ideas, their thinking process, and their prognostications have validity and merit<sup>15</sup>.

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<sup>15</sup> An interesting document that may help here is 509 US 579, *Daubert v Merrell Dow*, the Supreme Court case describing what may be characterized as Expert Testimony. In the *Daubert* case the Court supports the US Code which allows a broader interpretation of an expert. The expert testimony is no longer limited to peer reviewed works. This we shall see is a critical change even for this topic. For example, the whole issue of access and interconnection in the peer review literature is dominated by the Baumol Willig tautology which states that fees should be charged to maximize public utility subject to the constraint that the initial incumbent has its profit maximized. By definition that accepted standard denies any new entrant access.

In his study of “Public Intellectuals”, Richard Posner addresses these types of questions in a broader political context. Posner is the head of the U.S. 5<sup>th</sup> Circuit Court of Appeals in Chicago, and is a well known jurist and author, and himself a Public Intellectual of sorts. In his work, Posner takes the Public Intellectual to task. When Posner discusses the Public Intellectual he also opens up the discussion of the Intellectual class in general. There has been great discussion of this class by many authors over the past century and Posner just adds to the discussion yet in a new and innovative manner<sup>16</sup>.

Posner characterizes the Public Intellectual as:

*“To summarize, a public intellectual expresses himself in a way that is accessible to the public, and the focus of his expression is on matters of general public concern of (or inflected by) a political or ideological cast. Public intellectuals may or may not be affiliated with universities. They may be full-time or part-time academics; they may be journalists or publishers; they may be writers or artists; they may be politicians or officials; they may work for think tanks; they may hold down "ordinary" jobs.*

*Most often they either comment on current controversies or offer general reflections on the direction or health of society. In their reflective mode they may be utopian in the broad sense of seeking to steer the society in a new direction or denunciatory because their dissatisfaction with the existing state of the society overwhelms any effort to propose reforms. When public intellectuals comment on current affairs, their comments tend to be opinionated, judgmental, sometimes condescending, and often waspish. They are controversialists, with a tendency to take extreme positions.*

*Academic public intellectuals often write in a tone of conscious, sometimes exasperated, intellectual superiority. Public intellectuals are often careless with facts and rash in predictions.”*

This is a frightening characterization but is all too often totally the case especially in the domain of those who opine on the Internet Neutrality issue which we will soon get to. The last statement that they are often careless with facts and rash in predictions is to some degree holding the punch. They all too often opine on things which they do not have the faintest degree of knowledge of.

### **2.3 THE ACADEMY**

There are a multitude of Academics who one may look at as playing the role of Public Intellectual. The Academy is today filled with individuals who frequently want to take their thoughts and put them out to the public, whether those thoughts are well hatched or

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<sup>16</sup> See the books by Hofstadter, *Anti Intellectualism in American Life*, or Barrett, *The Truants, Adventures Among the Intellectuals*, or Johnson, *Intellectuals*, or the classic, Allan Bloom, *Closing of the American Mind*. The American Intellectual seems to be quite distinct from the French Intellectual, for in France there are many Public Intellectuals, but the French think for thinking's sake whereas the Americans think in response to financial sponsors, in many cases.



not. Many of the Academics so involved will not ever think of sending in a paper for publication without extensive review for fear of potential peer criticism, yet they will take ideas of the moment and send them forth to the Public as if generated on Olympus.

They typically today are in Law Schools, and even more typically are devoid of any technical, business, or operational experience, and most likely even hands-on knowledge of the industries on which they are commenting. This is not to say that every Public Intellectual who is an attorney and at a Law School has de minimis knowledge, but one must look at what attorneys say and their approach to the topic as one which is inherently adversarial on the one hand and an advocate on the other. Posner is a true exception. Perhaps because he has spent so much of his time as a Judge seeking the best solution and not as an advocate.

Thus, without impugning any of the current players by name, we return to the Internet Neutrality issue and present a current cross section of Public Intellectuals from the Academy who is working in the Net Neutrality space and they include some of the following:

At University of Pennsylvania School of Law there is Christopher Yoo, previously at Vanderbilt, an attorney by training, and an academic by profession for most of his career with no stated technical competence or business experience<sup>17</sup>.

Gregory Sidak is another, also an attorney educated at Stanford and in the Academy and in Think Tanks the totality of his career<sup>18</sup>. He is currently at Georgetown Law and Criterion Economics, a Washington Think Tank and consulting firm.

Then there is Larry Lessig at Stanford and now Harvard Law, a Yale Law graduate, well known in intellectual property law on the Academic side, self proclaimed expert on the Internet<sup>19</sup>, albeit also with no apparent technical expertise or training and no business or operations experience<sup>20</sup>.

Then there is Tim Wu at Columbia, a Harvard Law Grad and one who has clerked for Judge Posner herein referenced, and one who has claimed business experience in Silicon Valley<sup>21</sup>.

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<sup>17</sup> <http://www.law.upenn.edu/cf/faculty/csyoo/>

<sup>18</sup> <http://criterioneconomics.com/who/sidak.php>

<sup>19</sup> <http://www.lessig.org/blog/> This is Lessig's blog and it appears as if this is a promotional site for whatever is produced. This is the Public Intellectual in full bloom.

<sup>20</sup> <http://www.law.stanford.edu/directory/profile/39/>

<sup>21</sup> [http://www.law.columbia.edu/fac/Timothy\\_Wu](http://www.law.columbia.edu/fac/Timothy_Wu)

What is so common a thread amongst these is that they are all attorneys and that none of them appear to have any material technical or business experience or competence? One would think, that in order to opine as an expert on something which is so sophisticated as the Internet and its architecture, that one would have to possess a modicum of technical expertise, otherwise one opines on something about which they may possess flawed ignorance of key issues.

Yet that has not seemed to have stopped Intellectuals, especially Public Intellectuals, in the past. It is not that each of the individuals involved do not possess superb credentials in their chosen field, but in discussing the Internet, possession of star quality credentials in the law, even economics, may represent but a miniscule set of the insights and knowledge truly required.

In contrast, there are several technical Public Intellectuals which can be identified. They are much fewer and for the most part are true advocates for the technology per se and not for a political position.

One is Tim Berners-Lee who invented the software we call the Web and who is currently at MIT. Berners-Lee has made an effort based upon his well accepted and demonstrated expertise and he has defined Net Neutrality as<sup>22</sup>:

*“Net neutrality is this: If I pay to connect to the Net with a certain quality of service, and you pay to connect with that or greater quality of service, then we can communicate at that level.*

*That's all. It's up to the ISPs to make sure they interoperate so that that happens.*

*Net Neutrality is NOT asking for the internet for free. Net Neutrality is NOT saying that one shouldn't pay more money for high quality of service.*

*We always have, and we always will. There have been suggestions that we don't need legislation because we haven't had it.*

*These are nonsense, because in fact we have had net neutrality in the past -- it is only recently that real explicit threats have occurred. Control of information is hugely powerful. In the US, the threat is that companies control what I can access for commercial reasons. (In China, control is by the government for political reasons.)*

*There is a very strong short-term incentive for a company to grab control of TV distribution over the Internet even though it is against the long-term interests of the industry. Yes, regulation to keep the Internet open is regulation. And mostly, the Internet thrives on lack of regulation.*

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<sup>22</sup> <http://dig.csail.mit.edu/breadcrumbs/node/144>

*But some basic values have to be preserved. For example, the market system depends on the rule that you can't photocopy money. Democracy depends on freedom of speech. Freedom of connection, with any application, to any party, is the fundamental social basis of the Internet, and, now, the society based on it."*

Thus, when we look at the issue of Net Neutrality, perhaps knowing who is the advocate for whom is an essential factor to be included in understanding how to weigh what has been said. Berners-Lee it appears is a broker of truth based upon facts and he is advocating for the Net qua Net. The others as attorneys deal with the law which in most cases is a backward looking process. The law is precedent at best and promoting your clients views at worst.

## 2.4 THE THINK TANKS

The collection of Think Tanks which have erupted in the telecom and media space is phenomenal. One of the oldest of the Think Tank intellectuals is Peter Huber who spent several years at the Manhattan Institute. A Harvard trained lawyer and a PhD from MIT in Mechanical Engineering, Huber established himself in this space by being the person the FCC asked to write the first triennial review of the Modified Final Judgment, MFJ. This was accomplished in late 1987 and it was this report, the Huber Report, which started talking about an open network, a "geodesic" as phrased by Huber, which in many ways set the path for the new Public Intellectual going forward in telecommunications and in the early days of the Internet.

Huber apparently had little or no knowledge of telecommunications before he prepared this report which made it ever so more the curious. Here is a young man, a brilliant as said by many, engineer and attorney, tasked with assessing the evolution of telecommunications. He of course did not see the re-consolidation of the market nor did he see the Internet. To do so required one to have some experience in the business as well as technical experience outside of his ken as a mechanical engineer, a degree from MIT notwithstanding.

There are now many Think Tanks focusing on telecommunications and in turn supported by companies who have a vested interest in policy turning out in a specific manner. Some of the major Think Tanks are entities such as Heartland Institute<sup>23</sup>, Free Press<sup>24</sup>, Public

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<sup>23</sup> <http://www.heartland.org> Heartland refuses to supply its funders and states: "For many years, we provided a complete list of Heartland's corporate and foundation donors on this Web site and challenged other think tanks and advocacy groups to do the same. To our knowledge, not a single group followed our lead." However we have seen that Progress and Freedom does detail all of its supporters. We have found that Heartland was highly critical of some of our early work on Municipal Broadband Networks. Ironically had they waited to see the following reports, based upon our actual experience, our position and their sponsors, allegedly the incumbent Telcos, would have reached a consistent position.

<sup>24</sup> <http://www.freepress.net/> and their support is not readily ascertainable from their web site.

Knowledge<sup>25</sup>, Progress and Freedom Foundation<sup>26</sup> and many others. Gigi Sohn is an example of one of the Public Intellectuals from the Think Tank world where she founded Public Knowledge.

At the other extreme is Joseph Bast who founded Heartland Institute. Sohn is left leaning whereas Bast is right leaning. One could look at dozens and dozens of such entities which have cropped up over the past few years.

## 2.5 CHALLENGES OF TECHNOLOGY AND POLICY

Technology and Policy, a field of interest for the Public Intellectual, can be a mine field for the un-educated or the poorly educated in the technical field at hand. I have observed that over the past few years the practitioners of policy in a space which has a strong technical element, telecommunications, health care, and the like, have become less technically adept and more politically attuned.

For example, in the late 1960s and early 1970s, when AT&T was at its pinnacle, Bell Labs and its parent, AT&T created a publication called the *Bell System Journal of Economics*. It was akin to the technical journal called the *Bell System Technical Journal*, the BSTJ as it was known in the community. To ensure that the BSJE, the Economic journal was filled with the “correct” economics positions, AT&T spent quite a few years recruiting to its economics research area some of the best and brightest students from the highest ranked schools of Economics. They, in turn, wrote for the Journal, and then AT&T could refer to articles in the Journal to support its regulatory positions. Was the FCC at all red-faced in using such self service papers, not in the least, for frankly it was the only game in town?

In today’s world, the Public Intellectual finds a home in the Academy and in the Think Tank, as the two primary places, which we have just discussed. There may be Public Intellectuals also in places such as the Press and even some just independent thinkers, supported by no third party, a rarity in today’s world.

The venue for their ideas fall into two general classes; the Media at large, newspapers and television, and the legal system at large, such as expert witnesses, supporting filings, testifying before Congress, and the like. It is not uncommon to see a Public Intellectual, who is from the Academy, testifying before a Congressional Committee, supporting a third party company’s position, yet never revealing that they are being compensated, and have been compensated for such testimony.

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<sup>25</sup> <http://www.publicknowledge.org/> and their supporters are not readily available. This was founded by Gigi Sohn, an attorney.

<sup>26</sup> <http://www.pff.org> and their supporters are publicly stated: <http://www.pff.org/about/supporters.html>

If a Physician gave testimony being paid by a drug company and not declaring that fact, they most likely would be defrocked in every way possible. For an Academic, however, they continue to opine without fear of anything, they just collect another substantial advisory fee. The problem of course is also due to Congress who never asks the Public Intellectual the question of who is paying for their testimony. Even with Public Intellectuals who are attorneys and attorneys are trained to testify on the behest of their clients, they too never disclose their clients.

Yet, these were truly highly competent professionals and they also became well trained in the technology and the operations of the telephone business. In contrast, academic economists have in the past decade begun to opine in a similar manner, either as experts in litigation or in filings supporting their clients before regulatory bodies.

A simple example of the quasi Public Intellectual extending beyond their ken is that of Professor Hausman at MIT. A renowned academic in the field of economics, Hausman in 1993 was requested by Pacific Telesis, one of the Baby Bells, to disembowel one of my papers on PCS, the FCC's auctioning of the 1.8 GHz spectrum, also known as Personal Communications Services<sup>27</sup>. I wrote in a paper presented at MIT entitled *Wireless Access to the Local Loop*. In the paper I stated several conclusions I had reached based upon my being both a Visiting Professor at MIT in Electrical Engineering and Computer Science and the Chief Operating Officer and Senior Vice President at NYNEX Mobile, now Verizon Wireless. Thus, unlike Hausman, I was speaking as a fact expert not an academic. Facts are in my opinion often so troubling to academics, especially economists. I asserted at the time the following:

*"First, access and interconnection charges were barriers to entry because they allowed the incumbent to "tax" the new entrant and thus create an unfair advantage. The access theory allegedly sustained by Hausman was predicated on the classic Baumol-Willig Theorem which was developed under the aegis of AT&T to apparently justify their stranglehold on the local loop. Simply, the Hausman argument on access is based on network externalities and payment to the incumbent for the advantage. I had already stated that wireless would supplant wireline, it did so three years ago, and that if the rule based on externalities held that at the point at which this occurred, the wireline should now pay the wireless. That has never occurred.*

*Second, he then opined that there were great economies of scope between the wireline business and the wireless. I had stated that there are none. Specifically I relied upon the fact, apparently then and yet today still unknown to Hausman, that IP switching would replace the Class 5 switches. I had discussed this with Jacobs at Qualcomm when we first introduced CDMA into the network. What was obvious to us in 1988 was still apparently unknown to economists in 2003! In addition, telephone poles were not good for cell sites and one would outsource billing and customer service, as well as the sales forces being totally different, I made them so. Thus there were no other common elements. His*

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<sup>27</sup> See <http://www.telmarc.com/Hausman.pdf>

*argument also included the assertion that there were minority partners; we were already buying them out at NYNEX at that time, so that too held no merit.*

*Third, I had stated that disaggregation was to become a dominant approach, further eliminating scope. Disaggregation is also known as outsourcing, need one say more. He allegedly denied that also.*

*Fourth, I stated that there were de minimis scale economies in the CDMA architectures. Simply stated, scale economies mean that the cost per new unit drops the more number of units you produce. I showed that using a CDMA fabric that in a real design scenario, namely really and truly building something, that if you took the capital per new customer as a function of the total customers supplied, that there was de minimis change just after a short while, thus no scale economies in capital plant. This was not brain surgery, this was not economics, this was just using facts, and real numbers for real builds. To support his payer of fees, Hausman, allegedly rejected this set of facts. One could then take the disaggregation fact and also say that to an operator, the disaggregator may have reached scale, and thus by outsourcing scale can be achieved for any supplies, and thus for the supplies there is no economy of scale.*

*Fifth, I stated that the incumbents were clearly barriers to entry for any new player. Well, this is now history not conjecture, NYNEX is owned by Verizon and Pacific Telesis by AT&T, so history tells a story for which I had predicted an outcome. I was not paid by an incumbent for at that time I was personally financing my entry into the business, yet Hausman was apparently a paid expert. Thus, is this quasi Public Intellectual to be believed as an unbiased purveyor of what should be done in the Internet market<sup>28</sup>? Or, when being paid to support an adversary and be an advocate, can one reasonably assume that such a Public Intellectual is nothing more than a voice for that adversary. In my opinion, this taints both the clarity and the integrity of such works as purely academic and makes it merely a service for hire."*

In fact, one may wonder why did Pacific Telesis even spend so much money attempting to discredit my work by a quasi Public Intellectual who had no technical or operational expertise? Why would so prominent an academic put his alleged reputation on the line to rebut a paper presented at a working conference? He clearly spent hours on this report. He was apparently compensated, and most likely if so compensated then compensated very well.

Yet, it then may, in my opinion, call into question the remainder of his work, for if one seeks to gain ongoing compensation of this type, then one would most likely assume that one would have to continue in his professional work to reflect a set of opinions consistent with those of his erstwhile financial backers.

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<sup>28</sup> One should also look at a recent book in which Hausman opines on the Internet and Broadband. The book is *Broadband*, by Crandall and Alleman, AEI-Brookings, 2002.

If that logic follows, then what independence can one expect, for the academic is always writing in anticipation of a future fee, not writing to seek the truth, whatever that is and wherever that may lead.

## 2.6 ECONOMISTS AND LAWYERS VS. TECHNOLOGISTS AND BUSINESS PEOPLE

In the space of Public Intellectuals there will always be tensions based upon world views. We provide here a simple example in the issue space of Net Neutrality but this example will extend across the spectrum to many other cases.

In the domain of Net Neutrality, there clearly is a tension in the market of Public Intellectuals between Lawyers and their allies the Economists and in turn the people who make things work, the Engineers and Business People. One group is looking backward versus another looking forward, one for establishing “rules” vs the other for finding ways around them.

One needs look to the wonderfully perceptive paper by Rob Frieden, *Revenge of the Bell Heads*, to see how this battle has worked out<sup>29</sup>. Frieden is quite knowledgeable of this community of Bell Heads and Net Heads, those brought up in the world of the old Bell System and those brought recently into the world of the Internet. Consider it Verizon versus Google, Washington and New York versus Silicon Valley, lawyers and suits versus beards and engineering degrees.

Frieden wrote this in the 2001 time frame, just as the obvious sets of conflicts were starting. The old Bell System is in many ways like the Catholic Church, it has its Pope, Cardinals, Bishops, Monsignors, Pastors, and is a highly structured environment. Everyone has a place and they know their place. Everyone has accepted the tenets of the religion or they are expelled, truth and reality have no place, for truth and reality can be molded by the institution, it does not exist extra the institution.

Yet, on the Public Intellectual side of the Net Heads, there has grown up a strong base of attorneys. One must remember, however, that attorneys are fundamentally people trained in an adversarial system, at least in the US and in English law countries. They have to take a side and then go to war over their positions. Attorneys represent their clients, a strange thing for an erstwhile Public Intellectual, one who we would think was opining on their own insights, for lawyers generally opine solely for and in the interest of their clients.

In addition, the lawyer Public Intellectual, besides being an advocate, and adversary, is totally reliant on third parties for establishing the basis for their case, unless they rely solely upon the existing law and the decisions rendered therefrom.

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<sup>29</sup> <http://arxiv.org/abs/cs.CY/0109035> Rob Frieden, *Revenge of the Bell Heads: How the Net Heads lost Control of the Internet*, TPRC, September 2001.

Attorneys and Economists are also people who perform their professional duties by looking backwards. The attorney relies on the law and precedents and the Economist all too often looks at statistics from the past and then tries to generalize therefrom. Economists use regression of past events, human actions of the past, and the work of former economists. Neither of the two classes are what we would characterize as forward lookers. In many ways, Marx was the quintessential Economist, as one who looked backward, he never saw capitalism as it evolved coming down the track.

In contrast, Engineers and Business People are forward looking, by necessity, by training, by their genes. They may give deference to the past, but for the most part, they are change agents. The Engineer finds ways around the lawyer's restrictions, around what the law dictates, and hand-in-hand with the business person executes those changes. The Internet is a prime example in its early days<sup>30</sup>.

Thus the Economist will talk about scale and scope and the Engineer will design around it. The economist will look with the glasses of building a large steel mill, with a fifty year life, whereas the Engineer will look at a software defined element changeable on a moment's notice. The very concept of capital asset makes a change. The Lawyer is constrained by the past, precedent is his major weapon, whereas the Engineer is freed from the past, creativity and finding ways around problems are the tools of his trade.

The question is; where will this war be fought. If this is a battle based solely on the law, then two things will happen. The past will become the future and stay that way and second Engineers will reinvent the future so that the law as written no longer applies. This cycle will be endless.

## 2.7 THE WORLD OF THE PUBLIC INTELLECTUAL

The concept of Internet Neutrality and its handling in the public market of ideas is an interesting case of how the Intellectual elite of this country has been utilized. One need go to the work of Hofstadter when he wrote the work, *Anti Intellectualism in American Life*, in 1963 to see how the Intellectual, Public or otherwise, views themselves and the threats to their self created wisdom and integrity.

The Public Intellectual then as characterized by Hofstadter was confined in their own world of accepting members and they rejected any who attempted to break their monopoly hold on truth. Hofstadter states<sup>31</sup>:

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<sup>30</sup> The best example of this challenge of cultures and what results is the book by Steve Coll, *The Deal of the Century*, Atheneum, 1986. Coll had written the quintessential book on technology versus regulation.

<sup>31</sup> See: *The Paranoid Style in American Politics*, By Richard Hofstadter, *Harper's Magazine*, November 1964, pp. 77–86. He starts with "It had been around a long time before the Radical Right discovered it—and its targets have ranged from "the international bankers" to Masons, Jesuits, and munitions makers." Hofstadter also wrote *Anti Intellectualism in American Life* in 1963. Hofstadter was from the Columbia University school of Public Intellectuals mentioned also by Posner. They were for the most part Communists or Communist affiliated, as was Hofstadter himself a member of the Communist Party. In his *Anti Intellectualism* work Hofstadter shows great anti Catholicism in a Chapter claiming that Catholics and the Church in general is against any form of thought, it requires mere following. This of course is a bit strange for two reasons; this was 1963 and he was friends with Arthur M. Schlesinger, a close



*“American politics has often been an arena for angry minds. In recent years we have seen angry minds at work mainly among extreme right-wingers, who have now demonstrated in the Goldwater movement how much political leverage can be got out of the animosities and passions of a small minority. But behind this I believe there is a style of mind that is far from new and that is not necessarily right-wing. I call it the paranoid style simply because no other word adequately evokes the sense of heated exaggeration, suspiciousness, and conspiratorial fantasy that I have in mind. In using the expression “paranoid style” I am not speaking in a clinical sense, but borrowing a clinical term for other purposes.”*

One can see this paranoid style in many of the current Public Intellectuals in the area of Net Neutrality. And frankly one sees this across the board with almost all public intellectuals, Chomsky being the gold standard. The standard approach, and frankly not of new invention as one reads Hofstadter, is to make the other side a demon, to create perils that auger the end of humanity if the other side wins anything. This Paranoid Style stifles debate. Regrettably it has become an element in the style of all Public Intellectuals. Posner makes certain recommendations to assist in allowing people to ascertain the credibility of these Public Intellectuals. Specifically Posner recommends that two things be done concerning the public’s knowledge of the Public Intellectual:

That all Public Intellectuals provide a repository accessible to the public at large of all of their works so that the public may be able to see what positions they have taken in the past and to determine for themselves whether the Public Intellectual is consistent.

That the Public Intellectual, if at a University or other quasi public or third party supported institution, reveal what support that this Public Intellectual has received from what third parties so that the public can ascertain who has influenced the work of that Public Intellectual.

We can make the following observations:

1. There is a role for Public Intellectuals for no other reason to help define the issues. The Public Intellectual takes and articulates a position. The Old Bell System had taken this to a fine art by having the local managers of their local operating companies take to the road and tell the public in Kiwanis, and the like, what the Bell System was doing to improve their life. They were mini Public Intellectuals, yet you knew who sent them.
2. The Public Intellectual should follow the Posnerian requirements of providing a history of what they said and disclosing who is paying what for what they are saying. Full disclosure is critical. If the Public Intellectual were acting as an expert at trial, these two

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friend and colleague in the field, who was a strong Jack Kennedy supporter and second the Communist Party in those days inflicted death on those with independent minds. In many ways his own paranoia was evident there.

requirements would be a part of the written report provided by the expert. In the truly public market of ideas these facts have equal necessity. The public must know if someone has sent this person forth, what are they paying this person and for how long has this relationship been in existence.

3. Academic experts who hold themselves forth in the full public view or the semi public view as for example experts, take adversarial positions, and they, in my opinion, sully the reputation of the Academy in doing so, especially when they try to both use and hidden under the rubric of the Academy which is also supporting them.

4. The Public Intellectual, who is independent of the Academy or the third party supported Think Tanks, should be sought after. For truly this is an independent Public Intellectual, for this person is opining with no reward except that of seeking the truth. In this category may appear such Academy located individuals, and one may think that Berners-Lee may very well fall into this category; I really do not know but suspect.

### 3 INDIVIDUALISTS

The individualists were those who sought to focus on the individual and the rights of the individual qua a single entity. The rights were initially natural rights, those rights that man had from the very beginning, not the rights which may have been handed down by either a sovereign or a government. The individualists looked towards the single person in their own lives and for many of them they viewed the government less as a supporter of those rights and more as a delimiter of them.

The individualists were also less interested in society and in addition they tended to look less strongly on the social contract theories since such theories depended on society as a group agreeing to form a government rather than an amalgam of individuals.

In Jefferson's Declaration of Independence there is the most clear definition of individualism available. It is

*"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."*

The elements are:

1. Self Evident: That is it is a universal truth that it exists and its very existence is obvious to all.
2. All Men: It applies to all; including slaves which Jefferson had some problems with, as well as women.
3. Unalienable Rights: There are certain natural rights which all have to themselves, without the source being the government or any ruler. The source, the Creator, is broadly speaking rights accruing to man by the very nature of man being man. These rights may be positive or negative rights.
4. Life, liberty and pursuit of happiness: Man is free, with a free existence, life, and man has the opportunity to seek what makes him happy. Happiness may be that of a stoic, epicurean, Christian, or whatever, it may be monetary or purely spiritual, but happiness is self defined. The individual is assure life, liberty and the pursuit of happiness, not guaranteed happiness but just the pursuit thereof.
5. Instituted among men: The individuals meet to create the government, the individuals, not groups, not society, the separate and distinct individuals.

6. Powers from the consent of the governed: The government has power only as it gets it from the individuals, from the very people who have established the government.

Thus, this single set of ideas sets forth simply and clearly the broad underpinnings of individualism.

The Bill of Rights, albeit opposed by the Federalists, added to appease the Anti Federalists, and placed as almost an afterthought; represent the very elements of the individualism which characterized the establishment of the United States. The Bill of Rights are individual rights, not collective rights of states or groups.

The Ninth Amendment is somewhat telling. It states:

*The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.*

This wording states clearly the existence of rights, natural individual rights, still retained by the people, as individuals, not just as a group. In many ways these are Enlightenment ideas and in the late eighteenth century they were yet to be flecked with the stains of socialism and communism.

### 3.1 JOHN LOCKE

To those of us who hold dear the premises of our democracy, one of the foremost thinkers who created what we hold dear is John Locke. John Locke was one of the initial thinkers who looked at the dimensions of the individual and their relationship to the state and to society. Locke was somewhat of an exception, in that he was a believer of a social contract but for Locke the contract was draw up between individuals who came to the table with natural rights and sought a government to ensure those rights no grant ones and certainly not to delimit them.

#### 3.1.1 The Individual

Let us begin in seeing how he views the individual. In the pure state of nature Locke states in *Two Treatises on Government* (1680-1690) Vol 2<sup>32</sup>:

*"§ 4. To understand political power aright, and derive it from its original, we must consider what estate all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man."*

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<sup>32</sup> We use references from <http://www.lonang.com/exlibris/locke/>

That is man is unto himself and in possession of both his property and his very person. He is independent of any other man. This is the true state of nature.

He continues:

*"A state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty."*

Locke then stipulates the creation of a society via the contract path saying:

*§ 78. Conjugal society is made by a voluntary compact between man and woman, and though it consist chiefly in such a communion and right in one another's bodies as is necessary to its chief end, procreation, yet it draws with it mutual support and assistance, and a communion of interests too, as necessary not only to unite their care and affection, but also necessary to their common offspring, who have a right to be nourished and maintained by them till they are able to provide for themselves.*

Locke shows that marriage is as much a contract between two people for procreation but he also infers it is a mutual interest pact. Two people enter into this contract (compact to Locke) and it is fundamentally the establishment of a mutual assistance pact, and in some ways this may open an interesting avenue to such contracts replacing a religious marriage act, which in and of itself was a sacrament separate from the state's protection.

### **3.1.2 Compacts**

He starts with the compact between man and woman as the primal contract upon which all others will be built. Locke then extends this to society:

*"§ 87. Man being born, as has been proved, with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of Nature, equally with any other man, or number of men in the world, hath by nature a power not only to preserve his property - that is, his life, liberty, and estate, against the injuries and attempts of other men, but to judge of and punish the breaches of that law in others, as he is persuaded the offence deserves, even with death itself, in crimes where the heinousness of the fact, in his opinion, requires it.*

*But because no political society can be, nor subsist, without having in itself the power to preserve the property, and in order thereunto punish the offences of all those of that society, there, and there only, is political society where every one of the members hath quitted this natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protection to the law established by it.*

*And thus all private judgment of every particular member being excluded, the community comes to be umpire, and by understanding indifferent rules and men authorized by the community for their execution, decides all the differences that may happen between any members of that society concerning any matter of right, and punishes those offences which any member hath committed against the society with such penalties as the law has established; whereby it is easy to discern who are, and are not, in political society together.*

*Those who are united into one body, and have a common established law and judicature to appeal to, with authority to decide controversies between them and punish offenders, are in civil society one with another; but those who have no such common appeal, I mean on earth, are still in the state of Nature, each being where there is no other, judge for himself and executioner; which is, as I have before showed it, the perfect state of Nature.*

Locke then continues:

*§ 88. And thus the commonwealth comes by a power to set down what punishment shall belong to the several transgressions they think worthy of it, committed amongst the members of that society (which is the power of making laws), as well as it has the power to punish any injury done unto any of its members by any one that is not of it (which is the power of war and peace); and all this for the preservation of the property of all the members of that society, as far as is possible.*

*But though every man entered into society has quitted his power to punish offences against the law of Nature in prosecution of his own private judgment, yet with the judgment of offences which he has given up to the legislative, in all cases where he can appeal to the magistrate, he has given up a right to the commonwealth to employ his force for the execution of the judgments of the commonwealth whenever he shall be called to it, which, indeed, are his own judgments, they being made by himself or his representative.*

*And herein we have the original of the legislative and executive power of civil society, which is to judge by standing laws how far offences are to be punished when committed within the commonwealth; and also by occasional judgments founded on the present circumstances of the fact, how far injuries from without are to be vindicated, and in both these to employ all the force of all the members when there shall be need."*

Locke sees the role of Government as we see in the above the arbiter and guarantor of civility in society based solely upon the laws governing that society.

Out of the evolving nature of the contract, the compact, society evolves within which the man agrees to work with others but the underlying principle is preservation of the individual, in his person and his property.

### 3.1.3 Property

In particular is Locke's theory of property. It was Locke who created the bifurcation of the King's, read as Government's property, and the individual's property. Establishing individual property apart from the King, Government, and holding it as something which was core to a democracy, was a formidable change in the way of thinking, it was a formidable break from the middle ages and the ideas of regency, and it was the basis for our Revolution and Constitution.

Apparently Obama has either forgotten that, yes he went to Columbia and Harvard, or has rejected that. The tyrannical actions against Weinberg, Paralla et al in the Chrysler case this week is an example. The threatening of Weinberg-Parella by the Administration to comply or they would make their lives hell was nothing short of fascist!

Let me quote from Locke (John Locke, *Two Treatises of Government, The Second Treatise*, 1690):

*"Sec. 27. Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body had any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joyned to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joyned to, at least where there is enough, and as good left in common for others."*

Here he defines property as the result of the labor of a man. The money invested by the investors of Weinberg-Parella was the result of their labor, it was their property. The laws of bankruptcy apply as a remedy to a breach of contract, namely the debts to Weinberg-Parella were senior to all others and they had pre-emptive rights. The Administration demanded they give those rights up for no value, the Administration demanded that they convey to the Government their property, the fruits of their labor. For what purpose, to enrich the Union. In turn to enrich the people in the current Administration at a later time.

Locke continues:

*"Sec. 45. Thus Labour, in the Beginning, gave a Right of Property, where-ever any one was pleased to employ it, upon what was common, which remained, a long while, the far greater part, and is yet more than Mankind makes use of."*

*Men, at first, for the most part, contented themselves with what un-assisted Nature offered to their Necessities: and though afterwards, in some parts of the World, (where the Increase of People and Stock, with the Use of Money) had made Land scarce, and so of some Value, the several Communities settled the Bounds of their distinct Territories,*

*and by Laws within themselves, regulated the Properties of the private Men of their Society, and so, by Compact and Agreement, settled the Property which Labour and Industry began; and the Leagues that have been made between several States and Kingdoms, either expressly or tacitly disowning all Claim and Right to the Land in the others [sic.]*

*Possession, have, by common Consent, given up their Pretences to their natural common Right, which originally they had to those Countries, and so have, by positive agreement, settled a Property amongst themselves, in distinct Parts and parcels of the Earth: yet there are still great Tracts of Ground to be found, which (the Inhabitants thereof not having joyned with the rest of Mankind, in the consent of the Use of their common Money) lie waste, and are more than the People, who dwell on it, do, or can make use of, and so still lie in common.*

*Tho' this can scarce happen amongst that part of Mankind, that have consented to the use of Money."*

So far the Administration has breached contracts and overridden corporate law. Now, the threats and intimidation of the property holders turns four centuries of the development of democracy on its head. This is not a Rawlsian world where the least of us must have what each and every person has. This is a world which allows, supports, encourages the entrepreneur. The threats from the Administration present a true chilling effect on the future of this country!

### **3.2 HERBERT SPENCER**

Herbert Spencer was a mid 19th Century Englishman who was stimulated by the discoveries of Darwin and at the same time looked at the issues in what was the new fields of Sociology and Psychology. His scale and scope of thought was expansive for one who was not a practicing or trained scientist nor one whose base was academia. He was a prolific writer and commentator on his society as it progressed through the 19th century. In some ways he was the antipode to Dickens, the 19th century commentator on the social mores of English society.

Spencer wrote on many topics from psychology, sociology, biology, philosophy, politics, and the like. He covered a great deal of ground and as expected he had his views evolve as he aged and as the times themselves changed. His major works were produced from 1850 through 1900, a dramatic period of cultural and scientific change in Britain as well as the world. In a sense it began with the European revolutions of 1848 and was completed with the beginning of the 20th Century but was all within the Victorian period of the British Empire. As such Spencer in many ways reflects the British Empire at its peak.

#### **3.2.1 The Man Versus The State**



His most lasting work was the small book, *The Man versus The State*, a collection of essays which focus on the principles of individualism versus the growing control of the individual by a democratic state. In many ways Spencer in this work sets out the strongest case for the individualist as a sense of being versus the state as a sense of control. This is not a Hobbes type of argument of the king and the subject, because for Spencer the Parliament had already attained the final role as law maker and the Queen was at best a figure head.

In his first essay in the book, entitled *The New Toryism*, Spencer bemoans the trend taking place whereby the politicians continually pass new and more restrictive laws to further deny the "natural rights" and liberties of the individual. He states:

*"The Whigs regarded the monarchy as a civil institution, established by the nation for the benefit of all its members; while the Tories the monarch was the delegate of heaven."<sup>33</sup>*

He then discusses the evolving trend whereby the parties as they control power then extend power. He states:

*"How is it that Liberalism getting more and more into power has grown more and more coercive in its legislation?"<sup>34</sup>*

This of course is a refrain we hear all too frequently about all political parties. Spencer then details many of the impositions on individuals promulgated by Parliament. He ends with the following statement:

*"Finally if any ... say that there is no true parallelism between the relation of people to a government where an irresponsible single ruler has been permanently elected, and relations where a responsible representative body is maintained, and from time to time re-elected, then there comes the ultimate reply ... that these ... restraining acts are not defensible on the ground that they proceed from a popularly chosen body; for the authority of a popularly chosen body is no more to be regarded as an unlimited authority than the authority of a monarch; and that true Liberalism in the past disputed the assumption of a monarch's unlimited authority, so true Liberalism in the present will dispute the assumption of unlimited parliamentary authority."<sup>35</sup>*

Thus Spencer strongly argues against the tyranny of the monarch on the same grounds he argues against the tyranny of the parliament. The actions of a Parliament which restricts individual freedom is as invidious as the actions of a tyrannical monarch.

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<sup>33</sup> See TMVTS p 9.

<sup>34</sup> See TMVTS p. 12.

<sup>35</sup> See TMVTSW p 25.

In the analysis of this writing in the same work by Henry Cabot Lodge, Lodge writes commenting on the situation in the United States as follows:

*"In the United States individualism was perhaps stronger than in any other country. The Democratic party at the outset was devoted to the principle of strict construction of the Constitution, of the least government and the most restricted administration possible. The Federalists, the Whigs, and Republicans favored a liberal construction of the Constitution and what seemed to them a reasonable exercise of the powers of government as in their belief essential to prosperity. One hundred years later we find the Democratic party at the other extreme and advocating in every direction the extension of governmental powers, while the Republican party, ... is now in an attitude of resistance..."<sup>36</sup>*

Lodge summarizes the individualism philosophy of Spencer as it was seen at the beginning of the 20th century. Surprisingly the same structure holds today, one hundred years later. In the United States the sense of individualism was an integral part of the Declaration of Independence and the Bill of Rights. In fact the Bill of Rights are themselves individual rights, and are not inclusive, in effect unlimited via the 9th Amendment.

In one of the last portions of the document, The Man versus The State, Spencer address the issue of social contract. The social contract idea as generated by Rousseau, Hobbes, Locke and others, was being used by the politicians as a basis for expanding governmental powers and justifying the continuing operations of Government into areas in which they had never before had authority. Spencer then states:

*"I again emphasize the proposition that the members of an incorporated body are bound severally to submit to the will of the majority in all matters concerning the fulfillment of the objects for which they are incorporated; but in no others." And I content that this holds of an incorporated nation as much as an incorporated company... Evidently it must be admitted that the hypothesis of a social contract, either under the shape assumed by Hobbes or under the shape assumed by Rousseau, is baseless. Nay more, it must be admitted that even had such a contract once been formed, it could not be binding on the posterity of those who formed it."<sup>37</sup>*

This clearly is a statement of rejection of contractarian government, especially contractarian forms whereby the individual hands over all control to a government. To Spencer, the individual survives and it the sine qua non elements of any governmental body. There is no majority, no minority, there is but the individual.

Spencer ends by stating:

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<sup>36</sup> See TMVTS pp 33-34.

<sup>37</sup> See TMVTS pp 189-190.

*"What do these facts mean? They mean that for the healthful activity and due proportioning of those industries, occupations and professions, which maintain and aid the life of a society, there must, in the first place, be few restrictions on men's liberties to make agreements with one another, and there must, in the second place, be enforcements of the agreements which they do make."<sup>38</sup>*

This means that for the survival of the individual Spencer sees the necessity of two factors. First, non-interference by the government between agreements reached by and between parties. Second, the support of the Government in seeking remedies on behalf of harmed parties in the event of a breach of an agreement. This is an interesting blend. We can enter into an agreement between parties without the Government but we need the Government to assist in the enforcement of the agreement on an ongoing basis.

In the comments on this piece by David Hill, one sees the confluence of interests between three players: the individual, the society, and the state. The individual to Spencer was to be that entity who preservation and security was to be preserved and it was the role of the state to insure that. Society was viewed as an ephemeral amalgam of parties, individuals and possible even other sub societal collections, who could represent a majority but could not suppress the rights of the individual.

Another way to understand Spencer and his place in the current world of political thought is to see how he is being presented in the present written word. To do so we choose to analyze the recent biography of Spencer entitled "*Herbert Spencer and the Invention of Modern Life*" by Mark Francis.

This biography is a recent addition to the body of works of the 19th century polymath. Spencer was both a philosopher and advocate of Darwin's evolutionary ideas as well as one who opined frequently on matters of political import. In many ways Spencer was a true polymath, one who wrote seminal works on psychology and sociology and wrote extensively on biology and integrated that with the new ideas promulgated by Darwin. Spencer was praised by many of his contemporaries and was also in many ways the typical Victorian, hardened in that period but also having his views shaped by it also.

Overall the book addresses Spencer, his life and his views. However, the author, in my opinion, is more interested in detailing how Spencer fits his personal view of Spencer than Spencer truly was as a person and as an influence on his world. Spencer, in his most lasting work, *The Man Versus The State*, clearly is an individualist and as such in many ways has become a major cornerstone for many libertarians. Yet Francis seems to reject this view and, for the most part, this book is a tirade against that position of individualism which Spencer clearly took.

### 3.2.2 Spencer's Critics

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<sup>38</sup> See THVTS p 211.

Spencer was well known for his views on psychology, sociology, biology, and especially the views on Darwinism and individualism. For Spencer all of life, all of existence was a continually evolving process. The author continually returns to that fact in all of its aspects.

Spencer was well read from the time he started to write through the 1930s. Then he was attacked unjustly by the left wing in American academia, centered at the time at Columbia University, a hotbed of Communists and Marxists. For it was in the mid 1940s that Spencer was vilified by the one-time Communist history professor at Columbia University, one Richard Hofstadter.

Hofstadter in his book *Social Darwinism* uses Spencer's ideas on Darwin in a somewhat self serving and twisted manner to attack both Spencer and the free market capitalism as it evolved over the century from 1850 to 1950. Hofstadter was well known in leftist circles as one who could readily take a few apparently disconnected points and with what could be at best described as shabby research methods produce polemics against the conservatives and right wing advocates in the body politic.

Hofstadter was also well know to write "soft" history, what we would expect in a New Republic piece, rather than hard academic history. Hofstadter was polemical in his style and greatly deficient in primary sources. He was all too often just a recorder of old press clippings using these as the window to the world he wanted the reader to see rather than addressing the reality via primary sources.

In a recent work by Prof. T. Leonard at Princeton University (See *Origins of the Myth of Social Darwinism: The Ambiguous Legacy of Richard Hofstadter's Social Darwinism in American Thought*<sup>39</sup>) Prof. Leonard states about Hofstadter and Spencer the following, while reviewing the issues in "*Social Darwinism in American Thought*", also called "SDAT":

*"Richard Hofstadter, like many New York intellectuals in the 1930s, embraced radical reform. He joined Columbia University's Communist Party unit for a brief period in 1938. The more mature Hofstadter grew disenchanted with radical politics, indeed came to see it as hostile to scholarship. But SDAT, which revised his doctoral dissertation published in 1939, preserves Hofstadter's earlier world view, that of a precocious scholar, still much influenced by his mentors, Merle Curti and Charles Beard, who could say to close friends, "I hate capitalism and everything that goes with it" ... SDAT also bears the historiographic imprint of Beard's "rule" that historical interpretation must assume that "changes in the structure of social ideas wait on general changes in economic and social life" ... SDAT is thus sprinkled with unadorned Beardian claims, such as "Herbert Spencer and his philosophy were products of English Industrialism" ..."*

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<sup>39</sup> See <http://www.princeton.edu/~tleonard/papers/Myth.pdf>

Leonard further states in another paper the view of Social Darwinism, especially as crafted by Hofstadter regarding Spencer as follows:

*"What is more, the canonical narrative wrongly indicts as imperialists the opponents of progressive reform, notably Herbert Spencer and William Graham Sumner, the canonical social Darwinists. This again shows the influence of Hofstadter's (1944) construct, which defines social Darwinism as opposition to reform, and then characterizes social Darwinists as defenders of not just individualism and laissez faire, but also militarism, racism and imperialism. But both Sumner and Spencer vigorously opposed imperialism, as might reasonably be expected of two leading exponents of limited government. In Social Statics, Spencer scorned English attempts to "justify our colonial aggressions by saying that the Creator intends the Anglo-Saxon race to people the world" (p. 142). He condemned the "piratical spirit" of imperialism, and insisted that "territorial aggression is as impolitic as it is unjust" (p. 322). Sumner, for his part, openly criticized the Spanish-American War, saying that "my patriotism is of the kind which is outraged by the notion that the United States was never a great nation until [this] . . . petty three months campaign" (Sumner 1919).<sup>40</sup>"*

Thus Hofstadter was the major writer to discredit Spencer and cast his efforts in almost racist terms despite the fact that they were total misrepresentations.

But let me return to Francis and his book. He sets his tone for the entire biography on p. 2 when he writes:

*"...the greatest source of popular confusion about Spencer does not arise from national prejudice, but from writers who have explained his theories by reference to those of Charles Darwin as if the former were a simple version of the latter. This misidentification has been so common that its correction would be an obligatory as well as unpleasant task for any Spencerian scholar. There are two reasons why it is painful. First it forces me to write about Darwin....also, it is slightly obtuse to explain an intellectual phenomenon such as Spencer's...by reference to something it is not."*

This statement clearly lays forth the attitude of the author going forward, cumbersome as the use of the language is. First, there is the almost arrogant exposition of Spencerian evolution not being akin to Darwin and then the outcry of having to endure the unpleasant task of education of the reader, specifically what appears to be the less well educated readers who, frankly as per the author, should know better. Francis seems to bemoan the fact that he must tell the readers things that they should have know ab initio about Spencer. As such one wonders what audience Francis had in mind for his book. Perhaps it is meant for the small cadre of fellow Spencerian academics.

The last phrase in the above quote is at best condescending and at worst insulting to the readers since it implies that each reader should be approaching the biography already

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<sup>40</sup> See Leonard <http://www.princeton.edu/~tleonard/papers/insearchof.pdf>

well educated in Spencer as well as in Darwin. This shrill tone of the author's style continues to resonate throughout the book.

### 3.2.3 Darwinian

The next interesting comment by Francis frankly refutes the entire basis of the Hofstadter diatribe on Social Darwinists. In Hofstadter SDAT, he accuses Spencer of being a pure Darwinian and as such lacking in any human emotions. However Francis states<sup>41</sup>:

*"...First there was Graham Wallas....to him Spencer was merely an early and hasty generalizer on the subject of evolution....secondly, there was Richard Leakey...he possessed the same information as Wallas except ...he was praising not condemning Spencer....After Darwin had explained his theory...Spencer quipped that it might as well be called "survival of the fittest"....if either Wallas or Leakey had read Spencer...(he) was unsympathetic to Darwin's theory..."*

Thus Spencer was not a pure Darwinian. As Leonard states:

*"Darwinian defenses of laissez-faire among scholars, who were more likely to have read Darwin, are not much easier to find. Bannister and other revisionists point out that even Hofstadter's social Darwinist exemplars, Herbert Spencer and William Graham Sumner, were not especially Darwinist. Spencer certainly invoked the evolutionary advantages of competition among men. And, Spencer's extraordinary intellectual prominence in the last third of the 19<sup>th</sup> century also made him a large target for reform scholars. But Spencer would have rejected the label of "Darwinist," in part because his own theory of evolution differed from and was published before Darwin's *On the Origin of Species*. The catchphrase "survival of the fittest" was Spencer's and Darwin did not adopt it as a synonym for "natural selection" until Alfred Russell Wallace convinced him to do so in the fifth edition of the *Origin* (1869).*

*Importantly, Spencer was a Lamarckian with respect to human inheritance. He imagined that competition induced human beings to actively adapt themselves to their environments, improving their mental and physical skills – improved traits that would then be inherited by their descendants. Spencer's view was that, in the struggle for existence, self-improvement came from conscious, planned exertion, not from the chance variation and natural selection that are the heart of Darwinism. As a result, evolution is progressive in Spencer, whereas, for Darwin, at least the early Darwin, evolution means only non-teleological change. Spencer's fundamental belief in human progress via Lamarckian bootstrapping was at odds with Darwinian natural selection's randomness and its openness to non-progressive change.*

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<sup>41</sup> See Francis p 3

*Spencer, in fact, was not just a Lamarckian, he was a leading Lamarckian, taking up cudgels against the neo-Darwinians such as biologist August Weismann, whose watershed finding in 1889—that mice with their tails cut off do not bear short-tailed progeny—was seen by many as a crucial-experiment refutation of Lamarckism. Spencer’s status as a defender of Lamarckism in the 1890s was such that that progressive Lamarckians, such as Lester Frank Ward, often found themselves in the awkward position defending Spencer, a man whose individualism and laissez-faire economics they loathed, and dedicated their lives to opposing."*

Thus the fundamental basis of the Hofstadter argument against Spencer has no merit. Francis begins by throwing the cudgel down early on in the biography as to his apparent dislike of free markets and then continues to pound the cause home.

### 3.2.4 Spencer the Man and the Individualist

Francis begins to position Spencer as a non-individualist, by redefining what he believed Spencer meant by his individualism<sup>42</sup>. The author commences what appears to be his personal repositioning of Spencer as not the one lauded by many 21st century libertarians but as a mainstream 21st century liberal. Although he defines "individualist" as the "natural antonym" of the term "state" the author commences the rehabilitation of Spencer from his point of view.

The most published work of Spencer, his small but compelling book, "The Man Versus the State", is a well read treatise which clearly and unambiguously states the position of the individual against the state. Unfortunately the positioning by the author at this stage to marginalize this work of Spencer presages his attempt to reconstruct Spencer as a man who may not even have written that book.

Chapter 3 depicts Spencer and the problems he allegedly had with women. One of his alleged lovers was the writer George Eliot with whom he had an affair which lasted a brief while. The chapter is less a discussion of Spencer's problems with women than it is a presentation of conflicted Victorians in England.

Chapter 6 discusses Spencer's rather common eccentricities starting with his hypochondria. The author states:

*"Spencer combined hypochondria with radical political opinions."*

It appears that this was a common British trait not unique to Spencer. For if one looks at Lord Russell one see that he suffered from exactly the same set of problems. One may conjecture that such a set of common characteristics were both common to the Victorian British as well as those holding extreme views.

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<sup>42</sup> Francis p 13.

The concept of the pervasiveness of evolution for Spencer is detailed by the author where he states<sup>43</sup>:

*"A constant refrain in Spencer's early scientific writings was that all phenomenon of the universe...were subject to evolution."*

Further Francis states:

*"Spencer's initial conception of life was not a cold and objective; he saw life as the general impulse towards goodness and perfection, evidenced everywhere one looked."*

This is a teleological outlook towards evolution, the goal being the goodness and perfection as stated by Spencer. But was that indeed his view, and if so what drove this end point, since Spencer was not a truly religious man. Francis states that the intelligence was science in and of itself.

Spencer was a prolific writer and there are a continuing set of streams of an evolving set of views. Yet Francis states that the paper "A theory of Population" written in 1852 was the singular key to his early views. Francis argues for Spencer's views, views which aligned with the expanding presence of Great Britain. Francis states<sup>44</sup>:

*"...Spencer perceived his own experience and that of nature generally as "the inherent tendency of things going towards good..." He called this vis medicatrix naturae...the progressive quality of nature even justified...suffering...necessary for benign progress...each conquered race or nation could acquire a liking for new modes of living...in the future Spencer saw new modes of evolution...(and) maintain a perfect and long lived existence for each individual."*

In Chapter 15 Francis appears to get annoyed by the seminal work of Spencer, "*The Man versus the State*". He speaks of Spencer's anti-utilitarianism and his hostility towards Bentham like hedonism<sup>45</sup>. Francis states:

*"In "The Proper Sphere of Government" he (Spencer) wrote as a Christian utilitarian opposed to individualism and thus was hostile to those who construed happiness as if the collective did not matter."*

Francis attacks "*The Man versus the State*" as being inconsistent with the true meaning of Spencer's views<sup>46</sup>. This is a wandering and almost incoherent presentation in the text and

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<sup>43</sup> Francis p 193.

<sup>44</sup> Francis p 194.

<sup>45</sup> Francis pp 248-249.

<sup>46</sup> Francis p 249.



Francis continually tries to say that "*The Man versus The State*" was an aberration of an old man rather than a culminating view developed by Spencer. In fact this was one of Spencer's clearest texts and the one which has had lasting influence. Moreover it is a text devoid of the Darwin and reflects an evolving and mature view of the individual versus the expanding nature of the State.

Francis then goes into the current position we find in Rawls with direct reference to him<sup>47</sup>. Francis speaks of the confusion Rawls has between liberalism and communitarianism, but no matter, both are counter individualism which is where Spencer had allegedly evolved to. Francis gets quiet complex and confusing as he attempts to draw together what he sees conflicting views of Spencer while at the same time attempting to keep Spencer in what we would see today as a truly "liberal" player and not one dedicated to true individualism. He ends the discussion with the statement:

*"For Spencer it was not that the individual and society operated in different spheres as they had for ...Mill. That distinction would have allowed for a principled discussion of when interference with the former was justified. Spencer's conceptualization of the individual and society places them on separate planes making it illegitimate to permit some restrictions on freedom while forbidding others."*

This sentence makes little sense. On the one hand they are not in different spheres but on the other hand they are on different planes. Now the metaphor is not just weak it makes no sense. This chapter is rant with such non sequiturs!

Now Francis continues his diatribe against "*The Man Versus the State*"<sup>48</sup>. Here is states:

*"Spencer's liberalism in particular is not usefully glossed over as a "bourgeois" individualistic ideology that was forged in opposition to the collective."*

Indeed it was not. It was carefully thought out and predicated on the events that allowed him to detail fact by fact with the resulting impacts on individual freedom equally detailed.

In Chapter 18 Francis discusses Spencer's work on Sociology in political systems. Francis detailed the nexus between these topics and evolution. It is seen that Spencer continually winds the evolutionary elements into his work<sup>49</sup>. To Spencer everything was continually in an ever changing evolutionary milieu. It was for him Lamarckian where the Darwinian step changes were Lamarck's slow changes which were absorbed.

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<sup>47</sup> Francis pp 250-251.

<sup>48</sup> Francis pp 258-259.

<sup>49</sup> Francis pp 305-306.

In the Conclusion, Francis again returns to what seems to be the major conflict that Francis sees, that is that Spencer was at heart in his maturity a true individualist yet Francis does not seem to want to accept that<sup>50</sup>. He states:

*"When it is realized that Spencer was a corporate thinker rather than an individualist, then his argument for the need to give a paramount place for the emotions becomes more easily explicable."*

This is a total rejection by Francis of the facts that are evident in "*The Man Versus the State*". Francis fails to even discuss the contents of this book in the slightest degree, he discusses in detail the early works but merely shouts against the latter.

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<sup>50</sup> Francis 334.

## 4 PROGRESSIVES

The classic Progressives were an outgrowth of the late 19th century. They reflected the response of some to the growth in immigration, the changes in industrialism, the impact on the classic agricultural paradigm, and the growth of American cities. All of these elements presented what was perceived as a threat to the then classic American life style. One of the most significant drivers of Progressivism was from the Mid Western Churches, primarily Protestant, and the development of the Social Gospel movement which in many ways created the concept of "society" and the need for helping all in the family of this "society" and yet moving that role from the local church and community to the Government. This would be one of the first times that there was a significant move to have the Government solve societal problems on a large scale.

As presented by Halpin and Williams from the Center for American Progress<sup>51</sup>:

*The original Progressive Era is known primarily for two major developments in American politics:*

*One, political reforms crafted to break up the power of privileged interests, such as expanded suffrage, direct primaries, direct election of senators, and the initiative and referendum process*

*Two, economic reforms structured to counterbalance the excessive power of business and to fight inequality measures such as the graduated income and inheritance taxes, the right to organize and other labor protections, unemployment insurance, worker's compensation, old age and disability provisions, food and drug safety laws, and conservation measures*

*As a philosophical tradition, progressivism in its most complete form developed as a "new liberalism" for a new century—updating the American liberal tradition from its Jeffersonian, small-government, republican roots best suited for the agrarian economy of the nation's founding era to a more democratic and modern liberalism capable of checking rising corporate power. The original progressives argued that changes in the economy's organization required a more complete understanding of human freedom, equality, and opportunity that Jefferson championed so persuasively. Progressives believed that formal legal freedom alone—the negative protections against government intrusions on personal liberty—were not enough to provide the effective freedom necessary for citizens to fulfill their human potential in an age of rising inequality, paltry wages, and labor abuses. Changed conditions demanded a changed defense of human liberty.*

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<sup>51</sup> See The Progressive Intellectual Tradition in America April 2010 [www.americanprogress.org](http://www.americanprogress.org)

The above clearly lays out the drivers of this change and the movement. It was the apparent and oft-times real influence and dominance of many parts of the economy by certain large corporations. It was not that all elements of industry had become dominant, yet many of the most visible did. Prime amongst them were railroads which in many ways became the life lines for the farmers and those in the mid West seeking markets for their goods. Thus their near monopoly control lit the fuse of revolt which led to Progressive ideas.

The CAP author's continue:

*Freedom, in its fullest sense, including negative freedom from undue coercion by government or society and the effective freedom of every person to lead a fulfilling and economically secure life*

*The common good, broadly meaning a commitment in government and society to placing public needs and the concerns of the least well-off above narrow self-interest or the demands of the privileged*

*Pragmatism, both in its philosophical form of evaluating ideas based on their real world consequences rather than abstract ideals, and in more practical terms as an approach to problem solving grounded in science, empirical evidence, and policy experimentation*

*Equality, as first put forth by Jefferson in the Declaration of Independence and updated in the Universal Declaration of Human Rights, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."*

*Social justice, the proper arrangement of law, society, and the economy to ensure that all people have the formal and informal capacity to shape their own lives and realize their dreams*

*Democracy, the full participation of citizens in the major decisions and debates that affect their lives*

*Cooperation and interdependence, particularly as these ideas relate to global affairs, an overall humanitarian vision, and the importance of shared social and economic knowledge*

This is the framework against which the Progressive movement began.

Yet there was a history of many thinkers and players before this explosion. We consider few here.

#### **4.1 HOBBS**

Hobbes was somewhat of a strange Public Intellectual. A product of the 17th century, beset by the regicide and Cromwell, a supporter of the monarchy, and an apologist for the King and his kingdom, Hobbes wrote Leviathan as a polemic to justify the reinstatement of the King and the recognition that all the Kings subjects owed allegiance to the state. In a sense he was a quintessential progressive, with the King being the embodiment of the state, and the King being the facilitator of the Progressive mandates.

#### 4.1.1 Hobbes and Humanity

Hobbes saw humanity as an unstable mass with the potential for explosive warfare and unable to reach and consensus amongst themselves without the strong hand of government<sup>52</sup>. To Hobbes, he saw this uncontrollable mass as the prime reason for establishing a government and further he saw the king and a strong central government as the only logical consequence.

As Miller states as he discusses Hobbes<sup>53</sup>:

"We need political authority, then, because it gives us the security that allows us to trust other people, and in a climate of trust people are able to cooperate to produce all those benefits that Hobbes listed as signally lacking in the "natural condition"."

Trust means predictable. Namely if A happens then the consequence is B. For example if I enter into an agreement with someone and they agree to B if I do A, and when upon completion of A they fail to do B will the Government enforce that? Not necessarily. The Government may have its own ideas and thus the trust that Miller speaks of as the bond which is necessary to establish a government is missing. In fact it is infrequent that any one trust their government. As Hobbes had a low opinion of human nature the individualists have a low, and often well deserved, opinion of the government.

Thus we call Hobbes the proto progressive because of his distrust of people and his view that a strong government, with a king, was the only solution to an effective government. Hobbes was clear in that you could not trust the people to deal with themselves, the government was essential.

As Miller quotes Hobbes as regards to Hobbes view of humanity<sup>54</sup>:

*"In such conditions, there is no place for industry; because the fruit thereof is uncertain; and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by sea; no commodious building, no instruments of moving and removing such things as require much force, no Knowledge of the face of the Earth, no*

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<sup>52</sup> Miller, Political Philosophy, p. 22.

<sup>53</sup> Miller, Political, p. 23.

<sup>54</sup> Miller, Hobbes, p./ 22.

*account of time, no Arts, no Letters, no Society, and which is worst of all, continual fear and danger of violent death; And life of man, solitary, poor, nasty, brutish, and short."*

This is Hobbes view of people by themselves without the King, without a strong central government. This is also the view of the progressives of many as an individual, selfish and brutish, in a Darwinian survival of the fittest. This is the pessimism that Hobbes bases his view of the world upon, in many ways a reflection of what happened under a Cromwell a republic. Apparently he never thought for a moment it was Cromwell and not the republic. For all one has to do is see what Cromwell did to Ireland and one sees the core of evil, and Cromwell was evil personified, murdering and slaughtering for apparently no purpose. Yes indeed if your view of a republic is Cromwell one would suspect you too would be repelled.

#### **4.1.2 Hobbes, the Intellectual and the Progressive**

In a recent work by Skinner, entitled *Hobbes and Republican Liberty*, we can see how Hobbes fares in the context of the public intellectual as proto-progressive. Hobbes, in many ways is seen as a sycophant to the King in much of his writings and as such is anti republicanism and the expansion of government by a broader based Parliament. Skinner uses liberty as the way to understand Hobbes and especially his rejection of republican tendencies. Skinner then works through the comparison of liberty as view in the classic republican sense to that as developed by Hobbes.

For Skinner the classic republican liberty is that of the free man, an individual, as compared to the slave who one whose actions are limited by a free man. Skinner then takes this concept and draws the line to and through the development of English law showing the development of the freedom of the individual and individual rights, and the fact that many of the rights are protective negative rights not oppressive positive rights..

Skinner further develops the liberty theme and he details some of the strengths and weaknesses of Hobbes and his approach<sup>55</sup>. In reading Skinner one sees more clearly the jumps to faith used by Hobbes, the definitions without any basis in demonstrable fact of evidence that Hobbes uses in his constructions. Albeit a seventeenth century work, it shows many of the failing of the public intellectual who has exceeded his ken. This analysis of Hobbes and his intellectual acumen is in sharp contrast to Locke who is soon to follow. Specifically the discussion of the equality of natural liberty to natural right is worth the reading<sup>56</sup>. Skinner does the concepts justice.

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<sup>55</sup> Skinner, Hobbes, in Chapter 1 and on pp 34-35.

<sup>56</sup> Skinner, Hobbes, on p 35.

### 4.1.3 Hobbes and Politics

Skinner makes some telling comments regarding Hobbes overall views on politics<sup>57</sup>. For example he states: "*Politics, we are being reminded, is pre-eminently the arena in which fortune holds sway*" He then continues with the statement: "*Hobbes is one of the earliest English philosophers to write in a similar way (as to Aristotle) of "politics" as the art of governing cities.*" For England and the King, fortune did not swing his way when beheaded. Hobbes was in many ways revolting against the republican trends of the mob, the execution of a king, with no justification.

Skinner details the concept of liberty in the act of living in a real city<sup>58</sup>. Skinner states a telling statement: "*For Hobbes, accordingly, the puzzle remains; what can it possibly mean when someone claims to be a free man while living under a monarch, in which the fullest rights of sovereignty will inevitably be held by the king himself.*"<sup>59</sup> This is the quandary of Hobbes. Rather than rejecting the king outright, he struggles to justify liberty on the one hand and the almost divine right of the King. Skinner works elegantly through that tension. Hobbes should have pursued the concept of a free man, in the face or a King or in the face of any ruling body out to delimit that freedom. For Hobbes, the world was still at best a mercantile environment and free men were non-existent since no matter who you were you owed your loyalty to the crown. Your business was at the pleasure of the crown, and your efforts were naught if the crown was displeased. The mercantile world of the seventeenth century was the last breath of a world before it was unleashed and understood a century later by Adam Smith. Thus the Hobbesian view of man was still man bound in a royal corset, his movements limited, his actions anything but free, and his very existence dependent upon the crown. The revolution had not yet settled in.

Skinner deals with liberty in the context of Hobbes in the Leviathan<sup>60</sup>. he details Hobbes as follows defining liberty; "*Liberty or freedom, signifieth (properly) the absence of Opposition (by Opposition I mean the Impediments of motion; and may be applied no less in Irrational and Inanimate creatures...*"<sup>61</sup>

The last is the culmination of freedom as per Hobbes, the ability of water to flow unstopped down a brook, no more no less<sup>62</sup>.

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<sup>57</sup> Skinner, Hobbes, on p. 48.

<sup>58</sup> Skinner, Hobbes, Chapter 3.

<sup>59</sup> Skinner, Hobbes, on p 79.

<sup>60</sup> Skinner, Hobbes, In Chapter 5.

<sup>61</sup> Skinner, Hobbes, On p 127.

<sup>62</sup> Skinner, Hobbes, Chapter 6 takes this and carries it through a discussion of liberty and political obligation and finally Chapter 7 moves through the present.

Skinner places Hobbes in an historical context and at the same time detailing the ever present issue of what makes a free man. Hobbes is an apologist for the central authority, in contrast to Locke and the other who follow. The whole basis of our Revolution in the United States was freedom as being free from Government oppression and oversight. Hobbes justifies that alternative view, albeit in a less than convincing manner.

Yet why Hobbes and why today? Liberty and freedom are concepts near and dear to the United States and its founding fathers. They for the most part rejected Hobbes and followed Locke. Freedom is why people came to the United States, why it separated from England and why it has come to where it is today. In many ways we may be losing that view. Yes, Health Care is important, but not to the point at which we lose that freedom. Yes, the economy is important, and again not to the point of losing freedom.

## 4.2 THOMAS PAINE

Thomas Paine was a key player in the American Revolution and the writer of *Common Sense*<sup>63</sup>. In a manner of speaking, he was, along with Madison, Jefferson and Hamilton, the key Public Intellectuals of the time. The problem, however, was that the three Founders were independently well off whereas Paine was chronically indigent. This may explain his evolution into a Progressive, and in some ways the first American Progressive. Paine not only did his work at no charge but he gave what money he made to the Revolutionary cause. Paine was a true believer in independence from the king, people ruling themselves, and a community of people fighting for a common cause.

Paine took the Revolution to heart. His *Common Sense* and other writing were truly mandates to rebel, to revolt, to separate. They, on the one hand, demonstrated the need to stand apart and at the same time stand together. Paine was a progressive in his view of community, the group, and government. He was disappointed in the U.S. Government in not providing him more than it did. As indicated he was not an independently wealthy man and after the Revolution was wandering a bit until he found a cause again in the French Revolution. Here he found the intensity of the true progressive, the nation founded on brotherhood, equality, freedom, where the governing body comes from the common man. Regrettably he did not see the Terror before it arrived. Yet his writings in this period are his progressive writings.

### 4.2.1 Constitutionalist

An integral part of this effort was a Constitution, a statement of basic principles. Paine wrote the following regarding a constitution:

*A constitution is not a thing in name only, but in fact.*

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<sup>63</sup> There are many biographies of Paine but the one I relied upon the most is that by A. J. Ayer, the famous philosopher. Ayer has a sharp and crisp understanding of Paine that goes well beyond the historian or more popular type writer.



*It has not an ideal, but a real existence; and wherever it cannot be produced in a visible form, there is none.*

*A constitution is a thing antecedent to a government, and a government is only the creature of a constitution.*

*The constitution of a country is not the act of its government, but of the people constituting its government.*

*It is the body of elements, to which you can refer, and quote article by article;*

*and which contains the principles on which the government shall be established, the manner in which it shall be organised, the powers it shall have, the mode of elections, the duration of Parliaments, or by what other name such bodies may be called;*

*the powers which the executive part of the government shall have;*

*and in fine, everything that relates to the complete organisation of a civil government, and the principles on which it shall act, and by which it shall be bound.*

*A constitution, therefore, is to a government what the laws made afterwards by that government are to a court of judicature.*

*The court of judicature does not make the laws, neither can it alter them; it only acts in conformity to the laws made: and the government is in like manner governed by the constitution.*

It is worth recalling these things from time to time.

#### **4.2.2 The Progressive**

Thomas Paine is often thought solely as the initial match which helped set off the fires of Revolution in the Colonies. He was beloved by Franklin, and was highly thought of by many in the new country. Yet upon the completion of the establishment of the United States, Paine set off to do the same in France. It was at this time in his writings that he entered what I shall term the Progressive phase. It was Progressive in that he saw a society, a role for Government, and a set of goals that the combination of society and government could reach.

As the CAP authors also state in their aforementioned work on Progressive thought in the late 19th century:

*"Writing at the height of the New Deal reform era, John Dewey explained the progressive view of liberty as a continuation of historic movements for human liberation:*

*Liberty in the concrete signifies release from the impact of particular oppressive forces; emancipation from something once taken as a normal part of human life but now experienced as bondage. At one time, liberty signified liberation from chattel slavery; at another time, release of a class from serfdom. During the late seventeenth and early eighteenth centuries it meant liberation from despotic dynastic rule. A century later it meant release of industrialists from inherited legal customs that hampered the rise of new forces of production. Today it signifies liberation from material insecurity and from the coercions and repressions that prevent multitudes from the participation in the vast cultural resources that are at hand."*

Thus the original 19th century Progressives believed that it is the role of the Government to care equitably for all others, a Rawlsian world of keeping balance amongst all people, taking from those who have and giving to those who do not. This "Government" makes the redistribution decisions.

Now Paine had written in a somewhat similar vein a century earlier. He states:

*What were formerly called Revolutions, were little more than a change of persons, or an alteration of local circumstances. They rose and fell like things of course, and had nothing in their existence or their fate that could influence beyond the spot that produced them. But what we now see in the world, from the Revolutions of America and France, are a renovation of the natural order of things, a system of principles as universal as truth and the existence of man, and combining moral with political happiness and national prosperity.*

*"I. Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.*

*"II. The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.*

*"III. The nation is essentially the source of all sovereignty; nor can any INDIVIDUAL, or ANY BODY OF MEN, be entitled to any authority which is not expressly derived from it."*

*In these principles, there is nothing to throw a Nation into confusion by inflaming ambition. They are calculated to call forth wisdom and abilities, and to exercise them for the public good, and not for the emolument or aggrandizement of particular descriptions of men or families. Monarchical sovereignty, the enemy of mankind, and the source of misery, is abolished; and the sovereignty itself is restored to its natural and original place, the Nation. Were this the case throughout Europe, the cause of wars would be taken away.*

Paine then continues with his overall social program detailing the amounts, as they would be in 1789, and with classic detail as Paine was wont to do:

*It is certain, that if the children are provided for, the parents are relieved of consequence, because it is from the expense of bringing up children that their poverty arises. Having thus ascertained the greatest number that can be supposed to need support on account of young families, I proceed to the mode of relief or distribution, which is, To pay as a remission of taxes to every poor family, out of the surplus taxes, and in room of poor-rates, four pounds a year for every child under fourteen years of age; enjoining the parents of such children to send them to school, to learn reading, writing, and common arithmetic; the ministers of every parish, of every denomination to certify jointly to an office, for that purpose, that this duty is performed. The amount of this expense will be, For six hundred and thirty thousand children at four pounds per annum each £2,520,000.*

*By adopting this method, not only the poverty of the parents will be relieved, but ignorance will be banished from the rising generation, and the number of poor will hereafter become less, because their abilities, by the aid of education, will be greater. Many a youth, with good natural genius, who is apprenticed to a mechanical trade, such as a carpenter, joiner, millwright, shipwright, blacksmith, etc., is prevented getting forward the whole of his life from the want of a little common education when a boy.*

*I now proceed to the case of the aged.*

*I divide age into two classes. First, the approach of age, beginning at fifty. Secondly, old age commencing at sixty.*

*At fifty, though the mental faculties of man are in full vigor, and his judgment better than at any preceding date, the bodily powers for laborious life are on the decline. He cannot bear the same quantity of fatigue as at an earlier period. He begins to earn less, and is less capable of enduring wind and weather; and in those more retired employments where much sight is required, he fails apace, and sees himself, like an old horse, beginning to be turned adrift.*

*At sixty his labour ought to be over, at least from direct necessity. It is painful to see old age working itself to death, in what are called civilized countries, for daily bread.*

*To form some judgment of the number of those above fifty years of age, I have several times counted the persons I met in the streets of London, men, women, and children, and have generally found that the average is about one in sixteen or seventeen. If it be said that aged persons do not come much into the streets, so neither do infants; and a great proportion of grown children are in schools and in work-shops as apprentices...*

*The persons to be provided for out of this gross number will be husbandmen, common laborers, journeymen of every trade and their wives, sailors, and disbanded soldiers, worn out servants of both sexes, and poor widows.*

*There will be also a considerable number of middling tradesmen, who having lived decently in the former part of life, begin, as age approaches, to lose their business, and at*

*last fall to decay. Besides these there will be constantly thrown off from the revolutions of that wheel which no man can stop nor regulate, a number from every class of life connected with commerce and adventure.*

*To provide for all those accidents, and whatever else may befall, I take the number of persons who, at one time or other of their lives, after fifty years of age, may feel it necessary or comfortable to be better supported, than they can support themselves, and that not as a matter of grace and favour, but of right, at one-third of the whole number, which is one hundred and forty thousand, as stated in a previous page, and for whom a distinct provision was proposed to be made. If there be more, society, notwithstanding the show and pomposity of government, is in a deplorable condition in England.*

*Of this one hundred and forty thousand, I take one half, seventy thousand, to be of the age of fifty and under sixty, and the other half to be sixty years and upwards. Having thus ascertained the probable proportion of the number of aged persons, I proceed to the mode of rendering their condition comfortable, which is:*

*To pay to every such person of the age of fifty years, and until he shall arrive at the age of sixty, the sum of six pounds per annum out of the surplus taxes, and ten pounds per annum during life after the age of sixty. The expense of which will be, Seventy thousand persons, at £6 per annum £420,000...*

Paine includes 14 points which are worth reading side by side with the Progressive manifesto:

*Having now finished this subject, I shall bring the several particulars into one view, and then proceed to other matters. The first eight articles, mentioned earlier, are;*

- 1. Abolition of two millions poor-rates.*
- 2. Provision for two hundred and fifty-two thousand poor families, at the rate of four pounds per head for each child under fourteen years of age; which, with the addition of two hundred and fifty thousand pounds, provides also education for one million and thirty thousand children.*
- 3. Annuity of six pounds (per annum) each for all poor persons, decayed tradesmen, and others (supposed seventy thousand) of the age of fifty years, and until sixty.*
- 4. Annuity of ten pounds each for life for all poor persons, decayed tradesmen, and others (supposed seventy thousand) of the age of sixty years.*
- 5. Donation of twenty shillings each for fifty thousand births.*
- 6. Donation of twenty shillings each for twenty thousand marriages.*

7. *Allowance of twenty thousand pounds for the funeral expenses of persons travelling for work, and dying at a distance from their friends.*
8. *Employment at all times for the casual poor in the cities of London and Westminster.*
9. *Abolition of the tax on houses and windows.*
10. *Allowance of three shillings per week for life to fifteen thousand disbanded soldiers, and a proportionate allowance to the officers of the disbanded corps.*
11. *Increase of pay to the remaining soldiers of £19,500 annually.*
12. *The same allowance to the disbanded navy, and the same increase of pay, as to the army.*
13. *Abolition of the commutation tax.*
14. *Plan of a **progressive tax**, operating to extirpate the unjust and unnatural law of primogeniture, and the vicious influence of the aristocratical system. There yet remains, as already stated, one million of surplus taxes. Some part of this will be required for circumstances that do not immediately present themselves, and such part as shall not be wanted, will admit of a further reduction of taxes equal to that amount.*

If one were to read Paine in some detail and recognize that this was written over 220 years ago, he would be viewed as an extreme left wing radical. However unlike many such current radicals Paine did the numbers as well.

In view of the many who have attached onto the early Paine, perhaps they should also look at the later Paine and see where his thinking had gone. Of course this was written when he was in France during its revolution which was one of the greatest redistribution events of mankind.

### 4.3 JOHN DEWEY

John Dewey had a long and seminal influence on the US and its political views. It can be argued that he was the initial US public intellectual and a founder of the group centered at Columbia University.

We argue here that Dewey would become the lynchpin between the old and the new Progressives. He managed to create an intellectual environment which catalyzed and spawned the Progressives and established the basis for the neo-Progressives. Although an avowed socialist, he was less than the classic socialist as one would see in that time and place. He lacked any true understanding of the working man, albeit in close proximity to the then leaders of the union movement. He was an activist and lent his name to many

causes. His communist credentials were reinforced by his being a part of the Trotsky trial in Mexico in 1937. One should remember however that Stalin subsequently had Trotsky assassinated by being dismembered by an ax.

Dewey as a writer is always a problem for those first approaching him. As Ryan states:

"...generations of readers have complained that Dewey was a terrible writer."<sup>64</sup>

Fott also states:

"...it is almost universally admitted that Dewey's books and articles do not make easy reading... One must admit the obvious, that his prose is at least awkward, at most obscure... What is probably forever uncertain is the extent to which this unclarity is due to a deficient literary sensibility, or an enduring thought on Dewey's part that he had a radical teaching to deliver that could not be expressed in traditional language..."<sup>65</sup>

Or as we may also argue, it is just due to the lack of intellectual clarity on the part of Dewey. Plato was a clear writer, even if handed down by generation of writers, Russell, his contemporary and fellow traveler was exceptionally clear in what he said. Dewey on the other hand is almost turgid and one must exhaust one's self to gain some insight into what he said no less the validity of what is being stated.

The objective here is to lay out Dewey as several things:

First, a Progressive in thought, one who denies the individual and who promulgates the society. This is fairly direct to do but it has many ancillary side points, for his almost demonic anti Catholicism was not left to him alone but it created a lingering effect for Columbia as well as the intellectual elite as a whole. We shall see it again when we look at Hofstadter who enshrines it with more academic gloss.

Second, we look at him as the first public intellectual, one who through a mass amount of writings, not just in the denseness of his books, but in magazine articles and others in the public media of the day. He established himself as one of the new intellectual elite, a position which was not in existence before his ascendancy. It created a whole class of individuals whose words, thoughts and to some degree actions set the tone for the mass set of academic public intellectuals we see today in the United States.

Third, his attack on individualism was in many ways an attack on the fundamentals of what was the basis of the Constitutional system in the United States. He was a self

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<sup>64</sup> Ryan p. 20.

<sup>65</sup> Fott p. 21.

professed socialist and anarchist<sup>66</sup>, and it was this political bent that permeates his writings and his views on education and democracy, and which in turn question the fundamentals of the Founders. He was a believer in Beard who wrote *An Economic Interpretation of the Constitution of the United States* which alleged that the Founders wrote the Constitution to maximize their own personal financial gains. Beard was at Columbia along with many other left wing radicals from the turn of the 20th Century onwards. Beard's work was subsequently refuted by many including the work of McDonald and others.

Fourth, Dewey was a self avowed socialist. As such he vehemently rejected laissez fair, and in a time when uncontrolled monopolies and trusts abounded. He clearly had no broad historical or economic perspective but he views were those of one who believed that there was an elite group whose good ideas were best applied to the growth and control of the country. Further he believed that the common man was just a bit too common and needed educating so as to function properly in a productive manner. The education he mandated was to be of his liking.

#### **4.3.1 Pragmatism and Experimentalism**

Pragmatism in simple terms is the philosophy of seeing if an idea works in practice. To quote Westbrook:

"Truth depended, that is, not on the accuracy with which the idea copied an antecedent reality or in its coherence with other truths but on its capacity to guide thinkers towards a successful or satisfactory resolution of problematic situations."<sup>67</sup>

In simple terms one could say that this pragmatism is akin to having a model of some reality which when applied to the "real world" yields a result which in some sense reflects the real outcome. It is predictive. It tells what happens from what is precedent. It does not mean that we have some complex theory which we know is logically consistent nor a theory which has a multiplicity of elements. In fact it may be a simple model with simple predictive abilities. For example we may have a model for a transistor, where we may know that under the model are sophisticated quantum effects, yet our predictive model allows us to say when the current here goes up by 3 mA then the current there goes up 5 A. That is all we really need to know for the given situation. The "realities" of the flow of electrons, their quantum states, and the like are not relevant.

Wiebe states that the Dewey pragmatism was different. Specifically he says:

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<sup>66</sup> See Martin p. 115 and Ryan p. 11. In fact Ryan in his Preface provides a counter the light hand on Dewey by Westbrook. If one were to look at the causes and organizations supported by Dewey one would see the strong socialist positions he took, voting for Debs in 1912 and the like.

<sup>67</sup> Westbrook, p. 130.

"Even pragmatism which at first glance looked the perfect philosophical rationale for bureaucratic thought, underwent significant changes before it joined with the new approach. A revolt in its own right from idealism, pragmatism like scientific management carried relatively little baggage. By treating truth as a process instead of essence and knowledge as the continual testing of hypothesis against life's facts instead of the inculcation of fixed truths, it seemed to offer just the fluidity required by the new orientation. . . . Bureaucratic thought and pragmatism met only after John Dewey had transformed it into a theory that made individuals the plastic stuff of society."<sup>68</sup>

This is an exceptionally good description of the pragmatism and the influence of Dewey. First it is a relativism. It is what results from the actions. Truth is not immutable, to be sought, it is whatever we can agree that we observe. There may not even be a need for a consensus. The statement regarding Dewey is the most critical because indeed his thought became the underpinnings of the growth in Progressive bureaucracy but the ability to treat people as plastic entities to be modeled depending on what that bureaucracy desires is the theme we see going forward. Dewey had created the very set of tools justified in a "philosophy" that allowed for the public intellectual to spread forth their baseless views of human control.

To some Dewey was one of the founders of pragmatism to others he was not a pragmatist as were James and Peirce but an experimentalist, a nuanced difference in emphasis. As Fott states:

"...Dewey prefers to call his pragmatism by the name "experimentalism" because the term "pragmatism" gives the misleading sense that all thought is for the sake of action, instead of for the sake of resolution of a problematic situation or unproblematic experience."<sup>69</sup>

Posner discusses the Experimentalism approach as follows<sup>70</sup>:

"Dewey dubbed his approach "experimentalism," and the word aptly conveys the tenor of his thought. He commended the temperament that, impatient with convention and the accustomed ways of doing things—the sediment of habit—insists on trying now this, now that, in a creatively restless search for better means. The search yields, as a byproduct, better ends as well. As Dewey explained under the rubric of "interactionism," our beliefs are a product not of pure thought but of the interplay of thought and action. When (to take a post-Deweyan example) airlines were deregulated, consumers did not "know" what kind of airline service they wanted; they learned what they wanted by experience with the various new services that the airlines, freed from the dead hand of regulation, offered. A central planner could not have designed the optimal configuration of a deregulated airline industry; the essential information concerning consumer demands

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<sup>68</sup> See Wiebe p. 151.

<sup>69</sup> See Fott p. 3.

<sup>70</sup> Posner, R., HAYEK, LAW, AND COGNITION, NYU Journal of Law and Liberty



simply did not exist before the deregulated services were offered, just as the person who took up ballet to improve posture could not know beforehand that the pleasure of ballet would become an end in itself."

### 4.3.2 Socialist, Communist and Anarchist

What were Dewey's political views and how did they influence his writings? There is a great deal of room here to seek the true man. At one end he involved himself in many Progressive movements, he was a man involved and one who put himself on the front lines. On the other hand when he came to specifics such as socialism, he was at times vague and despite his volumes of words he leaves room for speculation. As for his communist side, Columbia was the hub for American Communism through most of the 20th century and it would have been near impossible to avoid it. His participation in the Stalin ordered trial of Trotsky is but one example of the nexus. However he was never a public member of the Party. We examine here some of his political bents.

Westbrook writes:

"By the end of the twenties John Dewey would admit, if pressed, that he was a socialist, for he was convinced that democracy required an end to private control of the commanding heights of the means of production. But he remained cool to much of the theory and practice that laid claim to the ideological label, even in the midst of the Great Depression. He avoided the word "socialism" if he could and when he could not he was careful to discriminate between his own peculiar socialist vision and the one identified with the common usage..."<sup>71</sup>

Thus it is fair to state that at heart Dewey was a socialist, a socialist if we use the term as one who sees the means of production controlled in some strong manner by the state. At one extreme we have the Progressives who view that control via laws and regulation and the Debsian socialists via direct state ownership and control. Dewey had gone beyond the extreme of the Progressives as Westbrook states.

### 4.3.3 Anti Catholic Position

Dewey was a rabid anti-Catholic. It is not at all clear why, he was an atheist but that did not make him an anti Semite, or one vehemently opposed to other religions. Yet he had what appears to be a lifelong anti Catholic bent which while at Columbia became intensified into an almost outright war. It can be argued that this was also one of the seminal reasons for the evolving anti Catholicism that permeated Columbia through the 20th century. The university had an almost universal revulsion to Catholics and went out of its way to deny them entrance.

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<sup>71</sup> Westbrook p. 429.

To understand Dewey early on we recount a tale told by Martin about Dewey and his son. It seems that Fred Dewey, his son, went to MIT to study when in his junior year he informed Dewey and his wife that he was engaged and engaged to a Catholic. This apparently enraged Dewey and his wife and subsequently Fred broke the engagement and subsequently married a non Catholic.<sup>72</sup> Dewey appears to have taken this as an affront.

As Ryan states:

"Dewey was frightened of the threat to American democracy posed by right-wing American nationalism and reactionary Catholicism..."<sup>73</sup>

Ryan continues:

"The Catholic Church still struck Dewey as a threat to human intelligence and social reform, and he still complained that its emphasis on supernaturalism was a threat to science, and its emphasis on authority a threat to individual liberty."<sup>74</sup>

The above is an amazing statement. First Dewey abhorred individual freedom, he was a Progressive and the last things a Progressive would want would an individual to have is freedom. Progressives wanted to control everything through the aegis of the Government. Individual freedom was suppressed to the control and benefit of "society" whatever that was. Authority was for Dewey to be replaced by the authority of the state. All one had to do is look at the hierarch of Government that FDR created to see the Progressive bent. The threat that Dewey spoke was frankly of his own making.

Dewey was a long hater of Catholics and the Catholic Church, almost to the extreme if not so. As Ryan states:

"Dewey's battles with the Catholic Church went back to World War I...he had always opposed state aid to parochial schools...public education was supposed to concentrate on what united American students, not to what divided them..."<sup>75</sup>

Ryan continues:

"...that Catholicism as such came to stand for what was most obnoxious in Dewey's eyes. Thus when he fought one last round with...Hutchins...it was a battle with medievalism...Dewey launched two thoughts on his opponents. ..first was that we needed to know about classic Greece, not to emulate classic Greek education...the

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<sup>72</sup> See Martin p. 115.

<sup>73</sup> Ryan p. 331.

<sup>74</sup> Ryan p. 336.

<sup>75</sup> Ryan p. 339.

second...that classical Greece had achieved more in philosophy than its social practice...the so called Dark Ages were really dark ages in Dewey's eyes..."<sup>76</sup>

Dewey is frankly an uneducated person when it comes to the Dark Ages, a name applied by the Renaissance intellectuals to set themselves above those who preceded them. Dewey saw the Dark Ages lasting until Descartes. The Dark Ages, which for Dewey must last till the mid 1600s, would encompass 1200 or more years! During that time he contends nothing happened. To anyone competent to the slightest in the field would see that a great deal happened. He rejects all the science, medicine, art, philosophy, that were necessary steps to get to Descartes. He uses this merely as one of his anti Catholic diatribes.

Is this anti-Catholic position, yes one may call it hatred, explainable? It does not seem so from the literature. Where Catholics demanded individual responsibility, the concept of sin and the person, Dewey saw the collective and society. Sin for Dewey was not participating in his "society" and that was never acceptable. In a strange way he was trying to create a parallel universe to the Catholic Church. His validating platform was the collection of anti-Catholics at Columbia who in many ways reinforced this attitude.

#### 4.3.4 Progressive Education

Dewey spent a great deal of his time considering the educational process, even though he never spent any time actually doing this. Strange to have a man tell other people how to do their jobs especially when at best he dabbled in doing it in Chicago with his experimental school. In contrast while at Columbia he was isolated from the Teacher's College despite the fact that later many thought the Teacher's College was tainted by Dewey.

As Pestritto and Atto state:

"Dewey's philosophy of education made explicit what was essentially an article of faith among progressives: state control and regulation of numerous aspects of public life would be required to bring about the improvements the progressives sought...Dewey's view of the purpose of education was purely democratic - education served to integrate the pupil into the larger community that was itself characterized by the universality of its experience."<sup>77</sup>

They then continue to detail some of Dewey's ideas of education in his well known work, "Pedagogic Creed", which states:

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<sup>76</sup> Ryan p. 339.

<sup>77</sup> See Pestritto and Atto, p. 13.

*"I believe that ... the teacher is not in the school to impose certain ideas or to form certain habits in the child, but is there as a member of a community to select the influences which shall affect the child and assist him in properly responding to these influences.*

*I believe that education is a regulation of the process of coming to share in the social consciousness and that the adjustment of individual activity on the basis of this social consciousness is the only sure method of social reconstruction."<sup>78</sup>*

In a sense Dewey sees education as a process where we mold and control the individual, driving from them their very individuality and seeking to attain a oneness with this "society" which Dewey has abstracted.

This point is further driven home by Fott:

"Throughout his career Dewey insists, particularly in his works on education, that there is no conflict between the good of a fully developed individual and the good of society. The child naturally wants "to serve" his fellows in society, and educators must understand that the "law" in intellectual and spiritual affairs is "co-operation and participation". "What one is as a person is what one is as associated with others, in a free give and take of intercourse." That the activities of life are bound up with emotions appears to indicate that there is no separate inner world for an individual apart from his relations with others."<sup>79</sup>

This is a chilling observation and it is true. Dewey saw himself and his camp followers as puppet masters, those who held the truth and those who held the strings to make society, not individuals, do what they felt was the correct thing to do. For Dewey the individual, as embodied in his view of the student and education, was a singular and immeasurable entity whose very existence depended solely upon belong and contributing to society.

As Martin states:

"...Dewey insisted that education be society-centered, for children are destined to become not isolated individuals but members and citizens of society. He saw and stated clearly that children's inner nature and mind grows from within but must be completed through relationships."<sup>80</sup>

Fott states:

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<sup>78</sup> See Pestritto and Atto p 14.

<sup>79</sup> See Fott p 36.

<sup>80</sup> Martin p. 199.

"...Dewey insists ...that there is no conflict between the good of a fully developed individual and the good of society. The child naturally wants "to serve" his fellows in society and educators must understand that the "law" in intellectual and spiritual affairs is "cooperation and participation"".<sup>81</sup>

Thus for Dewey the child and perforce of age the adult, is there to serve his fellow servers. The individual is there to serve the society and perforce of that has no rights unto themselves. We shall return to this later.

#### 4.3.5 The Public Intellectual

The public intellectual was a creation of the early 20th century and for the most part it was populated by academics and their fellow travelers. Public intellectuals are best characterized by the fact that they are purveyors of their ideas through the public media. Rather than publishing in academic journals, the public intellectual is generally an educated person who uses the media to present their ideas to the public. They are held in some state of high esteem perforce of their position. They have ab initio a degree of credence and respect based upon where they are employed or with what institution they are affiliated with.

They are almost a creation of the times and circumstances as well of the ability of the media to reach a larger public. In addition the public intellectual relies upon a public which can read and comprehend, a rather strange contradiction to the assumptions of Dewey and his education philosophy.

We also argue that Dewey and the other Progressive

As Hofstadter states:

*"Professors in America had always had the status of hired men, but they never had enough professional pride to express anything more than a rare momentary protest against this condition. Now even though their professional situation was improving they found themselves the resources to complain against their position; not the least of their grievances was the fact that their professional affairs were under the control of the plutocracy, since boards of trustees were often composed of those very businessmen who in other areas of life were becoming suspect for their predatory and immoral lives."<sup>82</sup>*

Indeed the movement of the public intellectual was driven by the resentment of the professors to those who fed them, namely those who controlled industries. One can see this in Dewey to some degree. It is not as if he brought in funds for research as is

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<sup>81</sup> Fott p 36.

<sup>82</sup> See Hofstadter TAR pp 154-155.

common today in science and engineering departments, in fact he cost money. His conflicts in his tenure at Chicago were in many ways the driving element for his revolt against the system. His movement to Columbia thus provided him with the resources to promulgate his agenda.

Hofstadter then continues to list the players:

"The roll of distinguished social scientists of the Progressive era...John R Commons, Richard T Ely, E R A Seligman,...Thorstein Veblen...Charles A Beard, Arthur F Bentley and Allen Smith...E A Ross, Lester Ward, John Dewey, ...Roscoe Pound...<sup>83</sup>"

These were but a few of the growing number of "public intellectuals" who came forth during this period.

#### 4.3.6 Anti Individualism

Now we can come to the main point of the discussion regarding Dewey. Namely his intense anti-individualism. He was strongly opposed to the principle of the rights of the individual. He was a believer in "society", a term he used again and again, and as a Progressive he was a true believer in the need to have a strong Government to oversee and control that society. As we have seen, in education, the intent was less to truly educate that to train young minds how to benefit the society, the Government, akin to say the Hitler youth is one were to stretch a point, and secondly he had his enemies list with the Catholic Church and Catholics in general at the top. If he had his way he would find a means to eliminate all Catholics by any means.

Westbrook states:

*"The democratic ideal, Dewey told his class....was embodied in the slogan of the French Revolution: liberty, equality, fraternity....."individuality operating in and for the end of the common interest"<sup>84</sup>*

Here Dewey states the key element, individuality, individualism, is subordinated to the society, the end of the common interest. Yet who is to determine that, the majority, and what rights are left to the individual, the Brandeis right to "be left alone". The right to practice your religion, not if you are a Catholic, the right to read what you want, not if it violates the demands of society. Dewey is filled with conflict. Unless of course you do what he commands.

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<sup>83</sup> See Hofstadter TAR p 154.

<sup>84</sup> Westbrook p. 93

Boisvert tells the tale of the ship the Arbella which brought Winthrop and his followers to New England. His sermon to the passengers when they arrived is described by Boisvert as follows:

*"The dominant images he employed were those of "fabric knit together" and "brotherhood". Notably absent from his discourse were two themes which have come to dominate the subsequent political life of the country, freedom and equality."*<sup>85</sup>

Boisvert speaks of Winthrop focusing on the inequality and diversity of the people and thus their need to bond together as a "society". He was stating that every man needed each other.

The validity of this is true in any society since there is a need to have commensurate of many forms and this banding means that one person can interact in a civil manner with another. However one should consider the option where a person wants to be left alone, left as an individual, and is that right permitted. One would argue that under the US Constitution it is, and again I reach back to Brandeis.

Boisvert then goes on to compare Locke to Winthrop, the group versus the individual.<sup>86</sup> He contrasted the Winthrop community of unequals and the need to band together and the Locke set of equal individuals and the emphasis on the sanctity of property and the preservation of individual rights. Boisvert summarizes:

*"...the fruits of Dewey's reflections can be summarized as follows. The gap that separates Winthrop from Locke need not be as deep as it at first appears. Empirical naturalism offers a network of ideas within which the democratic aspirations of Locke can be coordinated with the concrete communal ideals of Winthrop. Dewey's rethinking of political theory...involves a fundamental retranslation of political terminology. "Democracy", "individual", "freedom", "equality", and the "public" take on new significance..."*<sup>87</sup>

Thus Dewey redefines the terms we had built a country upon so that they fit his societal and Progressive vision. This is a classic case of propaganda manipulation and having the new platform of public intellectual it allows him to spread this rapidly to others in his clan.

Boisvert then continues with the following quote from Dewey<sup>88</sup>:

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<sup>85</sup> Boisvert p. 49.

<sup>86</sup> Boisvert pp 50-51.

<sup>87</sup> Boisvert p. 51.

<sup>88</sup> Boisvert pp 68-69.

*"Equality does not signify that kind of mathematical or physical equivalence in virtue of which any one element may be substituted for another. It denotes effective regard for whatever is distinctive and unique in each. It is not a natural possession but it is a fruit of the community when its action is directed by the character of the community."*

This is a statement of what we now call multi-culturalism, relativism, and communitarianism. Dewey states effectively that we are what we are only as reflected by our community, the society we belong to. We have no individuality at all. There is not natural possession of our person as a single unique individual but only as a cog in a wheel, albeit a slightly different cog, but recognizable only as the whole, namely the wheel.

Boisvert also states:<sup>89</sup>

*"'Individuality' identifies the distinctive manner in which someone participates in communal life. It signifies uniqueness, irreplaceability. 'Individualism' connotes both isolation and self interestedness. It assumes the opposition of self and community."*

*"'Individuality' ...suggests a mode of participation. It recognizes the irreducibility of community and the multiple interest associated with it."*

Individualism is more than what Boisvert states and less than what he presents. Individualism is the recognition that the individual, each person, has to themselves certain rights, rights to free speech, his own religion, protection from Government oppression, and more. The individual does not have to belong to some group, as long as he is a citizen. He does not have to be an Elk, a Mason, and a Democrat, to have the rights as guaranteed by the Constitution. Locke guaranteed rights to property to the individual. Winthrop was seeking a bond to preserve a threatened community.

Fott describes Dewey and the individual in contrast to Locke as follows:

*"His (Dewey's) view of the origin of the state is directly opposed to the tradition of liberal individualism and the social contract. The state does not arise "by direct conscious intent". He (Dewey) continues "the idea of a natural individual in his isolation possessed of full-fledged wants of energies to be expended according to his own volition and of a ready-made faculty of foresight ... is as much a fiction...as the doctrine of the individual in possession of antecedent political rights ... ""<sup>90</sup>*

This is a direct rejection by Dewey of the individual and the rights that apply to that individual. It must be so since Locke and the Founders stated clearly that those rights accrue from God and as an avowed atheist there is thus no source for those rights so they

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<sup>89</sup> Boisvert p. 68.

<sup>90</sup> See Fott p. 33.



cannot exist. Dewey in developing this theory is in effect deploying the atheists "religious beliefs" to the society. His denial of the individual is a religious belief just as much as the source being God.

Fott continues:

*"It is characteristic of Dewey's thought that he refuses to consider the individual except in relation to society, and society except in terms of the individuals who constitute it. ...Dewey criticizes early modern liberalism for its ahistorical, asocial individualism by claiming that it is not even possible to define the term "individual" without reference to what he considers the necessary link between the individual and the social..."<sup>91</sup>*

Fott also quotes Dewey as follows:<sup>92</sup>

*"As long as freedom of thought and speech is claimed as merely an individual right, it will give way, as do other merely personal claims, when it is, or is successfully represented to be, in opposition to the general welfare."*

Dewey is stating quite clearly that the practice of individual rights as guaranteed by the Constitution should be sublimated to the group or societal rights, never envisioned by the Founders. This construct is what becomes a fundamental elemental of the Progressives.

Thus as regards to individualism, Dewey finds it abhorrent and unacceptable. He believes it is the group or society which must be served. The fundamental problem is that the individual is immutable, we can see them and count them. The group, the society as we could call it, or the majority or ruling class is amorphous and changing, it is not static, and if we allow it control by denying the individual we create a state where the individual is oppressed. That is not what the Founders desired. It is a society of oppressive leaders, of intellectual elites and one that results on the elimination of the individual.

#### **4.4 TEDDY ROOSEVELT**

Teddy Roosevelt ("TR") was a groundbreaking president. Part of the reason was most likely because he was of both a privileged and elite background as well as one who had no experience in what even then would have been called the "real world". TR was to some degree the "accidental president" after the assassination of President McKinley. TR clearly believed that the executive had more power than any executive before him. He had held various political positions including two years as Governor of New York before his ascendancy to the Presidency. His family money and contacts as well as his superb self promotion were key to his becoming Vice President. His Presidency on the other hand was unexpected. As he moved through his Presidency he began to set targets to

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<sup>91</sup> Fott p. 35.

<sup>92</sup> Fott p 56.

attack and conquer as he did in Cuba. The most significant of targets were the Trusts and he now had a big stick in the Sherman Act. TR was the truly first President to set the role of the Federal Government as that of regulator of daily economic life. As he moved through his presidency he became more attuned to the Progressive ways. He tried to get the Republican Party to follow with little luck. When he left the office of President in 1908 all thought that it would be the end of TR. In 1910 however he gave his famous speech on The New Nationalism. This was his platform for Progressives in the upcoming 1912 election. He was to run against Wilson, yet known to him at the time of the speech.

Yet Teddy Roosevelt and Woodrow Wilson would come together in the 1912 election, the high water mark for the Progressive movement., and this coming together as foes for the Presidency, would in effect define Progressives and set the path and establish a framework for the neo-progressives of the current day. Roosevelt had been migrating from his initial Republican roots into the actual Progressive candidate in that election. In contrast Wilson was coming to the race as the southern Democrat, albeit the machine's Governor in New Jersey, but as one who was on record condemning the structure of the US Government and wishing for an English Parliamentary form. Wilson in many ways would be formed by Roosevelt's new awakening.

#### **4.4.1 The 1912 Election**

Teddy Roosevelt was in many ways a very strange person. He has been lionized by many but when looked upon in the cold light of day he becomes a unique character. Clearly an Anglo Saxon racist, one need look at some of his writings to see this, he looked upon non Anglo Saxons as the less competent of humanity, this emboldened his attempts to gain world dominance for the United States. It also defined his political actions on the international front, one case being the manipulation of the Japanese at the resolution of the Sino-Russian War for which he ironically was awarded the Nobel Peace Prize. The fact was that his actions in many ways set the framework for the events leading to World War II.

The recent book by Milkis on Teddy Roosevelt focuses specifically on the 1912 election. This election is in many ways a tale of the present and a demonstration of Teddy Roosevelt as both President and, more importantly, as a Public Intellectual of the Progressive movement in that time. The 1912 election was a turning point for American politics. It brought in Wilson and sent Teddy packing, but in many ways left the baggage that Teddy brought with him around for what seems a permanent stay.

Milkis tells a wonderful tale based on extensive research about this election. It is a historically well written piece albeit filled with consecutive facts but lacking in the interpretation and historical glue to make it a superb work, it is masterful notwithstanding.

The path of the book works back and forth on the New Freedoms of Wilson and the New Nationalism of TR. Milkis discusses these in Chapter 1 and the discussion is a somewhat back and forth discussion of the principles and the time which evoked them. The New

Nationalism is best described in the TR speech of the same name in 1910. The New Freedoms is best described by the Milkis in a memo from Brandeis to Wilson<sup>93</sup>. There is the ever presence of Brandeis in this book which is a powerful description of the great mind evolving his thoughts through the somewhat academic mind of Wilson.

Brandeis states:

*"The two parties (Wilson and the Democrats versus TR and the Progressives) differ fundamentally regarding economic policy....The Democratic Party insists that competition can and should be maintained in every branch of private industry...if at any future time if monopoly should appear to be desirable in any branch of industry, the monopoly should be a public one.....the New Party (Progressives) ...insists that private monopoly may be desirable..."*

This is a powerful statement which reflected the beginning in many ways of the power of the executive and the dominance of the central Government over the entire economy. Wilson agreed with this statement and what is most telling in the Milkis book is that the 1912 election was truly an election on principles, principle articulated directly by the players in that election. They were direct and forthright and presented their views of how the Government and the country should be run. Lacking was as reflected by Milkis any discussion of what the Constitution and Founders had ever intended. There appeared to be a unanimous agreement that change, as articulated by either Wilson/Brandeis or TR and the Progressives, was well within their purview and powers, independent of the Constitution.

The Socialists agenda under Debs is articulated by Milkis and he states that Debs viewed the Progressives as "a reactionary protest of the middle classes, built largely upon the personality of one man and not destined for permanence."<sup>94</sup> Ironically it would be Wilson who imprisoned Debs for his ideas, as well as my grandmother who headed the Socialist Party in New York. Wilson would leave Debs to rot for years until the Republican Harding pardoned him.

TR is quoted in his New Nationalism speech as saying<sup>95</sup>:

*"The New Nationalism puts national need before sectional or personal advantage ... Nationalism regards the executive as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than property...."*

It was this denial of the Lockean property construct which was at the heart of the Constitution. Milkis on the same page reinforces the TR stance of "human rights"

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<sup>93</sup> Milkis, Roosevelt, p 205.

<sup>94</sup> Milkis, Roosevelt, p 23.

<sup>95</sup> Miklis, Roosevelt, p. 40.

trumping "property rights". There does seem to be the conflict, perhaps of the time, that humans have property and that in many ways it was property via Locke that defines the individual as compared to a vassal of the King. TR and the Progressives seem to be driven by the Trusts and their "property" and the general hatred for these same Trusts.

Milkis discusses the conflicts of TR and the Constitution<sup>96</sup>. I would have liked to see this better presented, it is discussed but it is in itself a key element of importance who relation to the present is key. This returns again on p 91 where Milkis states:

*"In the end, TR and his political allies proposed to emancipate public opinion from the restraining influence of the Declaration (of Independence) and the Constitution..."*

TR was clearly a man who had his own ideas and the facts and history of the country be damned. The Wilson plan of the New Freedoms was in contradistinction to TR. Milkis compares and contrasts them but in many ways they had much in common. Monopolies seem to dominate the discussion<sup>97</sup>. TR was advocating for the referendum, recall and the like, pushing the power down to the people, and even to the extent of having recall of the President<sup>98</sup>. In contrast Wilson was defending natural rights but stopped way short of recalls as TR had done.<sup>99</sup>

The growth of the larger electorate, the conflict between large industries and labor, the expansion of the middle class, and even the conflicts on racial issues. TR had become an idealists with a platform designed to attract the largest group of common voters. He had developed his own ideas as how the country should be run and his New Nationalism was in a sense a new Constitution, drafted by a single man who then set out to sell it. Wilson was driven by the intent to concentrate mow power in both the executive as well as in Washington.

#### **4.4.2 The New Nationalism**

Roosevelt gave a speech during 1910, two years prior to the 1912 Presidential campaign, in Kansas, entitled The New Nationalism. It laid forth in some significant detail his views as a progressive. He states what the New Nationalism is in that speech:

*The New Nationalism puts the national need before sectional or personal advantage. It is impatient of the utter confusion that results from local legislatures attempting to treat national issues as local issues. It is still more impatient of the impotence which springs from over division of governmental powers, the impotence which makes it possible for*

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<sup>96</sup> Milkis, Roosevelt, p 44.

<sup>97</sup> Milkis, Roosevelt, p 202.

<sup>98</sup> Milkis, Roosevelt, p 219.

<sup>99</sup> Milkis, Roosevelt, p 226.

*local selfishness or for legal cunning, hired by wealthy special interests, to bring national activities to a deadlock. This New Nationalism regards the executive power as the steward of the public welfare. It demands of the judiciary that it shall be interested primarily in human welfare rather than in property, just as it demands that the representative body shall represent all the people rather than any one class or section of the people.*

It recognizes that the United States is now one country, united and not a collection of sectional entities. It furthermore places "power" in the hands of the "executive". It demands justice deal with people and not things. It demands that the legislature be of the people, representing them, and not special interests. **It puts the nation before the individual.**

In many ways it was the statement defining the Progressive movement. It placed many stakes in the ground as regards to the strength of the Federal Government and especially that of the President. It attempts to show that the individualism that the country was founded upon and built upon was now thrown on the ash heap of history and that the new nationalism made all subservient to the needs and goals of the nation. To those listening to the speech, their ears may not yet have been attuned to this nuance. TR had gotten his, and frankly he could care less by anyone else.

As Milkis states<sup>100</sup>:

*"Roosevelt, Croly<sup>101</sup> claimed, "was the first political leader of the American people to identify the national principle with the ideal of reform." TR hoped that his progressive vision of industrial democracy would bury the issue of race, that it would reunify the nation in a war against privilege."*

Croly had written a book, *The Promise of American Life*, in which he states<sup>102</sup>:

*"The triumph of Jefferson and the defeat of Hamilton enabled the natural individualism of the American people free play. The democratic political system was considered tantamount in practice to a species of vigorous, licensed, and purified selfishness. The responsibilities of the government were negative; those of the individual were positive. And it is no wonder that in the course of time his positive responsibilities began to look*

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<sup>100</sup> Milkis, Roosevelt, p. 40.

<sup>101</sup> Herbert Croly was the founder of *The New Republic* ("TNR") and a major Progressive thinker and writer. Croly and TNR nourished many of the Progressives in their day and it has continued to be a bastion of neo-progressive thought.

<sup>102</sup> Croly, H., *The Promise of American Life*, MacMillan (New York) 1911. pp 48-49. See <http://books.google.com/books?id=3BASAAAAYAAJ&printsec=frontcover&dq=croly+promise+of+american+life&ei=qj7cSdS0BJ2UMbmsxOYO#v=onepage&q&f=false> for the Google book. It should be noted that the dedication in this book is to the Croly family from the Holmes family on Christmas 1912. Holmes of course being the famous Oliver Wendell Holmes.

*larger and larger. This licensed selfishness became more dominating in proportion as it became more successful. If a political question arose, which in any way interfered with his opportunities, the good American began to believe that his democratic political machine was out of gear."*

Croly despised individualism and at his heart as a Progressive he sought in every way to seek out and promote his agenda of a strong central government and a national society of communal interests. Croly saw in TR a medium for his message, a voice to promulgate the destruction of individualism and the New Nationalism was such a vehicle.

One of TR's initial statements in his New Nationalism speech places the progressive viewpoint in clear perspective when he states:

*At many stages in the advance of humanity, this conflict between the men who possess more than they have earned and the men who have earned more than they possess is the central condition of progress. In our day it appears as the struggle of freemen to gain and hold the right of self-government as against the special interests, who twist the methods of free government into machinery for defeating the popular will. At every stage, and under all circumstances, the essence of the struggle is to equalize opportunity, destroy privilege, and give to the life and citizenship of every individual the highest possible value both to himself and to the commonwealth.*

Possessing more than what one earns and earning more than one possesses is a statement of disdain for those who have made returns on the "backs of the working man". Although not a socialist dictum, it is in essence a core belief of the progressives, that those who have accumulated wealth have done so on the backs of others, and thus what they have is well in excess of what they should have earned.

Roosevelt then stresses the need for equality, again a progressive agenda item, and he does so as follows:

*Practical equality of opportunity for all citizens, when we achieve it, will have two great results. First, every man will have a fair chance to make of himself all that in him lies; to reach the highest point to which his capacities, unassisted by special privilege of his own and unhampered by the special privilege of others, can carry him, and to get for himself and his family substantially what he has earned. **Second, equality of opportunity means that the commonwealth will get from every citizen the highest service of which he is capable. No man who carries the burden of the special privileges of another can give to the commonwealth that service to which it is fairly entitled.***

Equality to him is equality of opportunity is a twofold objective; first that each man, and one would assume woman, would have a "fair chance", whatever that means, but it is delimited by not having the "special privilege" restriction, again whatever that means. second, that the country will then get from that person in return for having been given this equal opportunity the "highest service". In effect he states that it is the duty of the Government to establish a level playing field by bringing up those who are lower and

lowering those who are high. In return for this level playing field the citizen who so benefits, in whatever way, owes the Government will get the "highest service" whatever that may mean. In effect there seems to be the establishment of some contract between the citizen and the Government in the raising up the best in its citizenry.

He then starts with corporations and states:

*"There can be no effective control of corporations while their political activity remains. To put an end to it will be neither a short nor an easy task, but it can be done.*

*We must have complete and effective publicity of corporate affairs, so that people may know beyond peradventure whether the corporations obey the law and whether their management entitles them to the confidence of the public. It is necessary that laws should be passed to prohibit the use of corporate funds directly or indirectly for political purposes; it is still more necessary that such laws should be thoroughly enforced. Corporate expenditures for political purposes, and especially such expenditures by public-service corporations, have supplied one of the principal sources of corruption in our political affairs.*

*It has become entirely clear that we must have government supervision of the capitalization, not only of public-service corporations, including, particularly, railways, but of all corporations doing an interstate business. I do not wish to see the nation forced into the ownership of the railways if it can possibly be avoided, and the only alternative is thoroughgoing and effective regulation, which shall be based on a full knowledge of all the facts, including a physical valuation of property. This physical valuation is not needed, or, at least, is very rarely needed, for fixing rates; but it is needed as the basis of honest capitalization.*

*We have come to recognize that franchises should never be granted except for a limited time, and never without proper provision for compensation to the public. It is my personal belief that the same kind and degree of control and supervision which should be exercised over public-service corporations should be extended also to combinations which control necessities of life, such as meat, oil, and coal, or which deal in them on an important scale. I have no doubt that the ordinary man who has control of them is much like ourselves. I have no doubt he would like to do well, but I want to have enough supervision to help him realize that desire to do well"*

Roosevelt feels that corporations are in some way the cause of many if not all evils. He states:

*I believe that the officers, and, especially, the directors, of corporations should be held personally responsible when any corporation breaks the law.*

*Combinations in industry are the result of an imperative economic law which cannot be repealed by political legislation. The effort at prohibiting all combination has substantially failed. The way out lies, not in attempting to prevent such combinations, but*

*in completely controlling them in the interest of the public welfare. For that purpose the Federal Bureau of Corporations is an agency of first importance. Its powers, and, therefore, its efficiency, as well as that of the Interstate Commerce Commission, should be largely increased. We have a right to expect from the Bureau of Corporations and from the Interstate Commerce Commission a very high grade of public service.*

*We should be as sure of the proper conduct of the interstate railways and the proper management of interstate business as we are now sure of the conduct and management of the national banks, and we should have as effective supervision in one case as in the other. The Hepburn Act, and the amendment to the act in the shape in which it finally passed Congress at the last session, represent a long step in advance, and we must go yet further.*

The establishment of personal criminal liability to officers and directors would become a substantial burden and it has been enacted through many laws over the past century. Yet the view of Roosevelt at the time, and progressives in general, was that corporations were in some sense static in that once they captured a market position it could never be challenged because they had gathered so much power. They totally failed to see market cycles, the effects of the entrepreneur and the results of aging management in monopolistic companies. One need just look at the companies dominating Wall Street in 1910 and compare them 25, 5, 100 years later.

Roosevelt then continues to look poorly upon those who have achieved. He states:

*The absence of effective State, and, especially, national, restraint upon unfair money-getting has tended to create a small class of enormously wealthy and economically powerful men, whose chief object is to hold and increase their power. The prime need is to change the conditions which enable these men to accumulate power which is not for the general welfare that they should hold or exercise. We grudge no man a fortune which represents his own power and sagacity, when exercised with entire regard to the welfare of his fellows.*

He does not state what is unfair other than the getting of money. He seeks national Government restraint against this group.

The progressives were rebelling against what they saw as a major evil, the large corporations and trusts. The irony of course is that at the time the US was still a predominantly agricultural economy and even in business it was dominated by many small companies. The problem was in certain more visible sectors such as the railroads, and even telecommunications, the large and monopoly prone industries, those with great economies of scale. Thus Roosevelt calls for Government control. as a basis for his progressive movement.

Roosevelt then presents his support for a graduated income tax. He states:



*No man should receive a dollar unless that dollar has been fairly earned. Every dollar received should represent a dollar's worth of service rendered - not gambling in stocks, but service rendered. The really big fortune, the swollen fortune, by the mere fact of its size acquires qualities which differentiate it in kind as well as in degree from what is possessed by men of relatively small means. Therefore, I believe in a graduated income tax on big fortunes, and in another tax which is far more easily collected and far more effective - a graduated inheritance tax on big fortunes, properly safeguarded against evasion and increasing rapidly in amount with the size of the estate.*

This was a class warfare issue, in that he was speaking to farmers who looked eastward and saw the bankers in New York and the industrialist in other eastern cities and saw them making money by manipulating businesses. He then saw this as a way both to win votes and equalize the wealth.

Roosevelt then proceeds to detail his proposals for unemployment insurance and the minimum wage. He states:

*The fundamental thing to do for every man is to give him a chance to reach a place in which he will make the greatest possible contribution to the public welfare. Understand what I say there. Give him a chance, not push him up if he will not be pushed. Help any man who stumbles; if he lies down, it is a poor job to try to carry him; but if he is a worthy man, try your best to see that he gets a chance to show the worth that is in him. No man can be a good citizen unless he has a wage more than sufficient to cover the bare cost of living, and hours of labor short enough so that after his day's work is done he will have time and energy to bear his share in the management of the community, to help in carrying the general load.*

Roosevelt then stresses the importance of a strong and powerful central Government. This idea is the cornerstone of the progressive movement. He states:

*I do not ask for over centralization; but I do ask that we work in a spirit of broad and far-reaching nationalism when we work for what concerns our people as a whole. We are all Americans. Our common interests are as broad as the continent. I speak to you here in Kansas exactly as I would speak in New York or Georgia, for the most vital problems are those which affect us all alike. The national government belongs to the whole American people, and where the whole American people are interested, that interest can be guarded effectively only by the national government. The betterment which we seek must be accomplished, I believe, mainly through the national government.*

This stress on all being Americans, and that New York, Georgia, Kansas, are all Americans is prefatory to his stating that the central Government should be empowered to do what is necessary. We will see that in many ways this was akin to what Wilson wrote of as well but for Roosevelt it was written as a stump speech and for Wilson the esoteric verbiage of the academic.

## 4.5 WOODROW WILSON

Woodrow Wilson is a complex figure in the development of the progressive movement. The recent book, *Woodrow Wilson: A Biography*, by Cooper, is a somewhat biased addition to the wealth of biographies on Wilson. Cooper is one of the class of writers who approaches Wilson in the somewhat favorable light of a progressive, in fact one may call Cooper a neo-progressive historian in light of how he develops Wilson's biography. In contrast to Cooper is Pestritto, who is anything but a neo-progressive. He has written extensively on Wilson and the Progressives and his writing is brilliantly clear and comprehensive in coverage. We will follow Pestritto in presenting Wilson.

One should always remember that Wilson was the ultimate opportunist. He was offered the Governorship of New Jersey just as the Board at Princeton was tiring of his high handed, arrogant, and almost dictatorial style while its president. He ran for President just when the political machine that initially supported him in 1910 decides the same in 1912. Wilson was also a pragmatist. He did what was necessary at the time. Thus as he saw TR and the Progressive bent he assumed much of the TR Progressive mantle to himself. As the country tired of TR it accepted the aloofness of Wilson, not knowing what it had elected.

Wilson was a Virginian by birth and at heart. In 1912 that still meant a level of arrogance and self importance as well as a strong racist bent. Milkis details the occasion when Trotter, a black leader and editor of the *Boston Guardian*, was thrown out of Wilson's office abruptly because he disagreed with the President's refusal to even discuss the separate but equal position of the Democrats<sup>103</sup>. Wilson also as a Virginian had strong ties to the south in many ways and the south was the core to his ongoing efforts. This truly was a sad day when the President so denigrated such a man as Trotter.

### 4.5.1 Wilson and Hegel

To understand Wilson one must understand the base of his world view, and that was Hegel. Strangely in the book by Cooper there is not a reference to Hegel in the index. Perhaps the reason is the nexus of Hegel and Hitler, the historicism of the Hegelian conflict of civilizations with a teleological view of a selected end point. For Hegel the process of history had a deliberate end point. It was not a process for the sake of process, but process with a conclusion. The winners of the thesis, antithesis, one the ones in the synthesis, were the better of both prior worlds, and as one reads Wilson one sees this Hegelian view flow out again and again.

One may ask, besides Wilson's world view, a Hegelian view, why did he become a progressive or was that part of his evolving character? Cooper states<sup>104</sup>:

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<sup>103</sup> See Milkis pp 274-275 places Wilson in the poorest of light as he deals with the civil rights of the blacks.

<sup>104</sup> Cooper p 106.

*"When, how, and why Woodrow Wilson became a progressive would become hotly debated question after he entered politics. Foes o both sides would denounce him for opportunism; erstwhile conservatives patrons would scorn him for ingratitude and for pandering to the passing popular fancies; skeptical progressives would suspect him of belated and halfhearted adherence to their side. Opportunism unquestionable played a part in swaying Wilson toward progressivism. The popularity of Roosevelt's anti-trust and regulatory policies, growing reformist insurgency in both parties, and repeated defeats of conservative Democrats, all pointed to the direction in which the political winds were blowing..."*

Yet Wilson was both opportunist, some would say pragmatist, and at the same time driven by a vision, a philosophy of history as developed by Hegel.

The development of Wilson's historicism in the Hegelian context is provided by Petitto<sup>105</sup>. First historicism is the theory of history based upon Hegel that states that history is both organic and evolving and yet rational and a reflection and instrument of power. Hegel saw history as an evolving conflict of ideas, of ways of thinking and living, the thesis and antithesis, when meeting in a point of conflict, the synthesis, the best idea of the next step of history, evolving, yet the evolution has a purpose, a teleological drive to improvement. Superior tribes overcome inferior tribes and the result is a forward moving civilization.

I would briefly question Hegel and the historicism because in European history we have the Huns destroying Rome, the Vikings killing off Irish culture, and tales of this kind again and again. One could argue that history is Darwinian with no end just a process of survival of the fittest, the Spencerian way in which mankind evolves. Yet it is important to understand a person's world view, and Petitto presents this brilliantly.

As to the influence of historicism on Wilson, Petitto states<sup>106</sup>:

*"Wilson also adopted the framework of historicism in describing how history bring progress. Advance in history comes out of conflict, a dialectical process where opposing conventions or customs meet, with the historically superior convention winning over and assimilating the inferior. Wilson traced this dialectic back to what he considered the early history of the state - the primitive family or tribe."*

In many ways this is Spencerian history, with the Hegelian conflict. Yet one must add to this the end, the goal, the teleology that implies that this is all going somewhere. As such, one can see Wilson with a vision, a mission, driven to crash into the existing system with his views and seek the Darwinian survival of what he saw as the evolving United States.

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<sup>105</sup> Petitto, Wilson, pp 14-19.

<sup>106</sup> Petitto, Wilson p. 35.

We will see that vision somewhat when we examine the New Freedom which was the basis of his campaigns.

Again from Petitto we have<sup>107</sup>:

*"The principles that underlie Wilson's theory of the state reflect Hegel and the tradition of historicism. Throughout his writings, Wilson constantly referred to government as something that is a living and must adapt and grow in accord with the progress of history. This organic concept of government is most thoroughly explained in The State."*

The principle that Wilson followed was a changing one but the change was around the laws, around the Constitution, reinterpreting what was there already with a strong role for the executive, especially when he became that entity.

Finally it is important to understand how Wilson saw the Constitution. It was well known in his writing in Congressional Government that he considered the three branches of government as cumbersome and that he thought the English Parliamentary system much more effective. Thus it is no wonder that he can totally dismiss the Declaration of Independence as well as the Constitution as outmoded elements of a process towards the organic development of the United States. As Petitto states<sup>108</sup>:

*"In his New Freedom campaign, Wilson asked rhetorically what the attitude of progressives ought to be toward the symbols of the founding political order - especially toward the Constitution and the individualistic understanding of it that dominated the founding era. His answer was that the form and principles of the founding era were appropriate and necessary for their time. ....The founders primitive, individualistic liberalism - while outdated for the present circumstances - had been historically necessary....Wilson's argument that the ideas of the founding were outmoded for the modern times is why he and other progressives who wrote about the founding era tended to focus on biographical and historical accounts and avoid discussion of principles."*

It is also why progressive historians like Beard try to denigrate and downplay the founding fathers and those who created the Constitution. It is essential for progressives to set the Constitution aside, to make it unnecessary, to make it something that we, society, has moved beyond, and to allow the central government to expand its powers over all. Wilson stepped further than TR and most progressives because he did so on the shoulder of Hegel, and in a strange way it was the same Hegelian shoulders that brought forth the Third Reich.

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<sup>107</sup> Petitto, Wilson p. 34.

<sup>108</sup> Petitto, Wilson, pp 103-104.

#### 4.5.2 The New Freedom<sup>109</sup>

As Teddy Roosevelt had his New Nationalism, Wilson introduced during his campaign his New Freedom. In contrast to Roosevelt, Wilson has a much more refined and detailed presentation. The document called The New Freedom, published after his election, was in effect a compilation of Wilson's speeches during his campaign in 1912. These speeches has inputs from many including Brandeis. The two men truly complimented each other and their intellects came through in what we see as The New Freedom. It became the corner stone of the Progressive movement during this period.

The first part of the structure of the New Freedom is Wilson's statements regarding the dynamic nature of the Constitution, the flexible bending ability of those responsible for its enforcement as to what indeed they were enforcing.

Wilson states:

*"Now, it came to me, as this interesting man talked, that the Constitution of the United States had been made under the dominion of the Newtonian Theory. You have only to read the papers of The Federalist to see that fact written on every page. They speak of the "checks and balances" of the Constitution, and use to express their idea the simile of the organization of the universe, and particularly of the solar system,—how by the attraction of gravitation the various parts are held in their orbits; and then they proceed to represent Congress, the Judiciary, and the President as a sort of imitation of the solar system.*

*They were only following the English Whigs, who gave Great Britain its modern constitution. Not that those Englishmen analyzed the matter, or had any theory about it; Englishmen care little for theories. It was a Frenchman, Montesquieu, who pointed out to them how faithfully they had copied Newton's description of the mechanism of the heavens.*

*The makers of our Federal Constitution read Montesquieu with true scientific enthusiasm. They were scientists in their way,—the best way of their age,—those fathers of the nation. Jefferson wrote of "the laws of Nature,"—and then by way of afterthought,—"and of Nature's God." And they constructed a government as they would have constructed an orrery,—to display the laws of nature. Politics in their thought was a variety of mechanics. The Constitution was founded on the law of gravitation. The government was to exist and move by virtue of the efficacy of "checks and balances."*

*The trouble with the theory is that government is not a machine, but a living thing. It falls, not under the theory of the universe, but under the theory of organic life. **It is accountable to Darwin, not to Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. No living thing can have its organs offset against each other, as checks, and live. On the contrary, its life is***

<sup>109</sup> <http://www.gutenberg.org/files/14811/14811-h/14811-h.htm>

*dependent upon their quick co-operation, their ready response to the commands of instinct or intelligence, their amicable community of purpose. Government is not a body of blind forces; it is a body of men, with highly differentiated functions, no doubt, in our modern day, of specialization, with a common task and purpose.*

*Their co-operation is indispensable, their warfare fatal. There can be no successful government without the intimate, instinctive co-ordination of the organs of life and action. This is not theory, but fact, and displays its force as fact, whatever theories may be thrown across its track. Living political constitutions must be Darwinian in structure and in practice. Society is a living organism and must obey the laws of life, not of mechanics; it must develop.*

*All that progressives ask or desire is permission—in an era when "development," "evolution," is the scientific word—to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine."*

The above statement by Wilson set that framework, specifically the call to action in the last paragraph which states: *in an era when "development," "evolution," is the scientific word—to interpret the Constitution according to the Darwinian principle; all they ask is recognition of the fact that a nation is a living thing and not a machine.* The Constitution need not change the words just how the words are interpreted. The problem of course is twofold: first, who is the interpreter and second the Constitution had within it the means to change how it would be interpreted, and changed.

Wilson then goes on to address the opposition and his case the Republicans. He starts out below by disemboweling Hamilton, without any due process, just his belief that Hamilton was in favor of the landed gentry. Then he goes on to Lincoln, giving Lincoln a backhanded compliment and then taking his shots at Republicans. He states:

*"There are two theories of government that have been contending with each other ever since government began. One of them is the theory which in America is associated with the name of a very great man, Alexander Hamilton. A great man, but, in my judgment, not a great American. He did not think in terms of American life. Hamilton believed that the only people who could understand government, and therefore the only people who were qualified to conduct it, were the men who had the biggest financial stake in the commercial and industrial enterprises of the country.*

*That theory, though few have now the hardihood to profess it openly, has been the working theory upon which our government has lately been conducted. It is astonishing how persistent it is. It is amazing how quickly the political party which had Lincoln for its first leader,—Lincoln, who not only denied, but in his own person so completely disproved the aristocratic theory,—it is amazing how quickly that party, founded on faith in the people, forgot the precepts of Lincoln and fell under the delusion that the "masses" needed the guardianship of "men of affairs."*

To Wilson, he believes that he and the Progressives are the men of the people and they have a vision, given solely to them, of what should be done and how people should be treated.

Wilson then goes on to address the major topic of the day, corporations and especially monopolies. Again as I had said regarding Roosevelt, the facts at the time do not support Wilson. Yes there were monopolies, railroads, telegraph, telephone, certain oil products, but at the same time there was competition. There was great competition. Wilson bemoans the monopolies as follows:

*"The doctrine that monopoly is inevitable and that the only course open to the people of the United States is to submit to and regulate it found a champion during the campaign of 1912 in the new party, or branch of the Republican party, founded under the leadership of Mr. Roosevelt, with the conspicuous aid,—I mention him with no satirical intention, but merely to set the facts down accurately,—of Mr. George W. Perkins, organizer of the Steel Trust and the Harvester Trust, and with the support of more than three millions of citizens, many of them among the most patriotic, conscientious and high-minded men and women of the land.*

*The fact that its acceptance of monopoly was a feature of the new party platform from which the attention of the generous and just was diverted by the charm of a social program of great attractiveness to all concerned for the amelioration of the lot of those who suffer wrong and privation, and the further fact that, even so, the platform was repudiated by the majority of the nation, render it no less necessary to reflect on the significance of the confession made for the first time by any party in the country's history. It may be useful, in order to the relief of the minds of many from an error of no small magnitude, to consider now, the heat of a presidential contest being past, exactly what it was that Mr. Roosevelt proposed.*

*Mr. Roosevelt attached to his platform some very splendid suggestions as to noble enterprises which we ought to undertake for the uplift of the human race; but when I hear an ambitious platform put forth, I am very much more interested in the dynamics of it than in the rhetoric of it. I have a very practical mind, and I want to know who are going to do those things and how they are going to be done. If you have read the trust plank in that platform as often as I have read it, you have found it very long, but very tolerant. It did not anywhere condemn monopoly, except in words; it's essential meaning was that the trusts have been bad and must be made to be good.*

*.... Mr. Roosevelt long ago classified trusts for us as good and bad, and he said that he was afraid only of the bad ones. Now he does not desire that there should be any more bad ones, but proposes that they should all be made good by discipline, directly applied by a commission of executive appointment. All he explicitly complains of is lack of publicity and lack of fairness; not the exercise of power, for throughout that plank the power of the great corporations is accepted as the inevitable consequence of the modern organization of industry. All that it is proposed to do is to take them under control and regulation. The national administration having for sixteen years been virtually under the*

*regulation of the trusts, it would be merely a family matter were the parts reversed and were the other members of the family to exercise the regulation.*

*And the trusts, apparently, which might, in such circumstances, comfortably continue to administer our affairs under the mollifying influences of the federal government, would then, if you please, be the instrumentalities by which all the humanistic, benevolent program of the rest of that interesting platform would be carried out!*

*I have read and reread that plank, so as to be sure that I get it right. All that it complains of is,—and the complaint is a just one, surely,—**that these gentlemen exercise their power in a way that is secret. Therefore, we must have publicity.** Sometimes they are arbitrary; **therefore they need regulation.** Sometimes they do not consult the general interests of the community; **therefore they need to be reminded of those general interests by an industrial commission.** But at every turn it is the trusts who are to do us good, and not we ourselves.*

*Again, I absolutely protest against being put into the hands of trustees. Mr. Roosevelt's conception of government is Mr. Taft's conception, that the Presidency of the United States is the presidency of a board of directors. I am willing to admit that if the people of the United States cannot get justice for themselves, then it is high time that they should join the third party and get it from somebody else. The justice proposed is very beautiful; it is very attractive; there were planks in that platform which stir all the sympathies of the heart; they proposed things that we all want to do; but the question is, **Who is going to do them? Through whose instrumentality? Are Americans ready to ask the trusts to give us in pity what we ought, in justice, to take?**"*

The last paragraph is an interesting one. For the Socialists, they wanted the Government to own all of the monopoly companies, for Roosevelt he want Government to control them, perhaps as Wilson suggested as their Board, and then what is Wilson saying, for the last sentence is almost terrifying, **Are Americans ready to ask the trusts to give us in pity what we ought, in justice, to take?**, indeed, is he saying that the Government should take over the trusts?

On the one hand Wilson sees the Spencerian Darwinian process, change being through a competitive market, yet Wilson and the Progressives in general see monopolies and trusts as immutable challenges to democracy. One should ask, how many are left? And how many trusts are left? We have had a century of regulation, and one can argue with some merit that in telecommunications it was the regulated company which made decisions to maximize its gain in a regulated environment that set that technology back decades. It was not until deregulation that all of what we see today happened.

Then Wilson praises the referendum. He does so as follows:

*When I was in Oregon, not many months ago, I had some very interesting conversations with Mr. U'Ren, who is the father of what is called the Oregon System, a system by which he has put bosses out of business. **He is a member of a group of public-spirited men***



*who, whenever they cannot get what they want through the legislature, draw up a bill and submit it to the people, by means of the initiative, and generally get what they want. The day I arrived in Portland, a morning paper happened to say, very ironically, that there were two legislatures in Oregon, one at Salem, the state capital, and the other going around under the hat of Mr. U'Ren. I could not resist the temptation of saying, when I spoke that evening, that, while I was the last man to suggest that power should be concentrated in any single individual or group of individuals, I would, nevertheless, after my experience in New Jersey, rather have a legislature that went around under the hat of somebody in particular whom I knew I could find than a legislature that went around under God knows who's hat; because then you could at least put your finger on your governing force; you would know where to find it.*

Yet when we look at California, rant with referenda, and one sees that people get lower real estate taxes, more services and exploding debt. When there is no fiscal responsibility then there will be evolving instability. That instability can be mitigated by a Legislature if and only if the Legislature has constraints. Handing change and legislation into the hands of the voters directly will take away the quid pro quo of who pays for the new service or what gets cut when you reduce taxes. Wilson and the Progressives seem never to have thought through the process.

We take a look finally at Wilson's view of liberty and freedom, or lack and control thereof. He states:

*What is liberty?*

*I have long had an image in my mind of what constitutes liberty. Suppose that I were building a great piece of powerful machinery, and suppose that I should so awkwardly and unskillfully assemble the parts of it that every time one part tried to move it would be interfered with by the others, and the whole thing would buckle up and be checked. Liberty for the several parts would consist in the best possible assembling and adjustment of them all, would it not? If you want the great piston of the engine to run with absolute freedom, give it absolutely perfect alignment and adjustment with the other parts of the machine, so that it is free, not because it is let alone or isolated, but because it has been associated most skillfully and carefully with the other parts of the great structure.*

*What is liberty? You say of the locomotive that it runs free. What do you mean? You mean that its parts are so assembled and adjusted that friction is reduced to a minimum, and that it has perfect adjustment. We say of a boat skimming the water with light foot, "How free she runs," when we mean, how perfectly she is adjusted to the force of the wind, how perfectly she obeys the great breath out of the heavens that fills her sails. Throw her head up into the wind and see how she will halt and stagger, how every sheet will shiver and her whole frame be shaken, how instantly she is "in irons," in the expressive phrase of the sea. She is free only when you have let her fall off again and have recovered once more her nice adjustment to the forces she must obey and cannot defy.*

*Human freedom consists in perfect adjustments of human interests and human activities and human energies.*

*Now, the adjustments necessary between individuals, between individuals and the complex institutions amidst which they live, and between those institutions and the government, are infinitely more intricate to-day than ever before. No doubt this is a tiresome and roundabout way of saying the thing, yet perhaps it is worthwhile to get somewhat clearly in our mind what makes all the trouble to-day. Life has become complex; there are many more elements, more parts, to it than ever before. And, therefore, it is harder to keep everything adjusted,—and harder to find out where the trouble lies when the machine gets out of order.*

*You know that one of the interesting things that Mr. Jefferson said in those early days of simplicity which marked the beginnings of our government was that the best government consisted in as little governing as possible. And there is still a sense in which that is true. It is still intolerable for the government to interfere with our individual activities except where it is necessary to interfere with them in order to free them. But I feel confident that if Jefferson were living in our day he would see what we see: that the individual is caught in a great confused nexus of all sorts of complicated circumstances, and that to let him alone is to leave him helpless as against the obstacles with which he has to contend; and that, therefore, law in our day must come to the assistance of the individual. It must come to his assistance to see that he gets fair play; that is all, but that is much.*

***Without the watchful interference, the resolute interference, of the government, there can be no fair play between individuals and such powerful institutions as the trusts. Freedom to-day is something more than being let alone. The program of a government of freedom must in these days be positive, not negative merely.***

Here we will see Wilson pandering in a Jeffersonian way to the rural small town folks. He dismisses the vitality of New York and its contribution in favor of what the small town, whatever that is, brings to the country. Here too we see the Wilson of the Government controlling all. The last sentence is most telling. Namely as Wilson states: ***Without the watchful interference, the resolute interference, of the government***, yet it is that watchful eye, that controlling hand that we also fear.

*You know what the vitality of America consists of. Its vitality does not lie in New York, nor in Chicago; it will not be sapped by anything that happens in St. Louis. The vitality of America lies in the brains, the energies, the enterprise of the people throughout the land; in the efficiency of their factories and in the richness of the fields that stretch beyond the borders of the town; in the wealth which they extract from nature and originate for themselves through the inventive genius characteristic of all free American communities.*

***That is the wealth of America, and if America discourages the locality, the community, the self-contained town, she will kill the nation. A nation is as rich as her free communities; she is not as rich as her capital city or her metropolis. The amount of money in Wall Street is no indication of the wealth of the American people. That***

*indication can be found only in the fertility of the American mind and the productivity of American industry everywhere throughout the United States. If America were not rich and fertile, there would be no money in Wall Street. If Americans were not vital and able to take care of themselves, the great money exchanges would break down. The welfare, the very existence of the nation, rests at last upon the great mass of the people; its prosperity depends at last upon the spirit in which they go about their work in their several communities throughout the broad land. In proportion as her towns and her country-sides are happy and hopeful will America realize the high ambitions which have marked her in the eyes of all the world.*

Yes, the United States is an amalgam. Yes, today as it was a century ago, Wall Street needs something to sell, to broker, to exist. Wall Street does do its business on the backs of Main Street, it makes fortunes doing that. The question is not just can Wall Street exist without Main Street, it also is can Main Street exist without Wall Street, in the largest most expansive sense. Does Wilson understand this symbiotic relationship, one which goes both ways.

#### **4.6 BRANDEIS**

Brandeis is one of the intellectual cornerstones of Progressives. He is however a bit of a mixed bag for he was not totally doctrinaire. His views and opinions were logically reasoned by his razor sharp mind and unlike so many others his have some substantial basis for holding. Melvin Urofsky has written a recent biography of Brandeis which we shall refer to. Urofsky in his book has written a detailed account of one of the most eminent lawyers and judges of our country, Brandeis. Brandeis was a brilliant and perceptive jurist and he was part of what is now the bases of many of what we accept as common "rights" as citizens of the United States.

The biography is long and detailed and is probably one of the best biographies on Brandeis that I have read. Rather than detail the book I want to use two episodes in Brandeis life as discussed in the book to make a few points.

##### **4.6.1 Privacy**

First, the issue of the right to privacy. On pp 99-102 the author describes the seminal paper by Warren and Brandeis entitled "The Right to Privacy" which as the author does state is in many ways a right to be left alone, a right to anonymity. The fact is that there is no such right in the Constitution and that Warren and Brandeis, truly Brandeis alone if one understands the author, develops such "right" from well established common law principles. This was a brilliant paper and in many ways is as important today and it was over a hundred years ago. It would have been interesting for the author to detail this paper a bit more. The author returns to this topic of privacy in the discussion of the Olmstead case on pp 628-632. This was the first wiretapping case where the Court ruled that there was no need for a warrant and thus no 4th Amendment protection. Brandeis'

writing on his dissent is quite telling and it should have gotten a bit more coverage by the author. Brandeis states in his dissent:

"Of all the rights of the citizen, few are of greater importance or more essential to his peace and happiness than the right of personal security, and that involves not merely protection of his person from assault, but exemption of his private affairs, books, and papers, from the inspection and scrutiny of others. Without the enjoyment of this right, all others would lose half their value."

To me this needs a substantially longer discussion but the author does do it some credit.

#### 4.6.2 Style

The second issue is the relationship between Brandeis and Taylor and Galbreth, both early 20th century management consultants. There is a recent article in *The New Yorker* by Jill Lepore, a superb piece of critical and historical analysis of Brandeis, which discusses this relationship in detail and presents many of the weaknesses in Brandeis. Lepore looks at Brandeis through the lens of the management and efficiency consultants, in many ways the hucksters who predated the current Business Schools. She starts her article by stating:

*"Ordering people around, which used to be just a way to get things done, was elevated to a science in October of 1910, when Louis Brandeis, a fifty-three-year-old lawyer from Boston, held a meeting at an apartment in New York with a bunch of experts who, at Brandeis's urging, decided to call what they were experts at "scientific management." Everyone there--including Frank and Lillian Galbreth, best known today as the parents in "Cheaper by the Dozen"--had contracted "Tayloritis": they were enthralled by an industrial engineer from Philadelphia named Frederick Winslow Taylor, who had been ordering people around, scientifically, for years."*

The essence of the tale is that Brandeis, who at the time was sitting on a regulatory body which controlled the monopoly like rates of railroads had gotten enthralled with the less than scientific work of Taylor and the Galbreth. He then saw that railroads should employ these new management techniques and then lower their rates. Simple, except as Lepore states, the Taylor results were a fraud! Perhaps there is a lesson here for many other "scientifically" based causes seeking legal justification. Brandeis was a brilliant legal scholar, however he had no expertise in the area of actually running a company. He did however understand the "books" and "records" of a company and as such he had used this profitably in his law practice. Yet the Taylor approach assumed you looked forward and not backward, that you understood the business as a living entity and not just the records of what happened. Brandeis was a lawyer at heart, as such he always looked backwards for precedent.

The author of the present biography gives, in my opinion, short shrift to this issue discussed by Lepore. He covers it on pp 240-243 but his discussion misses the key point presented by Lepore. Namely that Brandeis became enamored with Taylor and Galbreth

and that Taylor according to Lepore was somewhat of a fraud, the Taylor data it is alleged was all fabricated, and Galbreth had little if any basis for his facts and recommendations.

The author has done a superb job at writing the biography. Yet it does have in my opinion certain weaknesses. In certain parts of the text the sentences are wonderful but the paragraphs do not hold together, there is jumping around in time and in concepts being discussed. In contrast, the Lepore article has a style that is quite readable, whereas that of Urofsky is at times cumbersome and pedantic. As stated in my discussion of privacy and "management", Brandeis set the gold standard for privacy and I believe Urofsky could have taken that further, and with Taylor and Galbreth, I believe Brandeis just did not do his home work, and this was a failing.

I have been a fan of Judge Brandeis for much of what he accomplished especially with the writing of the classic paper, *The Right to Privacy*, with his then law partner Warren<sup>110</sup>. (Two recent works on Brandeis have appeared and are worth note. The first is an article in *The New Yorker* by Jill Lepore, a superb piece of critical and historical analysis<sup>111</sup>. Lepore looks at the field of management and efficiency consultants through the work of Brandeis<sup>112</sup>.

She starts her article by stating:

*"Ordering people around, which used to be just a way to get things done, was elevated to a science in October of 1910, when Louis Brandeis, a fifty-three-year-old lawyer from Boston, held a meeting at an apartment in New York with a bunch of experts who, at Brandeis's urging, decided to call what they were experts at "scientific management." Everyone there—including Frank and Lillian Galbreth, best known today as the parents in "Cheaper by the Dozen"—had contracted "Tayloritis": they were enthralled by an industrial engineer from Philadelphia named Frederick Winslow Taylor, who had been ordering people around, scientifically, for years."*

The essence of the tale is that Brandeis sitting on a regulatory body which controlled the monopoly like rates of railroads had gotten enthralled with the less than scientific work of Taylor and the Galbreth. He then saw that railroads should employ these new management techniques and then lower their rates. Simple, except as Lepore states the Taylor results were a fraud! Perhaps there is a lesson here for global warming, telephone interconnection rates and the like. Brandeis was a brilliant legal scholar, however he had no expertise in the area of actually running a company. He did however understand the "books" and as such used this profitably in his law practice. Yet the Taylor approach assumed you looked forward and not backward, that you understood the business and not

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<sup>110</sup> See 4 *Harvard Law Review* 193 (1890)).

<sup>111</sup> [http://www.newyorker.com/arts/critics/atlarge/2009/10/12/091012crat\\_atlarge\\_lepore](http://www.newyorker.com/arts/critics/atlarge/2009/10/12/091012crat_atlarge_lepore)

<sup>112</sup> [http://www.newyorker.com/arts/critics/atlarge/2009/10/12/091012crat\\_atlarge\\_lepore](http://www.newyorker.com/arts/critics/atlarge/2009/10/12/091012crat_atlarge_lepore)

the records of what happened. Brandeis was a lawyer at heart, as such he always looked backward.

Let me introduce an example.

When I was at NYNEX, now Verizon, in 1989 we had a strike. One of my management people went to strike duty in a customer service bureau. In that bureau, true to Taylor like management, there was a clock and you were timed for every customer contact and you were pressured to make them as short as possible. This manager went there and since he outranked the manager of the bureau he decided to try another tactic. He recognized that people call customer service because they have a problem.

Thus this customer contact was an opportunity to solve the problem, create a happy customer, get customer loyalty, get a word of mouth positive word about the company and even possibly sell more services. He reasoned that the longer the customer service call the better and the primary objective was to make a happy customer. A novel thought especially for a utility. He tried it and surprise it worked. Except for one thing, the system rejected it. The antibodies of the old telephone company attacked and said, "We do not do it this way." Well you know the result.

What is the relationship between this and Brandeis, well Brandeis accepted the "scientific" evidence without and justification, something he would never have done in court. Why did he do this, Lepore seems to believe it was an effect of the times. I would agree but it was also that Brandeis like so many well educated people believe that they can extend well beyond their ken with impunity.

The Lepore article is a review of a book, for which she writes:

*"In **'The Management Myth: Why the Experts Keep Getting It Wrong'** (Norton; \$27.95), **Matthew Stewart** points out what Taylor's enemies and even some of his colleagues pointed out, nearly a century ago: Taylor fudged his data, lied to his clients, and inflated the record of his success. As it happens, Stewart did the same things during his seven years as a management consultant; fudging, lying, and inflating, he says, are the profession's stock-in-trade. Stewart had just finished a D.Phil. at Oxford in philosophy when he took a job rigging spreadsheets to tell companies whose business he barely understood how to trim costs, and he feels sullied by it."*

This statement clearly shows that Brandeis was easily fooled by the Taylor forces, and that furthermore the consultants that flow to industry from our "best" business schools are oftentimes ignorant of what they opine upon and even worse they are conjurers of falsehoods created to meet certain expectations, perhaps on the part of the client. I have seen many of the top consulting firms send in twenty year old who I had to educate, if such was even possible, and then get them to write in English, all for \$500 per hour or more.

Lepore then jumps to the present and she states:

*"Much of Stewart's account is devoted to following the anti-Taylor and neo-Taylor theories that have determined the curriculum at business schools in the course of the past century. He pays special attention to human-factors science and follows through several chapters the work of Harvard Business School's Michael Porter, whose early books "Competitive Strategy" (1980) and "Competitive Advantage" (1985) launched a field known as strategic management. (I should perhaps mention that, in the late eighties, Porter was my boss. His phone rang off the hook, and I, a temporary secretary, had the job of answering it.) To Stewart, strategic management is scientific management, without the stopwatch. And, along with much else taught in business schools, and everything that goes on in management-consulting firms, "it contributes to a misunderstanding about the sources of our prosperity."*

*Business schools have been indicted before. Earning an M.B.A. has been found to have little correlation with later business success. Business isn't a science, critics say; it's a set of skills, best learned on the job. Some business schools, accused of teaching nothing so much as greed, now offer ethics courses. Stewart argues that this whole conversation, about people, production, wealth, and virtue, is a conversation about ethics, and is better had within a liberal-arts curriculum. His howl of frustration, after all those years spent living in hotels, peddling nonsense, and profiting by it, is loud and angry. It's also only half the story."*

The point here is quite telling. Professors like Porter take a simple idea which may have some merit and then use it as a template for solving everything including world hunger. Porter has recently authored a book using his wordy methods in the area of health care and in my opinion he would have spent his time more wisely working as a practical nurse at Mt Auburn Hospital for a year of two.

Now back to Brandeis. Whereas Lepore is well written, insightful, clear, perceptive, the recent biography of Brandeis by Urofsky is at the other extreme. The subject of the book is compelling. Each sentence is well written yet each paragraph jumps from thought to thought in a cacophony of words. The book is virtually unreadable. He jumps back and forth so as to give the reader a migraine.

In addition Urofsky addresses the two issues, the Taylor issue and the Privacy issue with the slightest of a touch. The Taylor issue as Lepore states is a truly groundbreaking issues as regards to the courts and judicial thinking. It is one of the first ways in which "scientific" results were introduced into the legal system. Taylor was an "expert" and his results were left unquestioned. In many ways this was one of Brandeis' lowest moments, he failed to do to science what it does to itself, and what is at the core of the legal system as well, adversarial analyses.

#### **4.6.3 Privacy and the Individual**

Secondly the classic work on Privacy Warren and Brandeis state:

*"It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual ; and, if it does, what the nature and extent of such protection is."*

They then go on to develop the basis of privacy in a well presented case. Regrettably when Brandeis was later to face this issue on the Court he did not confront it with the vigor of this paper. In fact the issue of privacy as a right seems still to be held at arm's length except for women's rights. One would suspect that such is rather one sided. (See my paper on privacy, [Privacy](#)).

The authors, Warren and Brandeis, then state:

*"Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life--**the right to be let alone**, the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession-- intangible, as well as tangible."*

The "right to be left alone" is in many ways a unique American right, which we unfortunately have abandoned. The Government has become more intrusive regarding what we do, say, how we do things, how we interact. There once was a time one could live alone, not the Government intrudes on what Warren and Brandeis saw as a right. This fundamental paper seems to be glossed over at best by Urofsky. It is a pity. Whereas Lepore sees through the fog and makes it clear, Urofsky takes clarity as in the above quote and obfuscates it.

Brandeis had massive strengths and several failings. The Taylor case is a major failing indeed. It sets forth a pattern of Government intervention of at best weak grounds. However the "right to be left alone" was a brilliant insight into what makes America great. Pity is has been neglected and abused.

In 1890 Louis Brandeis and his law partner Sam Warren wrote an article for the Harvard Law Review entitled *The Right to Privacy*<sup>113</sup>. In view of the appointment process to the Supreme Court today perhaps looking at this article in the context of Brandeis as a Justice would help. Remember it was 1890, almost 120 years ago, and quite a different world.

The article was written because Brandeis felt his and his family's privacy was violated by the Boston Press who invaded his daughter's wedding. There frankly is no right to privacy in the Constitution in a clear and unambiguous manner. Also when Brandeis got to the bench he actually overturned any please for rights to privacy. Thus this one paper brings to the fore many of the interesting issues we see again today. I have no opinion regarding the current state of affairs but I am a frequent reader of Brandeis and especially of this paper.

The paper starts out saying:

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<sup>113</sup> See [http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy\\_brand\\_warr2.html](http://groups.csail.mit.edu/mac/classes/6.805/articles/privacy/Privacy_brand_warr2.html)



*"That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society."*

Thus to Brandeis the law evolves and is not static. Is this all law, is it the Constitution, or just common law, or is it a reflection of the ongoing legislative process as we know it? He continues:

*"It is our purpose to consider whether the existing law affords a principle which can properly be invoked to protect the privacy of the individual; and, if it does, what the nature and extent of such protection is."*

He at least presents the case that he will examine whether the law deals with privacy at all. He continues:

*"The common law secures to each individual the right of determining, ordinarily, to what extent his thoughts, sentiments, and emotions shall be communicated to others."*

Now he uses precedents, starting with English Law, which given this was an argument from common law principles is most likely acceptable. He states:

*"Thus, in **Abernethy v. Hutchinson, 3 L. J. Ch. 209 (1825)**, where the plaintiff, a distinguished surgeon, sought to restrain the publication in the *Lancet* of unpublished lectures which he had delivered at St. Bartholomew's Hospital in London...In **Prince Albert v. Strange, 1 McN. & G. 25 (1849)**, Lord Cottenham, on appeal, while recognizing a right of property in the etchings which of itself would justify the issuance of the injunction, stated, after discussing the evidence, that he was bound to assume that the possession of the etchings ....In **Tuck v. Priester, 19 Q. B. D. 639 (1887)**, the plaintiffs were owners of a picture, and employed the defendant to make a certain number of copies."*

Now what rights is he discussing. He states:

*"We must therefore conclude that the rights, so protected, whatever their exact nature, are not rights arising from contract or from special trust, but are rights as against the world; and, as above stated, the principle which has been applied to protect these rights is in reality not the principle of private property, unless that word be used in an extended and unusual sense."*

He states that these rights are rights as against the world, and this in itself is a broad and new statements. He in effect creates common law rights as extensions of English Court extensions.

The to all those who object to the use of foreign law, possibly excluding English Common Law, he states:

*"The right to privacy, limited as such right must necessarily be, has already found expression in the law of France."*

He interjects the use of French Law, circa 1890 as a basis for his argument. In today's world this would fly in the face of many legal scholars and jurists. He ends with:

*"The common law has always recognized a man's house as his castle, impregnable, often even to its own officers engaged in the execution of its commands. Shall the courts thus close the front entrance to constituted authority, and open wide the back door to idle or prurient curiosity?"*

Here it is clear he uses Common Law and not Constitutional Law. When he ascended to the Bench at the Supreme Court he in many ways on this issue of privacy, time and again, found it lacking in the Constitution. Yet he found the fundamental right to exist, and perhaps the Common Law Right could arguable be covered under the Constitution's extension to such rights as being those un-enumerated rights. Remember the 9th Article of the Bill of Rights says:

*"Article [IX.] The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."*

Thus the Brandeis argument could be that if one could justify privacy via Common Law, and Common Law is what the 9th Article is referring to then there is a Constitutional right via this nexus. This was not the argument in *Roe v Wade* and its predecessors such as *Griswold*. Nor did Brandeis argue this when faced with similar issues.

However we see Brandeis: (i) allowed for interpretation, (ii) permitted the current milieu as a means to judge, (iii) allowed for use of foreign precedents as a basis for US precedent, and (iv) used his personal relationship to the legal matter to drive his judicial judgment. In today's world that may very well be a disqualification from sitting on the highest bench.

## 5 NEO INDIVIDUALISTS

The Neo Individualists are much more aggressive in their statements and expositions than before. To some degree they include the conservatives and the libertarians, more as a loose amalgam, but the common theme of the dignity of the individual as being preeminent is in all cases at the fore. We consider a few here.

### 5.1 MILTON FRIEDMAN

I thought I would start December with a reflection on Milton Friedman. In the Introduction of his classic, *Capitalism and Freedom*, he says from the outset<sup>114</sup>:

*"In a much quoted passage in his inaugural address, President Kennedy said: "Ask not what your country can do for you - ask what you can do for your country." It is a striking sign of the temper of our times that the controversy about this passage centered on its origin and not its content. Neither half of the statement expresses a relation between the citizen and his government that is worthy of the ideals of free men in a free society. The paternalistic "what your country can do for you" implies that a government is a patron, the citizen the ward, a view that is at odds with the free man's belief in his own responsibility for his own destiny. The organismic "what you can do for your country" implies that the government is the master or the deity, the citizen a servant or votary. To the free man, the country is the collection of individuals who compose it, not something over and above them..."*

*The free man will ask neither what his country can do for him nor what he can do for his country. He will ask rather "What can I and my compatriots do through the government" to help us discharge our individual responsibilities to achieve our several goals and purposes, and above all, to protect our freedom?"*

Hobbes was one of the first modern political thinkers to address liberty in a modern context. He dealt with the problem of freedom of the individual in a monarchy. His views were initial attempts but frankly wrong in that his position was to justify the monarch. He was trying to justify the pre-eminence of a monarchy while at the same time establishing that men were free, yet there were chains on their freedom. Friedman is the anti-Hobbes, the one who articulates true freedom, the removal of all chains.

Kennedy's speech is a soft version of Progressive thought. It sent a generation out to do good, the Peace Corps and Vietnam, Cuba and the Blockade. The irony of Kennedy was that the funds his father spent to buy his presidency were not obtained as Friedman stated, *"What can I and my compatriots do through the government" to help us discharge our*

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<sup>114</sup> Friedman, *Capitalism*, p. 1.

*individual responsibilities to achieve our several goals and purposes, and above all, to protect our freedom, but as a result of rum smuggling against the Government. There are multiple ironies in the Friedman context.*

Friedman in Capitalism continues with his two principles. First the scope of government must be limited. Second, government power must be dispersed. He states<sup>115</sup>:

*"The preservation of freedom is the protective reason for limiting and decentralizing governmental power."*

Unlike Nozick, who we shall discuss shortly, Friedman looked at the individual from the perspective an economic lens. For him the explanation of freedom was economic freedom. For Friedman, Economic Freedom led to Political Freedom. As he states<sup>116</sup>:

*"It is widely believed that politics and economics are separate and largely unconnected; that individual freedom is a political problem and material welfare an economic problem; and that any kind of political arrangements can be combined with any kind of economic arrangements. The chief contemporary manifestation of this idea is the advocacy of "democratic socialism"..."*

Needless to say Friedman then goes on to disabuse the reader that such a mix and match is possible. The economic structure and the political structure are one. Change the economic structure and then you will affect the political as well. Change the political and you change the economic. One need merely look at the three periods of economic crises in the US. in 1933 we moved from Hoover to FDR and the economic situation continued downward. From 1979 to 1980 we went from the economic disaster of Carter to the beginning of the longest term period of prosperity under Reagan. Then in 2008 we went from Bush to Obama and like 1932 we remain mired in economic collapse. Is there a reason for this? Friedman would argue in the affirmative.

## 5.2 R. H. COASE

I have found Coase is one of my favorite economists, one of very few. He avoids the plethora of useless equations and deals with simple examples and logic. Coase is in many ways the Aristotle of economics. Coase sees the world of individuals with individual property rights and a world where there may be costs incurred by individuals resulting from actions of other individuals. For example if I dump my sewerage in a stream which flows to your property. The stream is yours on your property and mine on my property. By dumping the sewerage you mess things up, and reduce the value of my property. I can seek a remedy.

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<sup>115</sup> Friedman, Capitalism, p 3.

<sup>116</sup> Friedman, Capitalism, p. 7.

Another example is spectrum, frequency spectrum used for wireless. There are two ways to go. One is a Coasian way of creating real time bidding for the spectrum by users which can now be accomplished electronically. The other is the classic way in which the FCC auctions off spectrum. It can be shown that the auction results in inefficient use of spectrum and adds the burden of Government control and regulatory delay. What is the best way to proceed? Let us examine Coase.

### 5.2.1 Coase's Theorem

We begin with a simple overview of Coase's Theorem. Coase's famous observation is stated in the Library of Economics and Liberty is<sup>117</sup>:

*"Firms are like centrally planned economies, he wrote, but unlike the latter they are formed because of people's voluntary choices. But why do people make these choices? The answer, wrote Coase, is "marketing costs." ... But because markets are costly to use, the most efficient production process often takes place in a firm. His explanation of why firms exist is now the accepted one and has given rise to a whole literature on the issue."*

The article continues:

*"Economists before Coase of virtually all political persuasions had accepted British economist Arthur Pigou's idea that if, say, a cattle rancher's cows destroy his neighboring farmer's crops, the government should stop the rancher from letting his cattle roam free or should at least tax him for doing so. Otherwise, believed economists, the cattle would continue to destroy crops because the rancher would have no incentive to stop them..."*

As I have argued before the Pigou school is one of central Government control via taxation. A favorite approach by Mankiw and the Harvard economists. If you don't like it tax it. In contrast Coase recognizes the efficiency of the market, if left to its own merits and that is saying something for a man who was an ardent Socialist when he began his analysis.

The article concludes:

*"This insight was stunning. It meant that the case for government intervention was weaker than economists had thought..."*

Now on point as regards to health care Coase talks of the light house and how they functioned without Government control. Specifically:

*"Coase also upset the apple cart in the realm of public goods. Economists often give the lighthouse as an example of a public good that only government can provide. They choose this example not based on any information they have about lighthouses, but rather on their a priori view that lighthouses could not be privately owned and operated at a*

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<sup>117</sup>Buchanan, James M. and George F. Thirlby, <http://www.econlib.org/library/NPDBooks/Thirlby/bcthLS5.html>

*profit. Coase showed, with a detailed look at history, that lighthouses in nineteenth-century Britain were privately provided and that ships were charged for their use when they came into port. "*

Thus health care, using the lighthouse metaphor, and in a Coasian sense, should follow a similar path, and such a path is in many ways divergent from that as presented by the current President.

### 5.2.2 Applications and Details

In an article by Jeff Eisenach and Adam Thierer the author's state: <sup>118</sup>

*"Fifty years ago this month, writing in the Journal of Law and Economics, economist Ronald Coase directly challenged these foundational Progressive assumptions. In the process of explaining why government should not own and control the broadcast spectrum, he showed that where Progressives mistakenly had diagnosed market failure, the real problem was government's failure to create enforceable property rights. And, where Progressives had promoted government control, Coase minced no words in demonstrating its failings. His work—expanded upon a year later in "The Problem of Social Cost" —ultimately won him the 1991 Nobel Prize in Economics, "for his discovery and clarification of the significance of transaction costs and property rights for the institutional structure and functioning of the economy.""*

The authors continue:

*"Coase's article began a wholesale rethinking of the Progressive paradigm that had dominated political thought since the turn of the century. By the 1980s, Coase's ideas had gone from radical to mainstream. Free market advocates, then in the ascendancy, embraced such Coasian principles as:*

- (1) The existence of a market failure or externality does not in and of itself justify government intervention; indeed, government is often the underlying cause of the problem.*
- (2) Government intervention is seldom either administratively efficient or politically neutral; to the contrary, it often results in what Coase called the "mal-allocation" of resources.*
- (3) Government control of the economy is a threat to political liberty; for example, government control of the broadcast spectrum has consistently been used to limit free speech."*

This observation is quite interesting in light of many current neo-progressive reforms. Take banking. Clearly the major cause of the failure was the housing bubble driven by Government demands and facilitation vi Fannie and Freddie on the issuance of mortgages

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<sup>118</sup> <http://american.com/archive/2009/october/coase-vs-the-neo-progressives/>

to those who could not afford them and the elimination of Glass Steagall. Like Hayek, the individualists does not like a libertarian look upon laissez fairs as the model of perfect economic viability, there is a role for Government, to ensure that "property" is protected and those having fiduciary responsibilities and accruing the gains have a concomitant liability, personally if necessary.

The authors continue:

*"From a legal and policy perspective, Coase's thesis had two profound implications. First, and most obviously, Coase demonstrated that in many cases the only form of government intervention required to address an apparent externality was to create clear property rights and workable means of adjudication, and the market would do the rest. More intrusive forms of government intervention—whether in the form of tax incentives, regulations, or even (as in the case of the electromagnetic spectrum) expropriation—were simply not necessary.*

***Coase also recognized, however, that there are times when the costs of negotiating among multiple parties would make market solutions infeasible.***

*When the transfer of rights has to come about as a result of market transactions carried out between large numbers of people or organizations acting jointly, the process of negotiation may be so difficult and time-consuming as to make such transfers a practical impossibility ... **In these circumstances it may be preferable to impose special regulations** (whether embodied in a statute or brought about as a result of the rulings of an administrative agency).*

Thus Coase recognized that the least cost way was having clear property rights and costs and then seek remediation between the parties. However, and this is critical, Coase was not laissez fair, namely leave all decisions to the free market, for there were time when tee costs of doing so exceeded the benefit if left amongst the parties and thus the least cost way was to have the Government take that function. Thus the Coasian world was not a world with any Government but a world with a rational Government where the Government did what was cost effective.

Finally the author's state:

*"Until Coase, externalities were seen as bad acts, the willful imposition of harm by a wrongdoer on an innocent victim. Given this characterization, the appropriate policy objective was to stop the wrongdoer and make the victim whole. But Coase explained that the relationship between the party "imposing" the externality and the one "affected by" it was in fact reciprocal. For example, a rule prohibiting a locomotive from emitting sparks into the farmer's fields imposed costs on the railroad that are no different, in kind, from the costs that would be borne by the farmer under a rule requiring crops to be planted further back from the tracks. The Coasian objective, then, is to determine which rule imposes the least costs on society overall—whether it is more efficient, that is, to*

*retrofit the locomotive to stop producing sparks, to plant the crops further back from the tracks, or, perhaps, to simply let the crops burn."*

This is an essential principle of individualism. There are externalities, they have societal costs and the individual making the decision to impose the costs must bear the responsibility or reimbursing those upon whom he has laid the costs. The question as stated above is to find the rule to allocate the costs justly which will have the overall least cost. This is not what we have in a neo-progressive world. The neo-progressive defaults to the Government being the cost re-distributor, and doing so under a redistributive manner aligning its interest with their established distributive justice principles.

### 5.3 F. A. HAYEK

Friedrich Hayek was born in Vienna in 1899 and come to prominence in the 1930s as the countervailing influence on the then changing theories of Economics, soon to be called macro-economics. Hayek came from what was the Austrian Scholl of Mises and settled in London where he had his greatest initial influence communicating with Keynes and then in 1950 to University of Chicago surrounded by the growing influence of the Chicago School of economics.

Coming from Vienna, and having seen the flow of extremes from Socialism, Communism, the Nazis and the like gave him a view of governments in their extreme levels of operation. He was an avowed anti-socialist and one can see this influence throughout his work. Yet he is influenced by the Vienna mindset, the mindset that gave rise to such things as the Logical Positivists and many other idea sets which had their time on the stage of 20th century intellectual debate. Yet one can see Hayek mature as he spends time in London and this is best evidence in the evolution of his thought from his 1944 work *The Road to Serfdom* and his 1976 work, *Law Legislation and Liberty*.

#### 5.3.1 The Hubris of the Knowable

To better understand Hayek it is useful to start by looking at his Nobel Prize speech. It was a warning to economists that their move to the use of sophisticated equations and models were a hubris upon which they could see their own demise. The economists were taking to themselves the techniques of physics and engineering, the use of complex mathematical models, which they then purported to reflect reality in an economic world and prognosticate the future and to tell Government what should be done. To this Hayek gave warning.

In Hayek's Nobel Lecture in 1974, entitled *The Pretence of Knowledge* he states<sup>119</sup>:

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<sup>119</sup> [http://nobelprize.org/nobel\\_prizes/economics/laureates/1974/hayek-lecture.html](http://nobelprize.org/nobel_prizes/economics/laureates/1974/hayek-lecture.html)



*"If man is not to do more harm than good in his efforts to improve the social order, he will have to learn that in this, as in all other fields where essential complexity of an organized kind prevails, he cannot acquire the full knowledge which would make mastery of the events possible.*

*He will therefore have to use what knowledge he can achieve, not to shape the results as the craftsman shapes his handiwork, but rather to cultivate a growth by providing the appropriate environment, in the manner in which the gardener does this for his plants.*

*There is danger in the exuberant feeling of ever growing power which the advance of the physical sciences has engendered and which tempts man to try, "dizzy with success", to use a characteristic phrase of early communism, to subject not only our natural but also our human environment to the control of a human will.*

*The recognition of the insuperable limits to his knowledge ought indeed to teach the student of society a lesson of humility which should guard him against becoming an accomplice in men's fatal striving to control society - a striving which makes him not only a tyrant over his fellows, but which may well make him the destroyer of a civilization which no brain has designed but which has grown from the free efforts of millions of individuals."*

The essence of Hayek's lecture was simply that macroeconomics is not a science, and the attempt to treat it as such and to guide an economy as one would use astrophysics to guide a spacecraft would be at the very least fool hardy. Indeed one look no further than many of the current texts on macroeconomics and see the hubris the authors have in stipulating certain dogma as to how the economy works. The inherent flaw in much of their logic is that whatever game they believe agents in the economy are playing, by whatever rules, they fail to take into account two factors, the random occurrences which happen from time to time and the deliberate actions taken by agents to work against the stipulated rules to effect increased segmental profit. Namely the simply theory of "sticky wages" denies the fundability of alternatives via increased automation, outsourcing or use of foreign assets.

Yet there is something in Hayek that may give a slight glimpse of hope. This was presented in 1974, an interesting time, for several key things were happening then. First, biology which Hayek calls a field which deals with essential complexity was unmodellable in a manner akin to physics, was dramatically changing at that very time. Specifically Hayek in his talk says:

*"Why should we, however, in economics, have to plead ignorance of the sort of facts on which, in the case of a physical theory, a scientist would certainly be expected to give precise information? It is probably not surprising that those impressed by the example of the physical sciences should find this position very unsatisfactory and should insist on the standards of proof which they find there.*

*The reason for this state of affairs is the fact, to which I have already briefly referred, that the social sciences, like much of biology but unlike most fields of the physical sciences, have to deal with structures of essential complexity, i.e. with structures whose characteristic properties can be exhibited only by models made up of relatively large numbers of variables. Competition, for instance, is a process which will produce certain results only if it proceeds among a fairly large number of acting persons."*

The second thing that that was changing at the time of Hayek's talk was our ability to model sophisticated and complex dynamic systems which were essentially random processes<sup>120</sup>.

The third phenomenon which changed at that very time was the introduction of minicomputers and the explosion of the ability to perform massive amounts of computation in lower and lower cost environments.

Thus the three things: understanding biology via the paradigm of the gene, which is now done through quantitative genomics, understanding how to think of systems as random dynamic processes, and having the computer processing skills to execute the algorithms has taken the unthinkable in Hayek's mind of biology as a descriptive science, into what we now know as biology as akin to any engineering skill which we are all familiar with. I can now engineer a flower color and engineer a cure to certain cancers. Unthinkable in Hayek's talk.

However the unthinkable in macroeconomics is still there. There does not exist an underlying paradigm of reality to work with such as a gene, a photon, an electron, a molecule, a force field, or the like. There is just a massive set of folders with plants and dry bones which we still measure and classify. There is no DNA to measure closeness of species and how the genetic changes occurred to work backward and to work forward with statistical precision.

Now let us jump to the current situation and to Larry Summers. As the Wall Street Journal has said<sup>121</sup>:

*"At a briefing last week, Mr. Summers provided Mr. Obama with a 30-page book outlining options to beef up financial regulation. He asked former Fed Chairman Paul Volcker -- an Obama adviser during the campaign who Friday unveiled his new economic-recovery panel of advisers -- to lead the discussion. Other briefings have included health care, particularly on changes that can be made in the economic-stimulus and budget plans in anticipation of a health-care overhaul.*

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<sup>120</sup> I published my first book in 1972, *Stochastic System and State Estimation*, stating in the Preface the thought, "the world is filled with uncertainty" and then I went on. In that book I presented the methods to deal with uncertainty and to predict with some form of certainty the future. I did so to the point of actually implementing it. It was these very theories that were used in the guidance of the Apollo spacecraft in the late 60s.

<sup>121</sup> <http://online.wsj.com/article/SB123396756857259093.html> February 7, 2009.

*The former Harvard economist is constantly doing his own first-person research. At the Alfalfa Club dinner this past Saturday night, Mr. Summers worked the room with a mission -- gathering evidence on how the president's economic stimulus package could work. When he saw an auto-industry official, he pushed for information on car sales to gauge the state of consumer demand."*

This appears to state, and it is evident that he does believe this, that macroeconomics has an ability to quantitatively and with some accuracy, always with precision, predict the future of this Stimulus package. Yet as Hayek stated a quarter century ago, this is truly unachievable. Possibly if macroeconomics achieves a breakthrough as did biology it may be sought but such is not the case.

The level of this sense of hubris is exacerbated by the opening sentence of this article which states:

*"An hour after the release of Friday's grim jobs report, Lawrence Summers was in the Oval Office giving President Barack Obama his daily economic briefing. The chief White House economic adviser told his boss with econometric precision that there was a roughly 80% chance -- "in the low 80s" -- that the \$800 billion stimulus bill being revised in the Senate would create as many jobs as Mr. Obama's original proposal.*

*The president asked whether that is "83% or 84%," poking fun at Mr. Summers's tendency to quantify an event's chances and shun the usual briefer's hedges of "likely" and "unlikely."*

This is not a joke, it is a way to say that they truly believe that this is predictable to that level of accuracy. Looking back almost two years later the chance became 0%. Namely the expenditure of \$800 billion had a negative effect as measure by the data, namely unemployment was greater than what the brains in the White House said when the proposed the plan, namely if they did nothing unemployment would be lower than it was actually!

I remember when we sent men to the moon, I designed the optical guidance system so I had a "dog in the fight", that we looked at our errors quite carefully and we always looked at the downside risks and managed for them. My system worked in Apollo XIII. It does not give one comfort to see such a level of confidence in a field which has been built entirely on fee of sand!

We should remember some of the final words of Hayek in 1974:

*"It is often difficult enough for the expert, and certainly in many instances impossible for the layman, to distinguish between legitimate and illegitimate claims advanced in the name of science.*

*The enormous publicity recently given by the media to a report pronouncing in the name of science on **The Limits to Growth**, and the silence of the same media about the devastating criticism this report has received from the competent experts, must make one feel somewhat apprehensive about the use to which the prestige of science can be put. But it is by no means only in the field of economics that far-reaching claims are made on behalf of a more scientific direction of all human activities and the desirability of replacing spontaneous processes by "conscious human control".*

*If I am not mistaken, psychology, psychiatry and some branches of sociology, not to speak about the so-called philosophy of history, are even more affected by what I have called the scientific prejudice, and by specious claims of what science can achieve."*

The Limits to Growth, the work written by the Club of Rome, was, in the period of the early 1970s, a hubris beyond belief. This group had said they could model all of humanities future and from their models they started to tell society what they had determined was the best path. There is a fear here reflected in Hayek's words. This fear can today be applied to many areas, from the global warming hysteria of some, to the ability of some macroeconomists to give predictions within 1%!

### 5.3.2 Economics

Hayek was a critic of the economists who had their models when all too often not only had not questions been answered but more importantly the key questions may not have been asked. Economists all too often follow the example of simplifying for their resulting ability to mode, thus saying "Assume a spherical elephant with wings." and then detailing the aerodynamics of such a creature when in fact there is no such entity.

From Hayek's work, Economics and Knowledge we have<sup>122</sup>:

*"I am certain there are many who regard with impatience and distrust the whole tendency, which is inherent in all modern equilibrium analysis, to turn economics into a branch of pure logic, a set of self-evident propositions which, like mathematics or geometry, are subject to no other test but internal consistency.*

*But it seems that if only this process is carried far enough it carries its own remedy with it. **In distilling from our reasoning about the facts of economic life those parts which are truly a priori, we not only isolate one element of our reasoning as a sort of pure logic of choice in all its purity, but we also isolate, and emphasize the importance of, another element which has been too much neglected.***

*My criticism of the recent tendencies to make economic theory more and more formal is not that they have gone too far, but that they have not yet been carried far enough to complete the isolation of this branch of logic and to restore to its rightful place the*

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<sup>122</sup> <http://www.econlib.org/library/NPDBooks/Thirlby/bcthLS3.html#Hayek>

*investigation of causal processes, using formal economic theory as a tool in the same way as mathematics."*

Thus Hayek is not saying that the economist should shy away from his models. Indeed he embraces them. Yet he is saying that we must understand the causes, not the models.

Hayek in the same work makes a final observation:

*"There is only one more point in this connection which I should like to mention.*

*This is that if the tendency towards equilibrium, which we have reason to believe to exist on empirical grounds, is only towards an equilibrium relative to that knowledge which people will acquire in the course of their economic activity, and if any other change of knowledge must be regarded as a 'change in the data' in the usual sense of the term, which falls outside the sphere of equilibrium analysis, this would mean that equilibrium analysis can really tell us nothing about the significance of such changes in knowledge, and would go far to account for the fact that pure analysis seems to have so extraordinarily little to say about institutions, such as the press, the purpose of which is to communicate knowledge.*

*And it might even explain why the pre-occupation with pure analysis should so frequently create a peculiar blindness to the role played in real life by such institutions as advertising".*

We now want to look at a couple of his specific works.

### **5.3.3 Road to Serfdom**

The Road to Serfdom was Hayek's most famous book, and as a result his most important. There are two points to be made initially. First Hayek was opposed to the principles and applications of central planning as promulgated by the socialists. Second, Hayek was not a proponent of laissez faire, he believe there were proper reasons for certain restraints.

Central planning, as it was proposed then and as practiced by the Soviet Union eschews the free market as the arbiter of supply and demand. The Central Planner decides how much to make of what based upon "studies". A classic example of a centrally planned sector of the US economy was the telephone business prior to 1982 when divestiture was enacted. You could get a black rotary phone, period. One could see the same now happening to health care as the Government takes more and more control.

A socialist to Hayek is one who not only wants government ownership but more importantly government control, the control is the critical factor. For Hayek he says<sup>123</sup>:

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<sup>123</sup> Hayek, Serfdom, p 37.

*"... it means also a particular method by which most socialists hope to attain these ends and which many competent people regard as the only methods by which they can be fully and quickly attained. In this sense socialism means the abolition of private enterprise, of private ownership of the means of production, and the creation of a system of "planned economy" in which the entrepreneur working for profit is replaced by the central planning body."*

This in essence is the fear that Hayek brings to his discussion in *Serfdom*. The last set of words is the most terrifying, the destruction of the entrepreneur. Hayek and many individualists saw the entrepreneur as the keystone of any free market economy. It is not GE or IBM who does the innovation, it is not Cisco or any of the other large companies, it all too often is that single entrepreneur or small group of entrepreneurs who conceive of a new and advantageous product or process, and unfettered by some central planning board see it implemented. Anyone who has worked close to the Government or in a large corporation knows that central planning is all too often done by those who have no other home, they are not the best. We all too often expect Government to fail and large corporation to have management teams who can avoid the perils of the central strategic planning staff.

Hayek then goes on to reject opposition to central planning to blind acceptance of *laissez faire*. He states<sup>124</sup>:

*"It is important not to confuse opposition against this kind of planning with dogmatic laissez faire attitude. The liberal argument is in favor of making the best possible use of the forces of competition as a means of coordinating human efforts, not for leaving things just as they are... It does not deny but even emphasizes that in order that competition should work beneficially, a carefully thought out legal framework is required and that neither the existing nor the past legal rules are free from grave defects."*

Thus what Hayek seems to be saying is the regulation can be beneficial and necessary. In a Coasian sense one needs to have property and the rights to that property enforced. Antitrust legislation may be beneficial, securities rules likewise. Health care may be essential but mandating and centrally controlling it is where the line is drawn.

Hayek sees the law as a strong compliment to a successful entrepreneurial environment. He states<sup>125</sup>:

*"While every law restricts individual freedom to some extent by altering the means by which people may use in the pursuit of their aims, under the Rule of Law the government is prevented from stultifying individual efforts by ad hoc action. Within the known rules*

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<sup>124</sup> Hayek, *Serfdom*, p 41.

<sup>125</sup> Hayek, *Serfdom*, p 81.

*of the game the individual is free to pursue his personal ends and desires, certain that the powers of government will not be used deliberately to frustrate his efforts."*

Thus Hayek is not a pure libertarian as he is often made out to be. His message in Serfdom is principally that we should avoid the centrally planned economy and that the law is and can continue to be a partner in that effort.

### **5.3.4 Law Legislation and Liberty: The Mirage of Social Justice**

Social Justice or Distributive Justice is a term which seems to have been developed through the Progressive era. Many authors have developed this concept in some detail and Hayek was one who strongly opposed the overall concept. Let me begin with Miller's description. Miller states<sup>126</sup>:

*"We are discussing how the good and bad things in life should be distributed among members of a human society. When, more concretely, we attack some policy or some state of affairs as socially unjust, we are claiming that a person, or more usually a group of persons, enjoys fewer advantages than a person or group of persons ought to enjoy... First, what exactly are the goods or bads...whose allocation is the concern of social justice...Second, if social justice has to do with distribution, what precisely does this mean? ... Finally, what is meant by human society?..."*

The assumption is that society in some fashion deems a group does not have the same advantages as others and that society must then, and it is implicit that society has the right, society then redistributes what the group with the advantages has to the group which does not. Social justice is redistribution of perceived advantages from one group to another.

Let us take a simple example. Look if you will at the current Administration's broadband program. They have allotted almost \$8 billion in grants, that is giving money away, to groups who live in underprivileged rural areas to allow them access to broadband access to the Internet. This is an example of social justice. These people have made a decision to live in rural areas and have benefitted by lower costs and taxes but in turn they want the same benefits as those who live in more urban areas and pay the higher costs of doing so. They also want those benefits at no cost, none. The social justice principle has been applied and they have been given funds taken from those living in the more costly areas so that the lifestyle of the rural people will be raised accordingly. Is this fair?

He continues<sup>127</sup>:

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<sup>126</sup> Miller, Social Justice, p. 1.

<sup>127</sup> Miller, Social Justice pp 4-6.

*"... social justice is regarded as an aspect of distributive justice and indeed the two concepts are used interchangeably. Distributive justice is an idea with a very long pedigree ... To elaborate, at least three assumptions have to be made before we can begin theorizing about social justice. First, we have to assume a bounded society with a determinate membership ... a second, namely that the principles we advance must apply to an identifiable set of institutions whose impact on the life chances of different individuals can also be traced ... The third premise follows naturally from the second, namely, that there is some agency capable of changing the institutional structure in more or less the way our favored theory demands."*

The broadband example just discussed follows this three prong rule. The bounded society is the US and there is a means to determine if the people getting the redistributed wealth can benefit, one would guess they would, yet the benefit is to them alone and not to all of society. If I raise horses in Montana and I want to sell the horses to people in New Jersey, then the current Administration would argue mutual benefit. That could be a stretch.

Miller then continues<sup>128</sup>:

*"This raises the question whether social justice and individual liberty are necessarily at odd with each other ... a widely held view is that public policy should trade off the conflicting demands of liberty and justice... They do so in two ways. First a central element in any theory of justice will account of the basic rights of citizens .... Second, one of the cost contested and intractable issues to arise in debates about freedom is whether and when lack of resources constitutes a constraint on freedom..."*

There is a clear conflict although Miller does not see it. In fact Miller details few if any realistic applications. Further social justice is not part of the Constitution but it has been put into law in various ways. One could view welfare as an application yet unemployment insurance is not, for the latter is an insurance which the recipient has contributed to and thus is owed as a contractual matter. Namely there is a quid pro quo involved.

Miller continues<sup>129</sup>:

*"An economic market may be viewed as a procedure whereby individuals who are entitled to various resources... deal with other individuals through the mechanism of contract and exchange... Consider the effects of introducing legislation preventing employers from discriminating on grounds of race or sex ... Before this legislation . employers choose which jobs to advertise and which conditions to attach to them ... The assumption behind the legislation is presumably that in this way a fairer allocation of jobs and income will be produced ... It is of course possible to argue that the market*

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<sup>128</sup> Miller, Social Justice, pp 12-13.

<sup>129</sup> Miller, Social Justice, pp. 108-109.



*functions best when it operates according to classic laissez faire principles ... This might be argued for on the grounds of justice ... Whatever one thinks of this claim, it is surely the right way to go defending market freedom (indeed, there are places in Hayek's writings where he offers a defense ... of this kind) ... that problem of social justice is simply a grander problem faced by a parent at a children's tea party with a cake to divide among ten hungry children..."*

Miller here introduce Hayek and the laissez faire principle. This is a bit of a canard since Hayek was not a believer in pure laissez fair, which meant to him an unfettered market. He believed in the individual and the individual rights, namely equality in those rights. That perforce of the need to insure the rights requires Governmental oversight, oversight of the rights, whether that be property rights or any extension thereof. The birthday cake example is interesting. As the parent I bought or made the cake and as such I should have the right to distribute any way I wish, and I may give half to my child and the rest to everyone else of just cut it in equal parts. Perhaps I give a piece with a size inversely proportional to the BMI, weight of the child receiving it since they may already be too heavy. But justice means that if it is my property I have the right to do with it whatever I want.

But I may make decisions based on various sets of principles which may differ from those held by the children. Again my right. I could transfer my property right to the ten children, then let them as a group make a decisions. I then voluntarily gave up the right. Then the group has the property and it become a group decision. There are many such options but one which is not an option is that the Government comes in and tells me. The Government has no property right!

Now let us go back to Thomas Paine. I will look at the work on distributive justice by Fleischacker. First a quote to let you know what Fleischacker is coming from<sup>130</sup>:

*"Karl Marx is by far the most influential figure ever to decry the distinction between rich and poor."*

Perhaps he never heard of the New Testament and the Sermon on the Mount, the loaves and fishes, and a few other things. Even Mohammed was quite direct on giving to the poor and the giving to the poor is a significant part of the Muslim religion. That accounts for 2.5 billion people that somehow may or may not like Marx. But that should set one to understand Fleischacker,

Now Fleischacker states the following about Paine:

*"I think we can assume that is Paine, one of the most radical of eighteenth century writers, had thought that his readers would accept the claim that all humans beings deserve to be raised out of poverty "not as a matter of grace, but of right" he would have*

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<sup>130</sup> Fleischacker, Distributive Justice, p 96.

*made such a claim instead of the roundabout and not terribly plausible argument that the elderly poor deserve government aid as a rebate on past taxes..."*

Here he is speaking of the Rights of Man sections we had discussed earlier. What make Paine different than Fleischacker is that Paine is a realist, he is probably a more 21st century person than the one commenting upon him. Paine worked for the Revolution in both the US and in France. He fought with Washington and took no pay. He was a bit naive and did not seek to enrich himself. But his arguments were detailed demonstrating a clearly focused need and using detailed business like approaches showing what it would cost, the benefit, the sources of funding and the like. Paine was a progressive but a logical progressive. He made arguments that are not drawn from some specious speech but from reality. To the degree that distributive justice has a place then looking towards Paine and his approach is what one must do. Paine made arguments based upon facts, details, and consequences, pro and con. Unlike so many others one would look at Paine as one who did all of his homework and laid out a detailed business plan for the deployment of the benefits. In short Paine did what Fleischacker has no clue of.

If one looks back to the Progressive era a century ago, one of the most significant contributions to Distributive Justice in word and deed was Father John Ryan, a mid western Catholic priest. He wrote his book *Distributive Justice* in 1916 and strangely for an American priest he sought approval for release from the Archbishop of Ireland rather than his local bishop. But that may be a tale in and of itself. Ryan in Chapter 16 of his work describes the principle canons, actually competing views of distribution, of *Distributive Justice*. He lays them out as<sup>131</sup>:

1. The Canon of Equality: All people who contribute to the product should receive an equal share.
2. The Canon of Needs: That the distribution is proportional to needs.
3. The Canon of Efforts and Sacrifice: That a person receive in proportion to what effort they made and what sacrifice they made.
4. The Canon of Productivity: Men should be rewarded in relation to what their contributions were to the product.
5. Canon of Scarcity: Pay in accord with the availability of such a person.

Ryan goes through a great deal of discussion defending and critiquing these various models yet not one of them relates to the economic models that were becoming quite clear at the time, supply and demand. Needs and Equality and Sacrifice are intangible and unworkable. To get a person to work one must pay a competitive wage, even more so in today's world. There are exceptions. Take Wall Street, there we have a "club" and if

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<sup>131</sup> Ryan, *Distributive Justice*, pp 243-253.

admitted to the club because of some exogenous reason, one can then demand club excess compensation. Unions are also a form of club, thus GM has excess club payments as compared to Honda, and the US Government then underwrites that excess. Ryan failed to deal with real examples, which a century ago were a bit more compelling. Today supply and demand almost always holds.

Now to Hayek and his views. In Chapter 9 of *Law Legislation and Liberty*, Vol. 2, Hayek presents the case against what we now see as social justice or distributive justice. In essence it is the case against neo-progressives and for individualism. It is not a case for libertarianism, since in many ways it admits some Government intervention but abjures Government control. The arguments of the more than thirty year earlier *Serfdom* book are not tempered but refined.

Hayek starts<sup>132</sup>:

*"While in the preceding chapter I had to defend the conception of justice as the indispensable foundation and limitation of all law, I must now turn against an abuse of the word which threatens to destroy the conception of law which made it a safeguard of individual freedom. ... "Social" justice ... came to be regarded as an attribute which the "actions" of society, or the "treatment" of individuals and groups by society ought to possess. ... This conception of "social" justice is thus a direct consequence of that anthropomorphism or personification by which naïve thinking tries to account for all self-ordering processes. ... statements which explicitly connect "social and distributive" justice with the treatment by society of the individuals according to their "deserts" bring out most clearly its difference from plain justice, and at the same time the cause of the vacuity of the concept; the demand for "social" justice is addressed not to the individual but to society... The primary question then becomes whether there exists a moral duty to submit to a power which can co-ordinate the efforts of the members of society with the aim of achieving a particular pattern of distribution regarded as just."*

It becomes immediately clear that to Hayek, the concept of social justice is a ruse, and a threat to the freedom of the individual and the intent of social justice is redistribution. We will continue on this analysis but it is important to note that Hayek does not look deeply into the reason that motivate the proponents of social justice. The same could be said about socialism and the proponents of it. I shall return to that later when we have reviewed the neo-Progressives.

Hayek continues<sup>133</sup>:

*"Although classical socialism has usually been defined by its demand for the socialization of the means of production, this was for it chiefly a means thought to be*

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<sup>132</sup> Hayek, *Law*, pp 62-64.

<sup>133</sup> Hayek, *Law*, pp 65-66.

*essential in order to bring about a "just" distribution of wealth; and since socialists have later discovered that the redistribution could in great measure and against less resistance be brought about by taxation and government service financed by it and have in practice often shelved their earlier demands, the realization of "social justice" has become their chief promise. It might indeed be said that the main difference between the order of society at which classical liberalism aimed and the sort of society into which it is now being transformed is that the former was governed by principle of just individual conduct while the new society is to satisfy the demands for "social justice" ... places the duty of "justice" on the authorities with power to command people what to do."*

This is an interesting view of socialism. It sees socialism as evolving and its aims held in tack while its means changed to meet the rules of the game of "social" justice. Hayek has brilliantly seen through the redistribution game under the rubric of social justice as just an alternative form of socialism.

Hayek then states quite clearly:

*"It is now necessary to distinguish between two wholly different problems which the demand for "social" justice raises in a market order:*

*The first is whether within an economic order based on the market the concept of "social" justice has any meaning or content whatever.*

*The second is whether it is possible to preserve a market order while imposing upon it ... some pattern of remuneration based on the assessment of the performance or needs of different individuals or groups by the authority possessing the power to enforce it.*

*The answer to each of these questions is a clear no."*

Hayek is stating that there is a clear conflict between the market driven economy and one where the principles of social justice prevail. The reason why is implicit in the second question, namely that in such a social justice driven a society the central controlling entity will usurp the authority to make fundamental economic decisions and take them from the open market capabilities. The Obama Administration is a clear example of that in almost all of its actions. Health Care is social justice by taking market decisions from the hands of the public and placing them in the hands of the rulers.

Hayek then summarizes<sup>134</sup>:

*"Social Justice can be given meaning only in a directed or "command" economy (such as an army) in which the individuals are ordered what to do; and any particular conception of "social" justice could be realized only in such a centrally directed system. It presupposes that people are guided by specific directions and not by rules of just*

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<sup>134</sup> Hayek, Law, p 69.

*individual conduct. Indeed, no system of rules of just individual conduct, and therefore no free action of the individuals, could produce results satisfying any principle of distributive justice."*

This is the most compelling statement. The last portion describes that a system of distributive justice besides being compulsory would negate individual freedom. Thus when we look at the current change in Health Care we see a distributive justice approach of centralized control and mandated actions negating any and all personal freedom.

Thus Schumpeter is primarily an economist yet his recognition of the entrepreneur and the individual as the prime driver for capitalism is essential to having a strong base for neo-individualism.

## **5.4 ROBERT NOZICK**

Nozick was another Harvard philosophy professor but in ways the direct opposite of Rawls. He took upon himself the task to examine the minimalistic government argument rather than the redistribution approach. Unlike Rawls, Nozick wrote one book, not a continual flow of refinements on the same theme. He said what he said and for the most part that was it. Nozick is the example to libertarians of their intellectual, the one who set the ground for the libertarian movement with credibility.

Ayn Rand was a polemicist, and in some ways the theatrical version of the libertarian movement. Yet we argue that there is significant differences between Nozick and Rand. Whereas Rand preaches using her characters in her novels, Nozick argues looking often at both sides with equanimity. We now examine a brief set of Nozick's views as they relate to individualism.

### **5.4.1 Basic Principles**

Nozick establishes his "entitlement" rules for the Lockean distribution of property by the individual. Specifically<sup>135</sup>:

1. An individual acquires property via the principle of justice in acquisition is then entitled to that property;
2. An individual who acquires property via the principle of justice in transfer is then entitled to that property;
3. An individual who acquires property via the principle of justice in retribution is then entitled to that property.

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<sup>135</sup> Nozick, Anarchy, p 151.

Note that in all three there is the implicit assumption of some underlying principle. Nozick states<sup>136</sup>:

*"A distribution is just if it arises from another just distribution by legitimate means. ... The legitimate first "moves" are specified by the principle of justice in acquisition."*

He then goes on in a footnote to define the latter

*"Application of the principle of justice in acquisition may also occur as part of the move from one distribution to another. You may find an unheld thing now and appropriate it."*

#### **5.4.2 Positive and Negative Rights**

The issue of rights has often been brought up in an analysis of Nozick. There are two classes of rights:

Negative Rights: The right not to be harmed. The right of habeas corpus is a negative right not to be imprisoned without a charge. You must be brought forth to the court and charged. The right to not have an interference with the practice of religion, Congress shall pass no law, the heart of the Bill of Rights. The Bill of Rights are in fact for the most part negative rights. protection from the Government.

Positive Rights: These represent what you get from the Government, and the examples that Sunstein provides of FDR second bill of rights are all positive rights. You have a right to health care, housing, education and the like.

To Nozick then one must ask if positive rights have any justification. Is not the exercise of a positive right in and of itself an expropriation and as such an infringement on liberty.

Wolf has stated<sup>137</sup>:

*"Nozick allows that we can have positive rights. But except in very special cases they exist only as a result of people voluntarily undertaking the obligations that correspond to those rights..."*

As Wolff also states:

*"Primarily for Nozick one has such rights over one's life and liberty, and the general right to form specific rights to property."*

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<sup>136</sup> Nozick, Anarchy, p 151.

<sup>137</sup> Wolff, Nozick, pp 19-20.

Thus one could argue that for Nozick the rights extend to one's own life, unencumbered right to one's own life, and if so, one then has the ability to choose when to end it. Furthermore the rights raises an issue as to whom they extend. Do rights extend to citizens, those who have agreed to be in the community, are aliens disenfranchised of rights, or is it that they never had them in the first place. Can the rights be delimited even amongst citizens. For example in the US, I have a right as a natural born citizen to run for president, is that delimitation to only natural born a delimitation of a right. Then at what point in the process of existing do I become eligible for rights, at conception, or do we define that point. We have had persons with rights withdrawn, prisoners, slaves, traitors, and a variety of others for various reasons from time to time they have had rights not available. For example if we were to institute a guest worker program do we then confer rights, the same rights?

### 5.4.3 Critique of Distributive Justice

Nozick, in simplistic terms, creates three constructs for distribution. They are simplified as follows:

1. Entitlement: One through their own efforts, Lockean work for example, gains title or ownership to property, and then has the entitlement to do with what he so wishes.
2. Patterned: The society determines a set of metrics as to how to distribute the things which are distributable. For example one may decide to distribute according to height, inversely according to weight, according to the length of the big toe, or whatever. This is typical of a pure socialist or communist society where the goods go to those needing them the most and are taking from those who have excess. It begs the question of need and excess but alas that has always been the quandary. Patterned distribution is also a centralized form requiring hopefully a benevolent central distributor or controller.
3. Un-patterned is distribution according to some random or capricious manner. Gifts from parents to children, charity, government graft, and the like. There is no rule, no basis of entitlement.

These are the three main ways Nozick sees in redistributing things in a society. The Rawlsian approach is patterned but "behind the curtain" ensuring distributional equity.

#### 5.4.3.1 Entitlement Theory

Entitlement theory makes the assumption that in some way an initial acquisition is entitled by some principle of justice. Thus in a Lockean sense if there was unclaimed land, say in New Jersey, in 1620, If I were to then clear the land, plant crops, file a claim at a court house, does that create an initial claim, because I worked and the work is converted to ownership. What of the Leni Lenape who hunted the land before I arrived, did they have claim to the land? If so does my claim now have to be a transfer claim

justified by some payment of some form to the Leni Lenape? Or what if I allow the Leni Lenape to still hunt the deer, and in fact I now pay them to hunt the deer in return for my claim being complete, is this an initial entitlement or a transfer, or is this really two entitlements plus a transfer. The Leni Lenape were hunters, they used the land to hunt deer, my farm attracts more deer, they still hunt, and thus two property interest now exist, the hunting and the farming, and there has been no dissolution of the former.

Now to retribution. The issue of retribution for slavery come to mind. Minorities whose ancestors were slaves may clearly have a right to retribution under the entitlement theory of Nozick. Yet what of one of African descent whose family never lived in the US, what claim would they have? What of the "retribution" type claims of Hispanic "minorities", what validity would they have under Nozick's theory of entitlement. One could argue none, that any Hispanic distribution would be Rawlsian and not following Nozick. However any affirmative action targeted at direct descendents could readily be ascribed as following Nozick and retribution entitlement. What then of a descendent who is say only one eighth a descendent of a slave, the other seven eights are non slave descendents, say free immigrants from the Massachusetts Bay Colony. Is there then some way specified by Nozick? Apparently not but he did not detail process and would not reject out of hand such a claim.

Wolff states regarding the entitlement theory of Nozick<sup>138</sup>:

*"Nozick seems faced with a dilemma. Does he assert the legitimacy of the no-more-than minimal state and ignore distributive justice or does he accept the burden of providing for distributive justice and thus give up the idea that the minimal state is the most extensive state ... This is the role of his entitlement theory of justice ... Nozick ... implies that the role of the entitlement theory is secondary; it is an answer to a problem caused by the minimal state. ... Within Anarchy, State and Utopia we can discern three distinct defenses of the state. First, ... defense based on the ... refutation of anarchism. Second, defense ... based on the entitlement theory of justice. Third, the minimal state can be recommended as a neutral framework within which one may design and live one's own utopia. ..."*

*Nozick's real opponents are those - conservative, liberal, or socialist - who believe there is a reason to adopt a more than minimal state. In the end everything rests on the entitlement theory."*

Indeed the minimal state is a concern. For libertarians the minimal state is the end goal and individuals look at society as a single mass and at times they are at war with that mass. For the individualist the individual and their rights, negative at a minimum, are to be protected. Thus the entitlement theory if expanded in a more social context states that it is the agreements entered freely by individuals, acting alone or in consenting groups,

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<sup>138</sup> Wolff, Nozick, pp 73-75.



which defines the society of individualism. The role of government in such a society is critical, it is to ensure that the rights are protected, that remedies can and are enforced.

Thus, unlike Wolff and many of Nozick's critics, I see him as rejecting anarchy, rejecting distributive justice as we see I the progressives and establishing a base for individualism, more so than libertarianism.

#### 5.4.3.2 Patterned Theory

Let us begin by using Nozick to define his patterned justice. He states<sup>139</sup>:

*"Let us call a principle of distribution patterned if it specifies that a distribution is to vary along with some natural dimension, weighted sum of some natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle."*

Thus as we have stated before society or the "distributor in chief" establishes some rule or sets of rules and then takes all of the goods in society and distributes them according to that rule. Note I said all things. For example if we tax you at 20% we are not taxing you at 80% and thus we control all of your assets because once we admit to taxing at any number we are just deferring taxing you at a greater number.

Nozick then refers to Hayek when he states:

*"... Hayek concludes that in a free society there will be distribution in accordance with value rather than moral merit; that is, in accordance with the perceived value of a person's actions and service to others. Despite his rejection of a patterned conception of distributive justice, Hayek himself suggests a pattern he thinks is justifiable; distribution in accordance with the perceived benefits given to others, leaving room for the complaint that a free society does not realize exactly this pattern."*

This is a key point regarding Hayek. For Hayek was not a true libertarian, he was not a believer in abject laissez fair and he was a believer in some form of patterned distributive justice. This is a significant distinguishing characteristic. We will discuss this later when we return to individualism and libertarianism.

Nozick then presents his famous Wilt Chamberlain distribution tale<sup>140</sup>. Simply, he looks at a society which has distributed in some patterned manner. Then there is Wilt Chamberlain and people want to see him play, and he demands a fee per entrant above and beyond his pay. There is a long discussion by Nozick on this issue. Nozick finally concludes:

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<sup>139</sup> Nozick, Anarchy, pp 156-158.

<sup>140</sup> Nozick, Anarchy, pp 161-163.

*"The general point illustrated by the Wilt Chamberlain example and the example of the entrepreneur in a socialist society is that no end-state principle or distributional patterned principle of justice can continuously be realized without continuous interference with people's lives."*

Indeed, the case of the entrepreneur in a socialist society is in and of itself an oxymoron. There could not be an entrepreneur. Why would anyone want to create a business knowing that the fruits of their labor and money would be expropriated by the state upon successful completion. Further, he also goes on to discussing Sen and the "Jury Theorem" so belabored by Sunstein and clearly shows again that<sup>141</sup>:

"Thus Sen's argument leads us again to the result that patterning requires continuous interference with individuals' actions and choices."

This is a statement about the individual and it is a statement which clearly reinforces his other remarks that any form of distributive justice is expropriation, interference and one could argue value reducing to society as a whole,

#### **5.4.4 Libertarian vs Individualitarian**

Libertarians are proponents of minimalistic government above all other principles. They all too often are posed as seeking as little government as is necessary to keep them just on the reasonable side of not being an anarchist. In addition as an Ayn Rand advocate may even postulate they seek abject laissez faire and Spencerian survival of the fittest. As we have stated earlier, Individualism takes not stand of this type, it is akin to classic liberalism in the protection of the rights of the individual above all.

Wolff provides a critique of Nozick and the libertarians. He states<sup>142</sup>:

*"From a Rawlsian point of view, the error of libertarianism is to take principles of legitimate expectations from within the structure and claim that the structure should be formed in accord with those principles. That is, all claims of entitlement, are for Rawls, relative to a prior structure. Nothing is "mine absolutely" but only "mine given the rules". Libertarianism forgets this essential relativism of claims of entitlement."*

If one is a believer in natural law and natural rights then one would shout "Nonsense" at what Wolff had just said. There is for those who believe in natural rights, such as those who wrote the US Constitution, that there is a natural right for freedom, that man is not born to be slave, despite the Jeffersonian schizophrenia that distort so much of our founding fathers efforts. Further as we show, Nozick admits that property is property per

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<sup>141</sup> Nozick, Anarchy, p. 166.

<sup>142</sup> Wolff, Nozick, pp 141-142.

the rules, not ex nihilo, Nozick's principles of entitlement expressly state that the rules apply, for indeed they must to be enforced. Further Wolff seems to neglect the third rule, restitution which in and of itself requires rules and enforcement.

For this reason and others Nozick set forth a strong philosophical base for both libertarianism and for individualism. I would argue his basis for individualism is even stronger.

## 5.5 OTHER NEO INDIVIDUALISTS

We review here a few other neo-individualists who add to the overall base of ideas.

### 5.5.1 Joseph Schumpeter

Schumpeter was an economist whose expertise was business cycles and his major work entailed examination and analysis of the business cycle in various venues. As McCraw states:

*"In 1939, Schumpeter published his two-volume, 1,095-page tome, **Business Cycles**, after more than seven years of concentrated research. He was fifty-six years old at the time and had been a professor at Harvard since 1932. He was well known throughout the world, having published scores of articles, over seventy book reviews, and three books, including the brilliant **Theory of Economic Development** (1911; English translation, 1934).... **Business Cycles** was Joseph Schumpeter's least successful book, measured by its professed aims and several other yardsticks.*

*Yet the book has two vital aspects that have largely been overlooked. First, the prodigious research that went into its writing caused a significant change in Schumpeter's thinking about capitalism. It moved him to a more historical and empirical approach that shaped nearly all his subsequent work. And second, much of the book constitutes a preview of modern, rigorous business history. This article explores both of these elements—not in the spirit of rescuing a neglected classic, because the book is not a classic. Instead, **Business Cycles** is a noble failure that paid unexpected dividends both to the author and to scholarship."*

McCraw then explains the role the entrepreneur plays in the business model and society in general:

*"Of all economic systems, **capitalism best enables people to create ventures before they possess the necessary funds and other resources to found an enterprise. For any given innovation, the Entrepreneur "may, but need not, be the person who furnishes the capital."** In the end, "it is leadership rather than ownership that matters."*

*The failure of both the classical economists and **Karl Marx "to visualize clearly entrepreneurial activity as a distinct function sui generis"—a distinction Schumpeter***

*always underscored—was a crucial flaw in their analysis of capitalism. The prior possession of money makes it easier to become an entrepreneur, of course, and successful ones do usually become wealthy.*

*But the historical record shows unmistakably that, in the countries Schumpeter is discussing, entrepreneurs come from all income groups. (He had a deep interest in social classes, a topic he often wrote about.) “Risk bearing is no part of the entrepreneurial function. It is the capitalist who bears the risk. The entrepreneur does so only to the extent to which . . . he is also capitalist, but qua entrepreneur he loses other people’s money.”*

*Having staked out the distinctive role of the Entrepreneur, Schumpeter identifies entrepreneurial Profit as the prime motivator—“the premium put upon successful innovation.” When other participants in the same industry see the new level of Profit, they try to duplicate the Innovation. In turn, the Entrepreneur tries to preserve his high Profit for as long as possible—through further innovation, the use of patents, secret processes, advertising, and “aggression directed against actual and would-be competitors.”*

Schumpeter recognize the entrepreneur as the key element of capitalism, and suppression of that function would doom capitalism in the long run. What Schumpeter got wrong is that the entrepreneur in today's market must initially come to the table with the idea and the seed capital through their own resources. The venture capitalist did not exist at the time Schumpeter wrote this and thus he is looking at the early 20th century view of financing entity and entrepreneur. The 21st century view is more complex and more reliant on the entrepreneur. Yet if the Government takes actions to suppress any of the functions in the food chain of the entrepreneur it will kill it off and thus all innovation. McCraw details that well.

These are forms of what, three years later, Schumpeter famously called “creative destruction” in *Capitalism, Socialism and Democracy*.”

Schumpeter was in many ways similar to Hayek. He introduced the concept of Creative Destruction, the process where businesses have natural lifetimes and are replaced by the next best thing. He states<sup>143</sup>:

*“The opening of new markets, foreign or domestic, and the organizational development from the craft shop and factory to such concerns as U.S. Steel illustrate the same process of industrial mutation - if I may use that biological term - that incessantly revolutionizes the economic structures from within, incessantly destroying the old one, incessantly creating a new one. This process of Creative Destruction is the essential fact about capitalism.”*

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<sup>143</sup> Schumpeter, *Capitalism*, p 83.

He then goes on to emphasize that this entrepreneurial Creative Destruction require the unimpeded individual who will conceive of the new ideas and take the risks to make it a reality, for the risks are high, massively high, not all entrepreneurs are successful, the entrepreneur being on a par with those few risk takers in human existence who abandon all security and seek both the new opportunity while at the same time being able to lead a band of like minded individuals around whom the entrepreneur will build the new venture.

The Progressive and neo-Progressive has no understanding of the entrepreneur. They may at time think they do but all of the Progressive principles are the antithesis of what the entrepreneur needs to survive, and Creative Destruction is essential to capitalism as pruning any dead branch is from growing trees. Otherwise those dead branches become vectors for disease and infestation.

Consider the telephone company, protected from 1913 onward by the Government at a monopoly, protected at the direction of the Wilson Administration. Once they became a well settled monopoly they did everything in a rational manner to maximize their monopoly profit. Since it was a monopoly and profits were defines as a percent of capital plant deployed, there became no incentive to deploy highly efficient capital plant, because then the profit would decrease. The Government Planners, in this case, the FCC, mandated perforce of the regulation a halt on Creative Destruction and an institutionalization of old technology. The Internet was not done at Bell Labs, because it would be cheaper, and thus the Creative Destruction came from a band of Department of Defense academics.

As for Schumpeter's view of a socialist society he said the following<sup>144</sup>:

*"By socialist society we shall designate an institutional pattern in which the control over the means of production and over production itself is vested in a central authority - or as we may say - in which, as a matter of principle, the economic affairs of society belong to the public and not to the private sphere. Socialism has been called the intellectual Proteus.<sup>145</sup>"*

### **5.5.2 Alan Bloom**

### **5.5.3 Thomas Sowell**

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<sup>144</sup> Schumpeter, Capitalism, p 167.

<sup>145</sup> Proteus was the shape changing sea god a son of Poseidon. Thus Schumpeter is calling socialism a shape shifter, an entity which can change its colors and shape to meet the challenge that it may face.



## 6 NEO PROGRESSIVES

We now look at the neo-Progressives. These are the group of "thinkers" and agents who have taken the mantle of the classic Progressives and carried it forward into the political forum of today. They start that trail in the FDR administration and then continue to the current day. Each of these in their way have contributed pieces to the neo-Progressive agenda. The Neo-Progressives are not the extreme left, the new left or whatever one may call them. They are believers of the core principles of the Progressive movement; society over the individual, Government as the single and ultimate arbiter, social and distributive justice rather than individual property rights. The Progressive doctrine did not die when the 1920s came upon us, it morphed into a complex set of theories and actions wrapped in various guises. The Public Intellectuals herein discussed represent but a small number of the total.

To preface the neo-progressives, I will take a quote from Henry Wallace in his book *New Frontiers*, written in 1934 when he was FDR's Secretary of Agriculture. Wallace was in many ways the nexus between the old progressives and the neo-progressives, albeit one who truly straddled both camps. He states:

*"I hope nobody will get the idea in reading this book that I have it in for the rich people. Most of them are just as mixed up and well meaning as anyone else. They are not intentionally harmful. But it happens that many of these rich people have extraordinary powers over the social structure and they have not learned to exercise these powers in the social interest, because past rules of the game for big and little have laid emphasis on getting money and power rather than on working for something larger and more permanent....As a rule, the conservative type of mind is so instinctively and continuously self-centered that it is always being surprised by changing forces...The government sits in either as a party to the negotiations or as a reviewer and enforcer. This mechanism for a concert of interest, skillfully worked out, should provide in considerable measure the unwritten constitution which will govern many of our most significant advances toward economic democracy.<sup>146</sup>"*

Wallace became Vice President from 1941-1945, and played a critical role during the War. Yet by 1944 FDR even found his views extreme and he was dropped for Truman. Yet the above lays out the neo-progressive view; (i) class hatred based on the rich and poor, (ii) downgrading of any and all conservative principles, including Constitutionality, and (iii) Government control of the economy. Wallace went on to become the Progressive Presidential candidate in 1948. His ideas in many ways became the bridge between the classic progressives and the neo-progressives.

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<sup>146</sup> Wallace, *New Frontiers*, p 12-13, p 287.

Thus we look at those individuals who contributed as public intellectuals to the development of the neo-progressive movement. In many ways they were promulgators of the ideas, the principle laid down by Wallace, and developed and fine tuned during the FDR reign by trial and error.

## **6.1 RICHARD HOFSTADTER**

Hofstadter made his career at Columbia University. This was the home of Beard and Dewey, and in the 1960s a focal point for East Coast anti-war and anti-government protests and action groups. In the 1930s it was a cauldron of Communism, with what some have said a majority of the students and faculty being members of or adherents to the Communist party. Columbia was the upper class version of City College. As City was the experimental Petri dish for first generation college educated immigrants, Columbia prided itself on its almost Ivy league status. Unlike Harvard, Columbia viewed itself as integral to New York, whereas Harvard was in the yard behind the wall in Cambridge, separate from Boston. Columbia prided and still prides itself on its left leaning tendencies and in many ways that pride exceeds the pride it may have on its academic performance.

### **6.1.1 Columbia in Perspective**

To place Columbia in some perspective let me recount a brief tale. In 1960, as I was preparing to seek out a college, one of the institutions I applied to was Columbia University. In the process, I had applied to their Advanced Science Program which was directed towards High School Seniors. I was trying to evaluate if it was worth the effort since to attend this program at Columbia since I lived on Staten Island and this would take all my Saturdays. In addition, the Program was focused on students committed to attending Columbia. Thus I wrote the Dean to seek advice.

The Dean's response was not positive for reasons not related to any fundamental academic issue but to a "cultural" issue. For years I thought this response to my letter may have been an artifact of that time, then end of the 50s and the beginning of the 60s. I thought that was, that is, until the last few months.

The issue was that in 1960 Columbia University was dominated by anti-Catholic intellectuals, and as a graduate of a Catholic secondary school I was considered damaged goods. I had not had the "right" training. In fact I was considered brainwashed. I thought that we had lived through the 50s, the Rosenbergs and McCarthy, Stevenson and Nixon, so this prejudice was just a lingering artifact of the past. Martin Luther King had not yet raised his voice so prejudice was something we had all learned to deal with, generally by avoidance. It would take almost fifty years to understand that this mindset was not in its sunset but was morphing itself into a sustainable and more pervasive movement.

The Columbia mentality, at the time, was dominated, in many ways, by the views of a principal spokesperson, Richard Hofstadter, the Historian. Hofstadter viewed himself and his associates as consummate intellectuals, and as such they had an almost divine insight



into the truth. Thus it was incumbent upon the unwashed to listen to them and follow their dicta. Furthermore, if one opposed them, then the person in opposition was considered as beneath them, not being capable of seeing the truth, as they presented it. It institutionalized the process of "class rejection" on the basis of intellectual separation. Namely, only they could think!

In today's world, however, one would think that this mindset would be gone, an artifact of a bygone era. In fact, it seems to be very much alive, albeit morphed a bit, but the nexus to Hofstadter is still strong. In fact there seems to be a resurgence of this nexus and mindset. This paper presents an analysis of this group and does so starting from a personal experience; my rejection by Columbia based solely on my attending a Catholic High School. Just to assure the reader, MIT had no problems, even through my PhD. Columbia tried several times to get me to teach there, I rejected them, and in 1996 I did spend a year as a Visiting Professor in the Business School, and the experience just confirmed my opinion of prior rejection. On to 1960.

On August 11, 1960 I received a three page letter from Donald Barr, the Assistant Dean of the School of Engineering at Columbia University. The letter was in response to a query from me regarding the program Columbia had for High School Seniors. Barr says:

*"Your letter of August 6 raises difficult questions. Before I try to answer them, may I say that it was a very difficult thing to have to say no to you and to many most unusual and able students for the Science Honors Program, but when one can only accept twenty percent of a nomination list one has to do violence to one's own feelings as well as to others'.*

*I note that you are a student at St. Peter's High School for Boys. Our experience has been that many Catholic school principals and guidance directors have serious reservations about students going on to secular colleges like Columbia. I can hardly tell you how many times I have been over this question with priests and brothers of many orders. It is a serious decision for a Catholic boy to make when he chooses a secular college.*

*At Columbia, the practicing Catholic student must work harder than other students and he must work harder than he would have to work at a Catholic college; this is because he must not only do the regular reading and follow the regular lectures that every student must do, but he owes it to his soul to do extra reading and study to obtain the distinctive position of the Church on questions bearing on the history and philosophy of religion.*

*The student with less clearly formulated religious views at Columbia is under no such obligation, and he can meet the multiplicity of viewpoints and arguments he will undoubtedly encounter with indifference or indecision or possibly a decision for skepticism or materialism. The Catholic student at a Catholic college has his religion made somewhat easy for him.*

*But the Catholic student at Columbia practices his faith in a veritable battleground of conflicting ideas and urgings. He will not find it easy to brush aside the viewpoints of his*

*teachers, some of whom will be either Protestant or Catholic and some of whom will be articulately skeptical or agnostic in their views. He may think in advance that he will be able to overlook these controversies.*

*I can assure him he will not. I also have great faith that a good and vigorous-minded Catholic student will be all the better for having his faith tested in these controversies. One develops strength by overcoming resistance spiritually as well as physically. But it is a very great burden, which I do not want to assume, to urge a student I do not know personally to take this chance."*

If this letter were written in 2010 and not 1960, and if it were about a Muslim applicant, not a Catholic, then there would be the New York Times, the ACLU, and the Courts all over this case. Instead the letter was written as Kennedy was running for President in the summer of 1960 at a University where the faculty was almost universally Democrat and Kennedy supporters. Yet Kennedy had gone to Harvard, but Columbia, with its hubris, thought it was more of a higher status than Harvard.

Was there sound guidance from Barr in his correspondence? Did Columbia present a challenge for a student educated at a Catholic school? Perhaps. For if one reads Thomas Merton's autobiography, *The Seven Storey Mountain*, Merton recounts<sup>147</sup>:

*"There was a sort of legend in New York, fostered by the Hearst papers, that Columbia was a hotbed of Communists....The Communists had control of the college paper and were strong at some of the other publications and on the Student Board."*

Further if one reads William Barrett, *The Truants*, one comes away with an even more complex environment of extreme left wing students, most calling themselves Communists, and most opposing the establishment, no matter what it was<sup>148</sup>. Barrett talks about Columbia in the 1930s, especially the late 30s as a hotbed of Communism, with such characters as Delmore Schwartz and the other members of the *Partisan Review*, a Communist magazine for intellectuals. They used Columbia as their focal point. It provided for the sources of their ideas and for the pathways to disseminate them into the intellectual world.

### **6.1.2 Hofstadter and the Focal Point of Prejudice**

Hofstadter was born in Buffalo, NY and of religiously mixed parentage, Lutheran and Jewish. This apparently had an influence on his all his life. Upon completion of his PhD at Columbia in 1942 at the ages of 26 he went to University of Maryland. How he avoided the draft is unknown. Men like Rawls, graduate of Princeton, born in 1921, enlisted in the US Army and fought at the Battle of Leyte. Hofstadter seems to have gone

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<sup>147</sup> See Merton, T., *Seven Storey Mountain*, Harcourt (New York) 1976, pp. 141-142.

<sup>148</sup> See Barrett, W., *The Truants*, Doubleday (New York) 1982, pp 209-21.

through WW II oblivious of what was happening. His biographer David Brown seems silent on this issue. It is as if the war was never happening and the only low point was the poor housing available in the Washington, DC area at the time. I believe that this speaks volumes about the character of Hofstadter. In this section I want to address the anti-Catholic attitude of Hofstadter and reinforce the observation already made regarding Dewey that this was not a personal quirk of these men but a pandemic attitude at Columbia.

Let me begin with the words of Jon Wiener in the Nation, in reviewing the biography by Brown of Hofstadter writes<sup>149</sup>:

*"Hofstadter was born in Buffalo in 1916 and came of age in the era of the Popular Front. He went to college at the University of Buffalo and became president of his university's chapter of the National Student League, a Communist-led antiwar organization that, according to a government report quoted by Brown, "attempted physical disruption of campus activities which led to arrest, suspensions and expulsions of its members... In his early twenties, he went to Mississippi with his passionate left-wing wife, Felice Swados, and visited black sharecroppers at Delta Cooperative, the subject of a famous series of photographs by Dorothea Lange for the Farm Security Administration.*

*His 1938 master's thesis at Columbia was a fierce indictment of the New Deal's Agricultural Adjustment Act for supporting Southern planters rather than poor farmers... The Spanish Civil War was raging during his graduate school days, and in October 1938 he responded, as many of his peers did, by joining the Communist Party--in his case, the CP unit at Columbia. "My fundamental reason for joining," he wrote his brother-in-law, "is that I don't like capitalism and want to get rid of it... I join without enthusiasm but with a sense of obligation." ... Four months later, in February 1939, he quit the party. His reason, according to fellow student Kenneth Stampp... "He couldn't stand the people." But even after that, in October 1939, he wrote his brother-in-law ...: "I hate capitalism and everything that goes with it." In 1941 he got his first full-time job, directly as a result of anti-Communism: He replaced a faculty member forced out by City College because of alleged Communist Party ties: Jack Foner, father of Eric."*

As such, Hofstadter was well to the left and Columbia provided him with a comfortable home, being the center of American Communism.

Hofstadter was also a self proclaimed intellectual. To him and the clique he was associated with, the intellectuals were a chosen group who circled around academe, and Columbia was considered a major focal point at the time, and they saw what truth was and from them truth would be disseminated. Their intellectual work was considered by them and their followers to be without peer.

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<sup>149</sup> This article can be found on the web at <http://www.thenation.com/doc/20061023/wiener> The Nation; *America, Through a Glass Darkly*, by Jon Wiener.

Hofstadter wrote several books, amongst them *The Age of Reform* and *American Political Tradition*. His writings were not of the type which included any original research but were more targeted at a broader non-academic audience. Though not a general press type writer, he did achieve success in his wider audience of liberal devotees.

In the article Jon Wiener, Wiener while reviewing the Brown biography of Hofstadter states:

*"The American Political Tradition, published in 1948 and widely regarded as Hofstadter's best book, is still selling briskly almost sixty years later: Recently it had an Amazon ranking of 4,400, which would be envied by most historians with books on the market today. (Brown's, for example, was at 22,000 on the same day.) Knopf's 1948 publicity marketed the book as a work of consensus history: "In this age of political extremism, this young and brilliant Columbia historian searches out the common ground among all American parties and factions." In fact the book was more subtle, and much more interesting, than that. Hofstadter wrote the book from a vantage point on the left. While others, like Daniel Boorstin, celebrated consensus, Hofstadter was openly critical. It opens with a description of an "increasingly passive and spectatorial" state of mind in postwar America, a country dominated by "corporate monopoly," its citizens "bereft of a coherent and plausible body of belief" and adrift in a "rudderless and demoralized state." ..."*

This shows that Hofstadter is still held in high esteem by the left, since this was so well received in *The Nation*.

But let us look at Hofstadter a bit more closely. Hofstadter makes the following comments in 1963, the year Kennedy was killed in office<sup>150</sup>:

*"In these pages I have been mainly concerned with the relationship between Protestant evangelicism and American anti-intellectualism, simply because America has been a Protestant country, molded by Protestant institutions. It would be a mistake, however, to fail to note the distinctive ethos of American Catholicism, which has contributed in a forceful and decisive way to our anti-intellectualism. Catholicism in this country over the past two or three generations has waxed strong in numbers, in political power, and in acceptance. At the middle the nineteenth century it was, though a minority faith, the largest single church in the country and was steadily gaining ground despite anti-Catholic sentiment. Today the Church claims almost a fourth of the population, and has achieved an acceptance which would have seemed surprising even thirty years ago. One might have expected Catholicism to add a distinctive leaven to the intellectual dialogue in America, bringing as it did a different sense of the past and of the world, a different awareness of the human condition and of the imperatives of institutions. ..."*

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<sup>150</sup> See Hofstadter, R., *Anti-Intellectualism in America*, Knopf (New York) 1963, pp. 136-141.

*In fact, it has done nothing of the kind, for it has failed to develop an intellectual tradition in America or to produce its own class of intellectuals capable either of exercising authority among Catholics or of mediating between the Catholic mind and the secular or Protestant mind. Instead, American Catholicism has devoted itself alternately to denouncing the aspects of American life it could not approve and imitating more acceptable aspects in order to surmount its minority complex and "Americanize" itself. ..*

*In consequence, the American Church, which contains more communicants than that of any country except Brazil and Italy, and is the richest and perhaps the best, organized of the national divisions of the Church, lacks an intellectual culture. "In no Western society," J. W. Brogan has remarked, "is the intellectual prestige of Catholicism lower than in the country where, in such respects as wealth, numbers, and strength of organization, it is so powerful." In the last two decades, which have seen a notable growth of the Catholic middle class and the cultivated Catholic public, Catholic leaders have become aware of this failure; a few years ago, Monsignor John Tracy Ellis's penetrating brief survey of American Catholic intellectual impoverishment had an overwhelmingly favorable reception in the Catholic press. ..."*

Hofstadter keeps seeing the Church and its members as one and the same. Although he states that the growth of a Catholic middle class has presented a challenge to the Catholic Church, he lumps the Catholic middle class in with the Church hierarchy as dolts. One must also remember that this is also the Period of Vatican II with dramatic openings in the Catholic Church, for better or worse. Hofstadter then continues:

*"Two formative circumstances in the development 'Of early American Catholicism made for indifference to intellectual life. First in importance was the fiercely prejudiced Know-Nothing psychology against which it had to make its way in the nineteenth century. Regarded as a foreign body that ought to be expelled from the national organism, and as the agent of an alien power, the Church had to fight to establish its Americanism. Catholic laymen who took pride in their religious identity responded to the American milieu with militant self-assertion whether they could and Church spokesmen seemed to feel that it was not scholarship but vigorous polemicism which was needed...."*

*The Church thus took on a militant stance that ill accorded with reflection; and in our time, when the initial prejudice against it has been largely surmounted, its members persist in what Monsignor Ellis calls a "self-imposed ghetto mentality." A second determining factor was that for a long time the limited resources of the American Church were pre-empted by the exigent task of creating the institutions necessary to absorb a vast influx of immigrants-almost ten million between 1820 and 1920-and to provide them with the rudiments of religious instruction. So much was taken up by this pressing practical need that little was left over for the higher culture, in so far as there were members of the Church who were concerned with Catholic culture, exceptionally unproductive in all areas of scholarship, achieve their best record in the sciences."*

At the time of this book by Hofstadter, Catholics were educated in secondary and College levels at Catholic institutions, but there was also a clear breakout into the secular world.

Even in New York, CCNY became equally populated with Catholics and Jews, not all Catholics went to Fordham or St. Johns, many, like the Jewish immigrants, could only afford a CCNY education. The Catholic Church frankly performed a great social function in New York by setting up schools, hospitals, and orphanages. The City could not handle the social issues presented by the influx of immigrants.

By having these institutions, the new working class could productively contribute without costing the tax payers the added amount that would have been necessary for health and education. The Catholic institutions also taught an ethic that reduced crime, it made what the Italian and Irish gangs did sinful and used its social pressure in a manner which we see little of in many of today's churches.

Hofstadter then continues:

*"As one might have expected, the way of the Catholic intellectual in this country has been doubly hard. He has had to justify himself not only as a Catholic to the Protestant and secular intellectual community but also as an intellectual to fellow Catholics, for whom his vocation is even more questionable than it is to the American community at large. Catholic scholars and writers tend to be recognized belatedly by their.....co-religionists, when they are recognized at all. All of this concerns, of course, not so much the anti-intellectualism of American Catholicism as its cultural impoverishment, its non-intellectualism. But it will serve as background for a more central point: a great many Catholics have been as responsive as Protestant fundamentalists to that it is against modernity of which I have spoken, and they have done perhaps more than their share in developing the one-hundred per cent mentality. In no small measure this has been true because their intellectual spokesmen-who are now growing in numbers and influence-have not yet, gained enough authority in the Catholic community to hold in check the most retrograde aspects of that revolt, including its general suspicion of mind and its hostility to intellectuals. "*

American Catholicism for Hofstadter became a pervasive genetic disorder seemingly to infect any person who professes to be Catholic and moreover any person in any way related to the Catholic Church, such as a Catholic High School Graduate. Hofstadter states that the Catholic holds a hostility to the intellectual, namely Hofstadter and his ilk. The hostility is that the Catholic thinker may disagree with them, and this disagreement to Hofstadter is prima facie evidence of dollarism. Hofstadter, and the Columbia clique, somehow view that they are prophetic and without fault or error in their intellectualism, that they solely have seen truth, and that it is their word ex-cathedra from Morningside Heights which contains the truth and the light. The arrogance of these men, and they were all men at the time, is appalling. It fundamentally rejects any other thought process.

*"A great deal of the energy of the priesthood in our time has been directed toward censorship, divorce, birth control, and other issues which have brought the Church into conflict with the secular and the Protestant mind time and again; some of it has also gone into ultra-conservative political movements, which are implacable enemies of the intellectual community. Catholic intellectuals on the whole have opposed the extreme and*

*(from the point of view of the faith) gratuitous aspects of this enmity, but they have been unable to restrain it. Indeed, one of the most striking developments of our time has been the emergence of a kind of union, or at least a capacity for cooperation, between Protestant and Catholic fundamentalists, who share a common puritanism and a common mindless militancy .....*"

He then goes on:

*"For evidence that Catholic clergy and laymen alike are unusually hostile to freedom of thought and criticism, even on subjects remote from dogma see Gerhardt Lenski: *The Religious Factor* (New York, 1960)."*

This is a broadly damning statement. Hostile to freedom of thought and criticism, even on subjects remote from dogma. Catholics at that time were becoming lawyers, scientists, mathematicians, engineers, physicians, and they were certainly not hostile to criticism in these fields. Perhaps they took positions orthogonal to Hofstadter's but that it acceptable in and discourse amongst thinkers. Yet disagreement with an intellectual is anathema.

In Hofstadter's *Age of Reform* he further states<sup>151</sup>:

*"At the so-called grass roots of American politics there is a wide and pervasive tendency to believe - I hasten to add that the majority of Americans do not habitually succumb to this tendency - that there is some great but essentially very simple struggle going on, at the heart of which there lies some single conspiratorial force, whether it be the force represented by the "gold bugs", the Catholic Church, big business, corrupt politicians, the liquor interests and the saloons, or the Communist Party..."*

In The New York Times review of the biography of Hofstadter by Sam Tanenhaus states<sup>152</sup>:

*"These were Hofstadter's subjects in his most productive years, the 1950's and 60's, when he nested among a nucleus of thinkers at Columbia that included the social theorists Daniel Bell, Seymour Martin Lipset and Robert K. Merton and the literary critic Lionel Trilling. Together they formed a loose federation of like minds and temperaments. All were secular Jews (or in Hofstadter's case, half Jewish). Many had weathered chastening experiences on the left. Most were influenced by European social science, in particular by psychoanalysis and depth psychology, which offered more fruitful diagnostic methods than the tired formulas of Marxism and the class struggle. The Columbia group did much to create the vocabulary of midcentury liberal thought in America as it sought to move beyond ideology and toward a kind of broad public doctrine or "orthodoxy," as Brown puts it.*

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<sup>151</sup> See *Age of Reform*, pp 16-17.

<sup>152</sup> See NYT August 6, 2006.

*In Hofstadter's case this meant exploring in a systematic way "the sociological penumbra of political life" — the murky substratum of desires and impulses that underlay the surface pageantry of American politics. He was much impressed by "The Authoritarian Personality" (1950), a survey of contemporary American political attitudes compiled by a team of researchers under the direction of the German émigré Theodore Adorno. Hofstadter adapted Adorno's "social-psychological categories" in his essay "The Pseudo-Conservative Revolt," an attempt to uncover the hidden sources of McCarthyism. "*

Tanenhous continues:

*"In the boom years of the 1920's, for instance, millions of small-town and rural "native stock" Americans, alarmed by the ascendancy of the country's pluralistic urban culture, had embraced the organized bigotry of the Ku Klux Klan and flocked to the punitive crusades of anti-evolutionism and Prohibition. The pattern was being repeated in the 1950's, also a boom period, only now it was a curious alliance of upwardly mobile white ethnics (many of them Catholics) and downwardly sinking displaced WASPs, who looked to secure their status as authentic Americans by converging upon "liberals, critics and nonconformists of various sorts, as well as Communists and suspected Communists.... And if, as Hofstadter maintained, political issues now reflected a wider cultural debate over "the capacity of various groups and occupations to command personal deference in society," then the largely Jewish inhabitants of what Brown calls the "Claremont Avenue ghetto" were, for all their seeming detachment, as deeply embroiled in the struggle as Midwestern rubes or urban Catholics."*

The characterization of Midwestern rubes and urban Catholics and their antithesis which he calls the Claremont Avenue Jews<sup>153</sup> are somehow in a massive cultural struggle, with these bone headed rubes and Papists pitted against the small enclave of intellectuals who have singular knowledge of the truth.

The small group of left wing intellectuals, according to Hofstadter, has taken the place of blacks, evolutionists and anti-prohibitionists, and the rubes and Papists are unjustly and in total ignorance attacking them as a result of their deckling social status! The irony is that the Irish Catholics and Italian Catholics in New York at that time were still Police and Garbage Collectors and had just returned from the War. Neither Hofstadter nor Bell had done the country the honor of such service and kept their comforts on the hill at Morningside Heights while the Irish Catholics, Italian Catholics and Protestant rubes from the mid West lost their lives defending their rights to call them dolts! Yet their attitude was and, in many ways, remains pervasive at Columbia.

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<sup>153</sup> Claremont Avenue is a small street that runs parallel to Riverside Drive on the West Side of Manhattan just west of Columbia University. It is a residential area for many Columbia faculty. In the 1950s and 1960s it was a mix of academic and middle class Jews. Many of the building were eventually taken over by Columbia.



In Hofstadter's writing, *The Pseudo-Conservative Revolt*, in the book edited by Daniel Bell, *The Radical Right* in 1955, and updated in 1963, Hofstadter writes<sup>154</sup>:

*"Paradoxically the intense concerns of present day politics are shared by two types of persons who arrive at them, in a sense, from opposite directions. The first are found among types of old-family Anglo Saxon Protestants and the second are found among many types of the immigrant families, most notably the Germans and the Irish, who are frequently Catholic."*

He then goes on to describe the Irish Catholics as just slightly above Neanderthals and acting like sheep in their movement to what he has termed Pseudo-Conservatives. What is amazing is that Kennedy had been in office for two years at this point and one would assume that Hofstadter were aligned with the Kennedy wing, if one reads what Brown writes in his biography. Yet the continually telling diatribes against Catholics are never ending.

In Brown's biography of Hofstadter (p. 122) he further reinforces the anti-Catholic and moreover anti-Irish Catholic views held by Hofstadter as well as Daniel Bell<sup>155</sup>. In fact Brown states:

*"Much of Bell's scholarship during this period focused on the cultural origins of McCarthyism. Like Hofstadter, with whom he worked closely on The New American Right project. Bell observed in the defensive posture of isolationists, anti-communist Irish and German Catholics, and other recent immigrants an eagerness to support a messianic approach to foreign policy as a show of loyalty."*

Bell graduated from CCNY in 1939 and avoided all military service during World War II. He spent the time as a reporter for *The New Leader* magazine which was a front for the Socialist Party of America. The magazine was a hotbed of socialists and left leaning followers like Arthur Schlesinger. Bell completed his PhD at Columbia in 1960 and then went on to Harvard.

But it appears that Bell was just another of the many faculty including Hofstadter who looked at Irish Catholics as the enemy, as ignorant and superstitious religious zealots who had nothing to contribute to the Academy. The irony was, and still is, that there is no true in-bred Irish in New York, New York is the ultimate melting pot, intermarriage between nationalities, religions, races, and whatever. Bell became putatively a sociologist at Harvard and made a name for him with the publication of several books.

### 6.1.3 Social Darwinism, Individualism and Progressivism

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<sup>154</sup> See Hofstadter, Pseudo-Conservatives, in Bell, *The Radical Right*, Doubleday (New York) 1963. p. 69.

<sup>155</sup> See Brown, D., *Richard Hofstadter*, Univ Chicago Press (Chicago), 2006.

Social Darwinism was written by Hofstadter as an update to his doctoral thesis. Hofstadter's style was often journalistic and he relied on secondary sources rather than the classic archival research methods employed by academic historians. As a result his writings become readable to a wider audience but open to criticism by the more academic circles.

His basic premise in Social Darwinism was that the right as exhibited by the Republicans and their kin were descendents from the 19th century Social Darwinists who were believers in the theory of survival of the fittest. They were the ultimate Individualists where to Hofstadter this meant believers in the domination by those on the top of those on the bottom, a natural consequence of the social Darwinism in action.

Hofstadter then progresses to take various attacks at the writers he sees as the predominant social Darwinists especially Spencer. He abhors Spencer and everything he stands for and the attack is virulent. Regrettable Hofstadter fails in the fundamental rule of the academic to understand what he speaks of.

Darwinism related to species and not individuals. One individual does not a new species make. Thus it would have been incumbent on Hofstadter to first describe what Darwinism was to Darwin and at the time of his writing and from that vantage point go into a discussion of the changes made to it by others in the political and social science domains. Regrettable he neither did that nor does it appear that he had any clue of what Darwin even said. He merely used the words to spin the tale he wanted to tell. This is whole sale intellectual dishonesty.

Let me address Spencer and Hofstadter's view. Hofstadter states<sup>156</sup>:

*"Spencer emphasized in the interest of survival itself cooperation in industrial society must be voluntary not compulsory. State regulation of production and distribution as proposed by socialists is more akin to the organization of a militant society and would be fatal to the survival of the industrial community: it would penalize superior citizens and their offspring in favor of inferior, and a society adopting such practices would be outstripped by others."*

Hofstadter assumes that this statement is a prima facie evidence of his evil Social Darwinism. In reality is a very truthful statement. Voluntary cooperation is essential to survival in an industrial society. Look at the Soviet Union, the Government mandated quotas and the compulsory mandates destroyed the whole system. Mandated rules of cooperation always lay the groundwork for ways to work around the system. As for state regulation, that is not socialist it is Progressive. Socialism is state ownership and control and the elimination of private ownership in toto. Thus this criticism of Spencer is less that of Spencer but a window to the mind of Hofstadter.

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<sup>156</sup> See SD p. 43.

Hofstadter continues<sup>157</sup>:

*"While Social Darwinian individualism declined, Darwinian collectivism of the nationalist or racist variety was beginning to take hold. Darwinism was made to fit the model of international conflict-ideologists...As a conscious philosophy, Social Darwinism had largely disappeared in America by the end of the war. It is significant that since 1914 there has been far less Darwinian individualism in America than there was in the latter decades of the nineteenth century...Darwinian individualism has persisted as a part of political folklore even though its rhetoric is seldom heard in formal discussion....but with these allowances, it is safe to say that Darwinian individualism is no longer congenial to the mood of the nation..."*

If one looks to the early 21st century there are many "un-proclaimed" Darwinian individualists if not by proclamation then at least by action; Wall Street bankers, the "masters of the universe" who have managed to destroy an economy while at the same time massively profiting from it. They are individualists because the very nature of the reward system is such, to the individual, not even to the team.

#### **6.1.4 The Paranoid Style**

In the book by Hofstadter on the politics of his day, *The Paranoid Style in American Politics*, he attacks politics in the mid 1960s and especially the Goldwater campaign. The most telling part of the current version is the Foreword by the leftist author Sean Wilentz who writes<sup>158</sup>:

*"When right wing extremists blew up the federal building in Oklahoma City in 1995, President Clinton berated the paranoid politics of hate and declared "there is nothing patriotic about hating your country." But three years later right-wing Republicans .... furious at Clinton's ability to outfox them politically... used his misleading statements about illicit consensual sex as a pretext to mount an unconstitutional but successful impeachment..."*

Frankly Clinton lied, committed perjury, and these were not "misleading", and the impeachment was Constitutional. Wilentz is anything but even handed in this statement but it does present the fact that Hofstadter's approach to history survives, yet in a now more virulent form.

Hofstadter states about Goldwater's defeat<sup>159</sup>:

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<sup>157</sup> See SD p. 203.

<sup>158</sup> See PS p xxvii.

<sup>159</sup> See PD pp. 114-115.

*"... Goldwater remarked In a revealing statement "I don't fell the conservative cause has been hurt. Twenty five million votes are a lot of votes and a lot of people dedicated to the concept of conservatism." ... If one accepts the point of view of political doctrinaires and amateurs, whose primary aim in politics is to make certain notions more popular, this statement has its validity; for a generation no politician has been able to preach Goldwater's brand of ultra right wing individualism and ultra nationalism to so wide an audience form so exalted a platform ... liberals should be grateful to Goldwater. No other Republican could have made such a startling contribution to the first really significant and general extension of the New Deal since the 1930s. It was his campaign that broke the back of our postwar conservatism."*

Compare Wilentz in the Foreword to Hofstadter in the body. Hofstadter could not see the US as moving in a direction, he could never have seen Reagan and the 1980s. Yet he did not see Johnson and the financial collapse of the 1970s and the Vietnam War. Speak of ultra nationalism one needs look no further than Vietnam. Johnson did ten times over in Viet Nam what Goldwater could ever have done. Also the whole concept of individualism is distorted and misunderstood by Hofstadter. He is writing a classic journalism piece and not one of academic correctness. He is writing a polemic and as such fits the role of Public Intellectual.

### 6.1.5 Hofstadter Redux

It is interesting to examine how Hofstadter still has influence in today's political world. For example, George Will wrote a piece for Real Clear Politics in April 2008 regarding Obama, and in so doing brings the Hofstadter mindset into the current time<sup>160</sup>. He states:

*"The emblematic book of the new liberalism was "The Affluent Society" by Harvard economist John Kenneth Galbraith. He argued that the power of advertising to manipulate the bovine public is so powerful that the law of supply and demand has been vitiated. Manufacturers can manufacture in the American herd whatever demand the manufacturers want to supply. Because the manipulable masses are easily given a "false consciousness" (another category, like religion as the "opiate" of the suffering masses, that liberalism appropriated from Marxism), four things follow:*

*First, the consent of the governed, when their behavior is governed by their false consciousnesses, is unimportant. Second, the public requires the supervision of a progressive elite which, somehow emancipated from false consciousness, can engineer true consciousness. Third, because consciousness is a reflection of social conditions, true consciousness is engineered by progressive social reforms. Fourth, because people in the grip of false consciousness cannot be expected to demand or even consent to such reforms, those reforms usually must be imposed, for example, by judicial fiats.*

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<sup>160</sup> See Washington Post, April 2008 or [http://www.realclearpolitics.com/printpage/?url=http://www.realclearpolitics.com/articles/2008/04/obamas\\_condescension.html](http://www.realclearpolitics.com/printpage/?url=http://www.realclearpolitics.com/articles/2008/04/obamas_condescension.html)

*The iconic public intellectual of liberal condescension was Columbia University historian Richard Hofstadter, who died in 1970 but whose spirit still permeated that school when Obama matriculated there in 1981. Hofstadter pioneered the rhetorical tactic that Obama has revived with his diagnosis of working-class Democrats as victims -- the indispensable category in liberal theory. The tactic is to dismiss rather than refute those with whom you disagree.*

*Obama's dismissal is: Americans, especially working-class conservatives, are unable, because of their false consciousness, to deconstruct their social context and embrace the liberal program. Today that program is to elect Obama, thereby making his wife at long last proud of America. "*

But if Will has discovered a nexus, a nexus of substantial value, then one must say that Hofstadter and the prejudice and near hatred of rubes and Irish Catholics may still live on. Will sees the pervasive influence of Hofstadter. Indeed there is the view that only the Intellectual on Morningside Heights sees the truth and that the rubes and Catholics below need guidance for the response from this underclass is their almost animalistic and unguided responses.

His dismissal of those with whom you disagree is in many ways a result also of the influence of Herbert Marcuse in his work *The One Dimensional Man*. For it was Marcuse who gave structure to what Hofstadter and Bell and others were saying in that he argued that the society had through its advertising, preaching and the like reduced people to sheep, to followers. Marcuse became the prophet for the 60s generation of protesters, especially at Columbia. In fact, Marcuse was saying in a more elegant and compelling manner what Galbraith had popularized in *The Affluent Society*, namely that society was manipulated to "buy" what corporate institutions wanted them to buy, that individual choice was being ripped away, and that society had only one path and that was the path laid out by the capitalists.

This underclass needs direction and guidance, says Hofstadter, and whatever they may think, whatever opinion they may have is uninformed because they just have not listened, they do not understand, and in some cases they do not have the capability of even understanding. They have in the mind of many of these intellectuals become the "untouchables", they are there but they just should be forgotten. If one reads between the lines of the letter to me from Barr in 1960 that view is pervasive. I had been inculcated and Columbia was just beyond me. Somehow MIT thought differently. Also I was a Professor in 1996 at Columbia in the Business School. Frankly the students were some of the least intelligent I have ever seen in my forty plus years of teaching<sup>161</sup>.

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<sup>161</sup> I taught in the 1995-1996 year at Columbia Business School. I was uniquely unimpressed by the students. They were in an Executive Program and one would have expected some understanding. They were lacking in any mathematical skills, and had the minimum knowledge of common business principles. In contrast in the late 1980 and early 1990s I was a Professor at the Polytechnic University, now NYU's Engineering School in Brooklyn. The students were for the most part first or second generation Americans from everywhere. They were bright and hard working, eager to learn, street smart, open, and lacking in the arrogance of the Columbia students. My MIT doctoral students are

## 6.2 JOHN KENNETH GALBRAITH

The next of what I call the neo Progressives is John Kenneth Galbraith. A Canadian and later Harvard Professor in between Government stints, Galbraith brought to the fore a new structure to the classic Progressive features. Galbraith was a transitional figure who first came of age during the FDR administration holding various posts from time to time. He had that middle class, semi academic, mid western bent which also characterized so many of the initial Progressives and yet he was able to take it one step further, establishing the neo-Progressive paradigm, by amalgamating academia and Government positions, thus enabling a continual interplay with policy whether the party in power was in or out.

We explain Galbraith briefly here using Galbraith's three major works: American Capitalism, Affluent Society, New Industrial State. This trilogy established the Galbraith economic philosophy which seems to be what is dominating the current Administration in their goals and their actions.

Unlike pure Keynes philosophy which looks upon the economy as a system with knobs which one can manipulate the Galbraithian economist looks upon the economy from a power perspective. Namely that the Government has power for good and evil and that the Government has a duty to deploy that power for what it sees as good. The famous book by Bertrand Russell on Power is an interesting example of how power has been used through the ages. Galbraith's experience during his times in Washington showed him how power can be applied in a societal context.

### 6.2.1 American Capitalism

In American Capitalism Galbraith states (p 104-105):

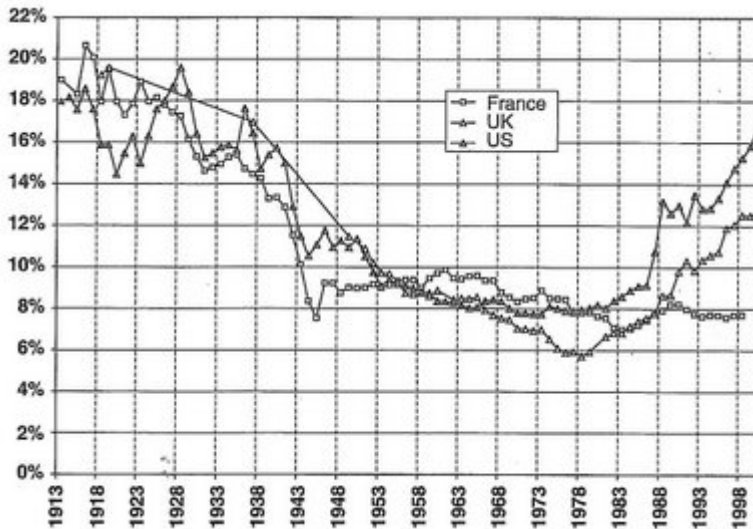
*"In one way or another nearly all of the great American fortunes are based on the present or past possession of monopoly power. ....Income inequality like monopoly distorts the use of resources. It diverts them from the wants of the many to the esoteric desire of the few...Unnecessary inequality in income, unnecessary in the sense that it does not regard differences in intelligence, application or willingness to take risks, may also impair economic stability."*

Thus to Galbraith, monopoly is evil and those with intelligence, hard work, and risk takers get rewarded but that excessive wealth distorts the true direction of the economy. The work by Piketty as shown below is an example of the current trend of socialist economists who worry that income distribution is skewed. In the Piketty plot we see the percent of wealth held by the top 1% of the population. We see the explosion now in the

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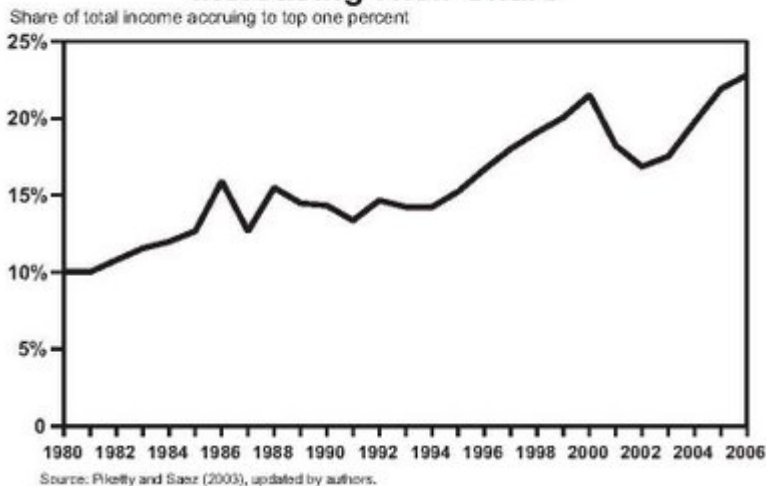
the same way, arrogance does not survive in a truly intellectually challenging environment, and there is always someone to show you the error of your ways. Unfortunately that seems never to have been the case for Columbia; it seems to engender arrogance and the feeling that you have obtained the truth.

US reaching levels not seen since the beginnings of the Depression. However these are not monopoly amounts.



The current Administration picks up on Piketty and in page 11 of the 2010 Budget puts the Piketty curve. The curve has been updated to 2006 and is for the US alone. It is quite interesting to see that Piketty showed the curved back before the Depression in 1930 whereas the Administration shows it only to 1980. As one says, Statistics can be quite confusing! It can also be the hand maid of deception.

Figure 9  
**Top One Percent of Earners Have Been Increasing Their Share**



Countervailing power was the second theme of this work. As Galbraith says (p 111):

*"In fact, new restraints on private power did appear to replace competition. They were nurtured by the same process of concentration which impaired or destroyed competition. But they appeared not on the same side of the market but on the opposite side, not with competitors but with customers or suppliers. It will be convenient to have a name for this counterpart of competition and I shall call it countervailing power."*

To some degree there is a Marxian like dialectic at play here between the thesis, antithesis, and synthesis, yet Galbraith does not share the inevitability of the Marxist and is more a Darwinian in his thought, albeit one where control or stabilization by the Government is a key player.

Galbraith continues (p. 136):

*"In fact, the support of countervailing power has become in modern times perhaps the major domestic peacetime function of the federal government.....These measures, all designed to give a group a market power it did not have before, comprised the most important legislative acts of the New Deal. They fueled the sharpest domestic controversies of the New and Fair Deals."*

Thus in his first work we see Galbraith positing two issues:

1. Income inequality leads to social unrest and income inequality is a result of the ineffectiveness of Government in permitting monopolistic entities to take advantage of the people.
2. Countervailing Power is a major element of Government's balancing the interests of the American people and the Government's use of this effects the establishment of new power groups whose new influence can modulate that of other groups. The Government has both the authority and the moral force to effect the establishment of these new entitlements and the support of these new countervailing groups.

The last point is again a bit Marxian in that there is the dialectic process at work again and in this case it does pit the proletariat against the capitalists. We see this in the current Administrations efforts in various venues. We see this in the President's own background as a Community Organizer. It is the Acorn empowerment and it is the Government's role as facilitator, not necessarily as the end agent itself.

### **6.2.2 Affluent Society**

The Affluent Society claims three major things concerning consumption (See [365HThe Global Development And Environment Institute at Tufts University](#)):

1. That the producers create consumer demand that the consumer is in many ways responding to the producers of the goods via advertising.



The consumer's mind has effectively been taken over by the producer. The producers, according to Galbraith, have the ability to produce what they can produce and get the consumers to buy whatever they produce.

2. That the relationship between consumption and some form of consumer utility function is near evaporating, that consumer buy when motivated by the producer and not as a result of some underlying exogenous need or utility.

This means that people are no longer the arbiters of their own fate, This was developed as a response to Madison Avenue advertising and the advertising age in the 1950s and 1960s. During that period people believe that by the appropriate form of advertising, media manipulation that people could be made to buy anything. The natural extension corollary to this is the use of the broad based media of toady by Government to make people believe whatever Government wants them to believe. This assumes that people have abandoned any inherent utility function. More importantly this assumes that people have abandoned values.

3. That the structural pressures to increase private consumption drives out the provision of public goods.

This means that to Galbraith the consumer was being directed by the producers to spend their money on goods from the commercial sector and as such the needs of the public sector were being neglected. This in Galbraith's eyes meant that the countervailing power of the government should intervene via taxation and reallocate the expenditures based upon trends as perceived by Government into public works which in the view off the government were more beneficial, and had a utility far in excess of the consumption which was occurring.

Galbraith has been quoted as to his environmental bent by telling the tale of a family who goes on a camping journey amidst roads in disrepair and streams filled with polluted waters.

### **6.2.3 New Industrial State**

The New Industrial State was his third in the trilogy. I remember reading it when it came out in the mid 60s. There also at the time was the debate between Solow and Galbraith. This is well elaborated upon in the book by Parker on Galbraith. Indeed the Parker book is exceptionally well done albeit politically biased towards Galbraith and strongly anti-Republican. Parker relates the thesis that is at the heart of this book (pp 439-448):

1. The giant corporation is the "characteristic organization" of modern capitalism.

In the mid 60s there was AT&T, GTE, ITT and massive companies in all sectors. The age of the true entrepreneur was not yet there. In fact it was the Government which expressly prevented this. For the Government made AT&T a monopoly and the Government actually sucked massive amounts of capital in taxes, 90% marginal rates, and massive

amounts of technical people into Defense and NASA efforts thus depleting the US economy for a generation. To some degree this is akin to the "green jobs" of the current Administration which will suck the people from "market driven" value creation to Government funded employment.

2. Shareholders, the nominal owners of the company, have little power over the company.

Again true then but shareholder suits did start up albeit they were eventually suppressed by the Government.

3. The members of what Galbraith calls the "technostructure", the techno bureaucrats in companies, own little in the company and seek low risk by not maximizing profits and fitting the classic economic model.

This is also now a changed paradigm. Again the entrepreneur changed this and then it was adopted en masse by the corporations where options now make management large owners in companies. Those massive compensation packages are truly light on salary but heavy on deferred option compensation. Yet profit maximization is deferred for long term market survivability. That is more a way of the market than of the change in corporations.

4. Corporations do not profit maximize but seek to sustain themselves and to survive.

This is clearly true of the large company, because if they maximized profit from quarter to quarter the way the market works volatility would be too excessive. However if we look at the recent financial crises there is clearly just the opposite. They went to extremes maximizing profit. The extremes took them to, and over, the brink.

5, Advertising and a national ideology of praise for growth in the consumption of consumables misdirects the collective energies away from the fact that the US is awash in affluence.

Galbraith is fixated with the affluence issue. Strange since in this period it was nowhere near what it had been during the pre-depression period or now.

6. The key resource of the US economy is not the large industrial capacity but the ability to mobilize organized intelligence in the business sector.

Galbraith saw the result of the deployment of intelligence during the war and after it in industrial areas. This included the application of statistics to marketing and the ability to target specific customers with specific messages. This was all new and he saw in it a major strategic advantage.

#### **6.2.4 Current Administration**

We look at the current Administration and in many key areas they exhibit Galbraithian approaches to Government. Specifically we look at the following:

1. Power: Galbraith was a believer in power, and power to influence, to control, to manage. The Galbraithian power if held in the hands of a benign and fatherly government. The current Administration is a massive collector of power. It does so through the explosive expansion of entitlement programs.
2. Countervailing Power: The Galbraithian believes that Government can use its power to create countervailing dialectics in the economy between established classic capitalist entities and collections or groups which the Government believes can and should be represented. Acorn is a prima facie example. The groups being sponsored by illegal immigrants is another. These groups are empowered by the Government and then the dialectic is created. Countervailing power is in the end Government power as well. The Government facilitation if not outright creation and support of countervailing powers are the ways Government can exercise control of the people with an arm's length approach. It is an invisible to most approach. One must deconstruct the new entities introduced often through legislation to see what their true purpose is.
3. The Prevalence of Large Corporations: This assumes that there does not exist any class of entrepreneurs as we know them today. That business organically thrives to the point of monopolies and then continues in a risk adverse manner to persevere. That they are not driven by classic capitalist drives but by mere survival sustained forever. This history of capitalism is just the opposite. It is purely Darwinian. Just look at AT&T. The Administration's treatment of GM is an example of this belief of the countervailing power with the large sustained corporation and fails to understand that it is unacceptable in a capitalist world. The weak must not survive, that includes an over bloated labor union.
4. Advertising, or in our current day parlance, the new media, can control public opinion: The current Administration is a true believer and practitioner in that. They believe that, like the Galbraithian Corporation which uses advertising to promote its view, the Government can do the same. Thus, the President on Leno.
5. Government is the ultimate and optimum arbiter of all societal issues: Government is a benign and all knowing benefactor and is required to arbitrate between all the players. Government is essential. Government worked well when it worked big. The Government is the wise Oz, the wizard who is all knowing and all powerful. The market, specifically the free market, is a ruthless jungle from which the Government protects the citizens. Unlike a socialist who wants the Government to own the resources, the Galbraithianist wants the Government to arbitrate between the consumer and the corporations. This is clearly what the current Administration proposes and is attempting to do.
6. Concentration of Wealth is bad: The accumulation of wealth in the hands of a few is unacceptable and it strikes at the heart of American culture. It is the role of the Government to transfer such excessive wealth to those in need, need as determined by the Government. The Administration seeks to take wealth from those at the top incomes and

to further flatten the distribution of wealth to all. In their mind the skewed distribution is almost immoral. There should be equality of wealth because wealth in a Galbraithian sense is inherently evil. Wealth however is defined on their terms.

7. The People can readily be motivated by media to act in accord with Government: People are artificially motivated to consume commercial products by corporations to the detriment of public services, goods, and the environment. The Administration's plan for cap and trade is an example of how the Administration seeks to flow money from the consumers, the people, to programs and projects that the Government believes are better. The Stimulus package is another step in the direction. Unlike the New Deal, the current Administration has taken massive moves in those areas.

### 6.3 AMITAI ETZIONI

Etzioni is a Professor at George Washington University and has been a strong proponent of the communitarian school. To a simplistic degree communitarian emphasize the group, the community and minimize and almost exclude the individual.

#### 6.3.1 Communitarian

Etzioni is a communitarian. He states that:

*“Communitarianism holds that a good society seeks a carefully crafted balance between individual rights and social responsibilities, between liberty and the common good...”<sup>162</sup>*

He further notes in the introduction of his book:

*“my first call is to demonstrate that immoderate champions of privacy have not merely engaged in rhetorical excesses but that these excesses had significant and detrimental effects.”*

Etzioni further goes on to state:

*“while we use voluntarily more ...ID cards...they are inadequate...all people be required to identify themselves when asked to do so by public authority..”*

He totally rejects the Fourth Amendment, he takes a neo-Nazi neo-Stalinist view that some benign public authority has the right to demand from the public, for no good reason, that they totally abandon all their constitutional rights.

Etzioni goes on to “re-examine” the privacy arguments. He criticized Warren and Brandeis, then criticized Griswold on the basis that although contraception may be good

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<sup>162</sup> Etzioni, p. 5.

the right recognized under Griswold may lead to “ the unbounded nature of the position embraced..”<sup>163</sup>

Etzioni goes on to suggest eliminating privacy as we now know it for such areas as national ID cards, implanting biometric identifiers in humans, expanding the Megan’s law disclosures, increasing government control over encryption, disclosing who has AIDs, and other such areas. Etzioni would see the release of all medical records record if he sees them for the public good.

In many ways Etzioni is not an aberration but a clear example of what certain major and influential groups want, namely government access and control over not only information but the individual. The ID cards are a single first step, but the biometric plants are horrifying.

### 6.3.2 Disdain for Individualists

Here is a typical Etzioni viewpoint<sup>164</sup>:

*"The U.S. Department of Justice should draft a contract for every American who opposes "big government" and wishes to cut it down and have their taxes slashed. The contract should stipulate that those who sign it will have to pay only a third of the regular tax rate (to cover the costs of our military and homeland security). However, in exchange they will not be entitled to any government services.*

*They will not be able to obtain passports, enter public parks, or use the highway system paid for by the federal government. They will all go on the no-fly list because they have not paid for the air control system. They will have to take their children out of public schools. Above all, if they grow ill, they will have to pay the doctors a fee that will help cover the costs of training these physicians which is now largely covered by the federal government. If they are hospitalized, they will have to pay their share of the building costs, also often largely covered by the federal government, including of the so called "private" hospitals.*

*The contract will of course have to be much longer. In effect, I suspect that it will extend to at least 20 single-spaced pages. However, you get the point. We shall never be able to gain a hearing from the millions who have been brainwashed by the libertarian nonsense and its laissez-faire conservative accompaniments until we find a dramatic way to drive home the point that although there is great room - in effect, urgent need - to reform our government, nobody really wants to live without most of the services it does provide. And if a bunch of libertarians want to sign the contract and move to some mountaintop and take care of each other, so be it. Just remind them not to call 911 in an emergency."*

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<sup>163</sup> Etzioni, p. 193.

<sup>164</sup> [http://www.politico.com/arena/bio/amitai\\_etzioni.html](http://www.politico.com/arena/bio/amitai_etzioni.html) on July 10, 2010-07-10

Etzioni represents that extreme view that Government should control everything since it know best and that people who even think of asking a question should be punished. His communitarian school of thought is one where this abstract community makes decisions in some communitarian manner.

### 6.3.3 Communitarian Philosophy

The Communitarian have a description of their beliefs. One of them is that they are communitarians and not believers in the majority. Specifically they state<sup>165</sup>:

*"Communitarians are not majoritarians. The success of the democratic experiment in ordered liberty (rather than unlimited license) depends, not on fiat or force, but on building shared values, habits and practices that assure respect for one another's rights and regular fulfillment of personal, civic, and collective responsibilities. Successful policies are accepted because they are recognized to be legitimate, rather than imposed. We say to those who would impose civic or moral virtues by suppressing dissent (in the name of religion, patriotism, or any other cause), or censoring books, that their cure is ineffective, harmful, and morally untenable. At the same time divergent moral positions need not lead to cacophony. Out of genuine dialogue clear voices can arise, and shared aspirations can be identified and advanced.*

*Communitarians favor strong democracy. That is, we seek to make government more representative, more participatory, and more responsive to all members of the community. We seek to find ways to accord citizens more information, and more say, more often. We seek to curb the role of private money, special interests, and corruption in government. Similarly, we ask how "private governments," whether corporations, labor unions, or voluntary associations, can become more responsive to their members and to the needs of the community.*

*Communitarians do not exalt the group as such, nor do they hold that any set of group values is ipso facto good merely because such values originate in a community. Indeed, some communities (say, neo-Nazis) may foster reprehensible values. Moreover, communities that glorify their own members by vilifying those who do not belong are at best imperfect. Communitarians recognize--indeed, insist--that communal values must be judged by external and overriding criteria, based on shared human experience.*

*A responsive community is one whose moral standards reflect the basic human needs of all its members. To the extent that these needs compete with one another, the community's standards reflect the relative priority accorded by members to some needs over others. Although individuals differ in their needs, human nature is not totally malleable. Although individuals are deeply influenced by their communities, they have a capacity for independent judgment. The persistence of humane and democratic culture, as well as*

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<sup>165</sup> <http://www.communitariannetwork.org/RCP%20text.html>

*individual dissent, in Eastern Europe and the Soviet Union demonstrate the limits of social indoctrination.*

*For a community to be truly responsive--not only to an elite group, a minority or even the majority, but to all its members and all their basic human needs--it will have to develop moral values which meet the following criteria: they must be nondiscriminatory and applied equally to all members; they must be generalizable, justified in terms that are accessible and understandable: e.g., instead of claims based upon individual or group desires, citizens would draw on a common definition of justice; and, they must incorporate the full range of legitimate needs and values rather than focusing on any one category, be it individualism, autonomy, interpersonal caring, or social justice."*

#### 6.4 JOHN RAWLS

Rawls is one of the foremost players in the area of neo-Progressives. Rawls is an interesting study in how one becomes a neo-progressive. He is in sharp contrast to Nozick, a colleague at Harvard. Where Nozick wrote what he mean and that was the end of it, Rawls wrote and evolved his theory of justice most of his professional career. Rawls had attended Princeton and upon graduating in January 1943 enlisted in the Army as a Private. He fought at Leyte, in the Philippines, and then at Luzon where he earned the Bronze Star, which was exceptional for an Army enlisted man<sup>166</sup>. Leyte and Luzon were bloody campaigns, which I have written about and have spoken to dozens of men involved in that campaign. Thus Rawls was subjected to one of the most difficult and long lasting battles of the War.

The Army was under MacArthur and had to dig the Japanese out of the Philippine strongholds. As I have experienced with many men in that operation it would be reasonable to assume that this had a profound impact on him from that point forward. Thus, unlike all of the other men of his age who managed to avoid the War, like Hofstadter, Galbraith, and others, Rawls was in the bloodiest of engagements. One would suspect based upon the interviews with others that this was seminal to his thinking going forward. In what specific way is difficult without having the details.

Thus the issue of justice, and the application of this principle in a broad and compelling manner as a life work may most likely have its roots here as well as his studies at Princeton, which combined established the basis of what was to come. Rawls and his principles of justice can be applied in a broad set of circumstances, from equitable distribution of income and health care to simple topics such as universal services for telephone customers. We shall deal with the simple case since it represents a real life example of Rawlsian justice in application.

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<sup>166</sup> It should be noted that in the book by Freeman the author a student of Rawls erroneously says that Leyte was in New Guinea. That would have been an error since the New Guinea invasion was well before Leyte. Also in my boob, USS Albert W Grant, which was my father's ship, he and his fellow crew were in the battle of Leyte at the same time as Rawls and I had interviews with over 30 crew men regarding that specific operation.

#### 6.4.1 A Simple Issue on Rawls

Fifteen years ago I wrote a paper on universal service in telephony. I compared the Rawlsian system with the Utilitarian school and the Benthamites. In the paper I was commenting on the Baumol-Willig theorem, a tautological proposition crafted by a few economists at the beckon call of AT&T to justify the incumbents control over the network. I stated:

*" The Baumol Willig theorem states that we want to maximize the welfare of the populace while keeping the profits of the monopolies high. This is a classical example of an ad hoc propiter hoc theorem. Clearly the result is that we tax the people and subsidize the monopoly.*

*The other issue is how do we measure welfare.*

*If we are a Rawlsian then we measure welfare as the welfare of the least of us and not the average welfare. Rawls states that if we maximize average welfare then we disadvantage the least of us and this is not just.*

*Thus as a Rawlsian we demand Universal Service. We must insist that all people have access to all service elements, whether it makes economic senses or not, we do so via wealth transfer. Hopefully, this political theory should now not seem too foreign. Rawlsians favor the implementation of access fees and the implementation of Universal Service. Indeed, the true Rawlsian would impute Universal Service to even computer terminals as has been stated by Vice President Gore.*

*In contrast is the classic liberal, now called libertarian view. It is more a combination of minimal government involvement and maximizing utility to the consumer. This is the philosophy of the utilitarian. Here we assume that government has a de minimis role and that the market follows of its own accord and that the market, in an Adam Smith fashion, will clear any inefficiencies of distribution and pricing mechanisms.*

*It assumes that each business should stand on its own stead and that utility is maximized on average. The result from the libertarian school, as opposed to the contractarians or Rawlsians, is the elimination of access fees and the elimination of universal Service."*

#### 6.4.2 Original Proposition

I then went and described the Rawlsian approach, one which I thought would never raise its head again. I stated:

*"Rawls has proposed a theory of justice that is a statement of what many proponents of antitrust theory ion the mid-fifties and sixties promulgated. The essence of Rawls' theory has three elements;*



*Original Proposition: There exists a means and method for a society to establish a Contract amongst and between themselves. This Contract thus created in this society of the just is one that maximizes the return on every transaction to the least of the individuals in the society. This approach to Contractarianism is one related to individuals in a non-bargaining environment establishing between and amongst themselves a "contract" to govern their society.*

*There are two elements contained herein.*

*The first is the essence of a contract, and in fact a form of social contract between the members of society and amongst them as a whole.*

*The second element is that of a view towards man as a constrained and unconstrained view of human nature.*

*The unconstrained view states that man, individually and in concert, has the capabilities of feeling other people's needs as more important than his own, and therefore we all act impartially, even when the individuals own interest are at stake.*

*The constrained view is to make the best of the possibilities which exist within the constraint.*

*For example, the constrained view of universal service is one which would state that if it costs a certain amount to provide the service, and there is a portion of the society not able to purchase the service, then there is no overriding need to provide it if such a provision is uneconomical and places a significant burden on the other member of society.*

*The unconstrained view, as a form of socialism, states that if there is the least of us in want for whatever the telecommunications revolution has in store, then they should have access to it at whatever cost. One can see that the current trend in Universal Service is such an unconstrained view, especially as viewed by the current Vice President in his actions over the past four years.*

*Rawls approach to this contract is one wherein the individuals in the society collect themselves as individuals, and agree to a plan for the operations of that society.*

*First Principle of Justice: each person shall have equal rights and access to the greatest set of equal fundamental personal liberties.*

*Second Principle of Justice: social and economic inequalities are to be arranged so that they both, (i) provide the greatest benefit to the least advantaged., and (ii) attached to positions available to each individual under conditions of fair equality of opportunity."*

Thus to my surprise I read in this week's JAMA an article entitled, The Ethical Foundation of American. In their view the Rawlsian approach is key to the way in which health care should be provided. They state:

*"Rawls' theory of justice, often referred to as social justice, has gained prominence since the 1970s as a dominant theory of justice. This theory has 2 major principles. The first, that "people should have maximal liberty compatible with the same degree of liberty for everyone," defines limits of individual liberty by focusing on the liberty of others. The second, that "deliberate inequalities [a]re unjust unless they work to the advantage of the least well off," focuses on social consequence and responsibility for actions.*

*Considering the body of research and news reports that describe inequalities in US health care access and quality, and the fact that these inequalities do not work to the advantage of the least fortunate, it is clear that the US health system does not meet these criteria for being just. It seems that the structure of incentives in the current health system stimulates behavior that marginalizes considerations of social justice, leaving it seldom emphasized, relative to the other 3 core principles of medical ethics."*

Unlike other theories of society, the Rawlsians argue that there exists a social contract with all so that all should receive what the least receive and no more. Thus if I have the financial resources to seek medical care for the prevention of colon cancer by annual colonoscopies and the law permits payment only for five year colonoscopies, the Rawlsian would either deny me my annual choice or make it annual for all, and then have all people pay the added costs. The Rawlsians establish "rights" extra those Constitutionally and legally established and then take the position that if the least of a society do not have them fully then none shall have them. It states that those who have been successful should not in any way use that wealth to disenfranchise those who do not.

The Rawlsian school also removes burdens from people. If you happen to be one of the 30% who are morbidly obese in the US and most likely suffering from Type 2 Diabetes, so be it, it is not your fault, despite the fact that you consume well in excess of 2000 cal per day, you must be dealt with as a faultless and blameless victim. Those who struggle to maintain health must therefore pay for the victims who out of total abject neglect do not.

The article in JAMA continues:

*"For example, **physicians attempt to maximize income while caring for the needs of their individual patients**, but this means that some physicians choose to accept fewer, if any, Medicare and Medicaid recipients, as well as self-pay patients. Some physicians argue that to keep their practice financially viable, they have to see fewer patients for whom they are inadequately reimbursed.*

*Yet for each of the physicians who decide they can no longer care for these patients, the responsibility of care falls to another clinician. This increases the burden on those other*

*clinicians and exacerbates the income disparities among them. In circular fashion, this increases the focus on revenue and reimbursement, rather than on social justice.*

*A second factor that may contribute to the imbalance of medical ethics in practice involves the **cost of education and level of student debt...***

*A third important factor is the US culture of “individualism.” While general western philosophy has shaped US culture, the unique history of the **United States has created a special emphasis on individualism, entrepreneurial capitalism, and personal responsibility.** Specifically regarding health care, many other western nations have some form of universal coverage supported by their government and treat health care as a public good. In the **United States, health care only intermittently has been treated as a public good** and an intense debate regarding the promotion of government health programs vs the philosophy of individual responsibility and allowing market forces to work is ongoing.”*

The authors recognize the unique character of the United States and then as classic Rawlsians they reject it in a backhanded manner. The US has not only created the special emphasis on individualism, entrepreneurial capitalism, and personal responsibility but has built its culture, society and success on those pillars. They are at the core of our society and they are what make us what we are, they are the success of the United States. The authors as true Rawlsians, are vehemently opposed to those core principles. That should be a terrifying thought.

### **6.4.3 A Rawlsian Application: Health Care**

Health care as described by many of the proposed plans from Congress is costly and the only way to pay for it is to ration, namely allocate limited resources. The allocation procedure must be based upon some set of accepted principles, not necessarily a moral set, but some logical set to some group of people. Enter the Harvard philosopher Rawls and his Theory of Justice. Rawls seems to invent what he call justice out of whole cloth to justify what he feels is the correct way to allocate resources, whatever they may be. They could be tags to the town swimming pool, or life saving surgery for an ill person.

The Rawlsian approach has then been applied by physicians at NIH particularly the current White House Chief of Staff's brother, also an advisor to the current President. An analysis of this paper is worthy of doing at this time to see what will most likely be incorporated into the interpretation of many of the proposed Congressional laws.

Rawls has proposed a theory of justice that is a statement of what many proponents of antitrust theory ion the mid-fifties and sixties promulgated. The essence of Rawls' theory is composed of three elements;

**Original Proposition:** There exists a means and method for a society to establish a Contract amongst and between themselves. This Contract thus created in this society of the just is one that maximizes the return on every transaction to the least of the

individuals in the society. This approach to Contractarianism is one related to individuals in a non-bargaining environment establishing between and amongst themselves a “contract” to govern their society.

There are two elements contained herein. The first is the essence of a contract, and in fact a form of social contract between the members of society and amongst them as a whole. The second element is that of a view towards man as a constrained and unconstrained view of human nature. The unconstrained view states that man, individually and in concert, has the capabilities of feeling other people’s needs as more important than his own, and therefore we all act impartially, even when the individuals own interest are at stake. The constrained view is to make the best of the possibilities which exist within the constraint.

For example, the constrained view of health care is one which would state that if it costs a certain amount to provide the service, and there is a portion of the society not able to purchase the service, then there is no overriding need to provide it if such a provision is uneconomical and places a significant burden on the other member of society. The unconstrained view, as a form of socialism, states that if there is the least of us in want for whatever the telecommunications revolution has in store, then they should have access to it at whatever cost. One can see that the current trend in Health care is such an unconstrained view.

Rawls approach to this contract is one wherein the individuals in the society collect themselves as individuals, and agree to a plan for the operations of that society.

**First Principle of Justice:** each person shall have equal rights and access to the greatest set of equal fundamental personal liberties.

**Second Principle of Justice:** social and economic inequalities are to be arranged so that they both, (i) provide the greatest benefit to the least advantaged., and (ii) attached to positions available to each individual under conditions of fair equality of opportunity.

Now let us see how this may be and is being applied to health care.

In the recent paper entitled *Principles for allocation of scarce medical interventions*, by Govind Persad, Alan Wertheimer, and Ezekiel J Emanuel (Rham Emanuel’s brother and health care advisor to the current President) the authors, all apparently Government employees develop a suggested plan to ration health care. They state:

*"Principles must be ordered lexically: less important principles should come into play only when more important ones are fulfilled. Rawls himself agreed that lexical priority was inappropriate when distributing specific resources in society, though appropriate for ordering the principles of basic social justice that shape the distribution of basic rights, opportunities, and income. As an alternative, balancing priority to the worst-off against maximizing benefits has won wide support in discussions of allocative local justice. As*

*Amartya Sen argues, justice “does not specify how much more is to be given to the deprived person, but merely that he should receive more”.*

This is a clear statement of not just giving health care but of rationing health care. They continue:

*"Accepting the complete lives system for health care as a whole would be premature. We must first reduce waste and increase spending. , The complete lives system explicitly rejects waste and corruption, such as multiple listing for transplantation. Although it may be applicable more generally, the complete lives system has been developed to justly allocate persistently scarce life-saving interventions. , Hearts for transplant and influenza vaccines, unlike money, cannot be replaced or diverted to non-health goals; denying a heart to one person makes it available to another. Ultimately, the complete lives system does not create “classes of Untermenschen whose lives and well being are deemed not worth spending money on”, but rather empowers us to decide fairly whom to save when genuine scarcity makes saving everyone impossible."*

The begin the paper by stating their basic premise of rationing in health care. Specifically they state:

*"In health care, as elsewhere, scarcity is the mother of allocation. Although the extent is debated, the scarcity of many specific interventions—including beds in intensive care units, organs, and vaccines during pandemic influenza—is widely acknowledged. For some interventions, demand exceeds supply. For others, an increased supply would necessitate redirection of important resources, and allocation decisions would still be necessary ..."*

Now although they suggest that this be applied in times of crisis for such things as vaccines, they have set the stage for expanding this to overall health care as is currently envisioned. Thus it is critical to bring Rawls and Emanuel into resonance. They seek a "justice" based argument rather than a moral based argument. They try to seek a solution based on humanistic elements rather than what one would call a moral or natural law argument. In fact we would argue that they reject any moral argument and any economic based argument and seek a politically correct extreme left wing argument as stated by Rawls.

Now they propose several systems which we summarize in their own words as follows:

*"...**Lottery Allocation:**... lottery has been used, sometimes with explicit judicial and legislative endorsement, in military conscription, immigration, education, and distribution of vaccines..."*

***First-come, first-served:** Within health care, many people endorse a first-come, first-served distribution of beds in intensive care units or organs for transplant. The American Thoracic Society defends this principle as “a natural lottery—an egalitarian approach for fair [intensive care unit] resource allocation.” Others believe it promotes fair*

*equality of opportunity, and allows physicians to avoid discontinuing interventions, such as respirators, even when other criteria support moving those interventions to new arrivals,,,*

***Favoring the worst-off*** : prioritarianism Franklin Roosevelt argued that “the test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little”. Philosophers call this preference for the worst-off prioritarianism...

***Sickest first***: Treating the sickest people first prioritizes those with the worst future prospects if left untreated. The so-called rule of rescue, which claims that “our moral response to the imminence of death demands that we rescue the doomed”, exemplifies this principle. Transplantable livers and hearts, as well as emergency-room care, are allocated to the sickest individuals first...

***Youngest first***: Although not always recognized as such, youngest-first allocation directs resources to those who have had less of something supremely valuable—life-years. Dialysis machines and scarce organs have been allocated to younger recipients first, and proposals for allocation in pandemic influenza prioritize infants and children...

***Save the most lives***: One maximizing strategy involves saving the most individual lives, and it has motivated policies on allocation of influenza vaccine and responses to bioterrorism. Since each life is valuable, this principle seems to need no special justification. It also avoids comparing individual lives...

***Prognosis or life-years***: Rather than saving the most lives, prognosis allocation aims to save the most life-years. This strategy has been used in disaster triage and penicillin allocation, and motivates the exclusion of people with poor prognoses from organ transplantation waiting lists. Maximizing life-years has intuitive appeal. Living more years is valuable, so saving more years also seems valuable...

***Instrumental value***: Instrumental value allocation prioritizes specific individuals to enable or encourage future usefulness. Guidelines that prioritize workers producing influenza vaccine exemplify instrumental value allocation to save the most lives. Responsibility-based allocation—eg, allocation to people who agree to improve their health and thus use fewer resources—also represents instrumental value allocation...

***Reciprocity***: Reciprocity allocation is backward-looking, rewarding past usefulness or sacrifice. As such, many describe this allocative principle as desert or rectificatory justice, rather than reciprocity...

***The complete lives system***: Because none of the currently used systems satisfy all ethical requirements for just allocation, we propose an alternative: the complete lives system. This system incorporates five principles...: (i) youngest-first, (ii) prognosis, (iii) save the most lives, (iv) lottery, and (v) instrumental value. As such, it prioritizes younger people who have not yet lived a complete life and will be unlikely to do so without aid. Many

*thinkers have accepted complete lives as the appropriate focus of distributive justice: "individual human lives, rather than individual experiences, [are] the units over which any distributive principle should operate...."*

Emanuel et al then state:

*"As the legal philosopher Ronald Dworkin argues, "It is terrible when an infant dies, but worse, most people think, when a three-year-old child dies and worse still when an adolescent does"; this argument is supported by empirical surveys. , Importantly, the prioritization of adolescents and young adults considers the social and personal investment that people are morally entitled to have received at a particular age, rather than accepting the results of an unjust status quo. Consequently, poor adolescents should be treated the same as wealthy ones, even though they may have received less investment owing to social injustice. "*

The complete lives system in my opinion reduces to a simple formula. Save anyone say between 15 and 55, and let the rest die. The very young have nothing immediate to contribute and the old have already contributed. The morality of the approach is not the least it considered, it appears to be pure Rawlsian with a flavor of keeping costs down.

Thus it seems that with the Emanuel et al system we would let say a Nobel Prize winner who is 66 die and treat a 23 year old crack addict with three counts of murder. The system allows those in teens thru early middle age be treated and then withdraw treatment from the others. This approach seems to take abortion a few more steps beyond the womb.

They then conclude:

*"The complete lives system discriminates against older people. Age-based allocation is ageism. Unlike allocation by sex or race, allocation by age is not invidious discrimination; every person lives through different life stages rather than being a single age. Even if 15 year olds receive priority over 65 year-olds, everyone who is years now was previously years. Treating 65 year olds differently because of stereotypes or falsehoods would be against treating them differently because they have already had more life-years is not."*

#### **6.4.4 A Summary of Rawls**

Amartya Sen is a welfare economists who is also at Harvard a was awarded the Nobel Economics Prize for his work in that area. Sen is a thinker of broad scope and he tends to look at the many sides of the argument and he often consider the "on the one hand and

then on the other" rather than ranting specifically about his special position. Yet he clearly has a pro neo-progressive bent<sup>167</sup>.

He says of Rawls' principles<sup>168</sup>:

*"It is not hard to see that there are some contributions of great importance in the Rawlsian approach to justice and fairness and in a way Rawls has presented and explicated its implications.*

*First, the idea that fairness is central to justice ...*

*Second, ... importance ... about the nature of the objectivity of practical reason ... sufficient ... for conclusions to be reached on the basis of reasons and evidence after discussion and due reflection ...*

*Third, ... "moral powers" ... that people have related to their "capacity for a sense of justice" and "for a conception of the good"...*

*Fourth, Rawls's prioritization of liberty ...*

*Fifth, by insisting on a need for procedural fairness ...*

*Sixth, ... after giving liberty its due and after recognizing the need to have openness ... the importance of equity in social arrangements ... the removal of poverty measured in terms of the deprivation of primary goods is given a big place in Rawls's theory...*

*Finally, focusing on "primary goods" ... Rawls gives indirect acknowledgement to the importance of human freedom in giving people real ... opportunity to do what they would like with their own lives."*

Sen, when we condense it as above, lays out the seven point which are the focus of Rawls and I many ways the neo-progressives. Others like Arrow, Solow, Dworkin, Nussbaum, have made similar arguments.

The problem however is that even if one agrees with all these principles is it possible to reach some consensus? Namely if one considers the Arrow Possibility Theorem then attempting to reach consensus on the above seven point may be impossible. Arrow has stated:

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<sup>167</sup> Sen, Justice, p 64 footnote where he says "... the evident suitability of Obama himself as a visionary leader, irrespective of his racial background." Sen clearly is a strong supporter of the Obama agenda and in particular the redistribution elements.

<sup>168</sup> Sen, Justice, pp 62-65.



*Possibility Theorem: If there are at least three alternatives among which the members of the society are free to order in any way, then every social function satisfying conditions 2 and 3 and yielding a social ordering satisfying Conditions 2 and 3 must be either imposed or dictatorial<sup>169</sup>. The Possibility Theorem shows that, if no prior assumptions are made about the nature of individual orderings, there is no method of voting which will remove the paradox of voting discussed in Part I, neither plurality voting nor any scheme of proportional representation, no matter how complicated. Similarly, the market mechanism does not create a rational social choice.*

*The interpretation of the Possibility Theorem is given by examination of the meaning Of Conditions 1-5. In particular, it is required that the social ordering be formed from individual orderings and that the social decision between two alternatives be independent of the desires of individuals involving any alternatives other than the given two (Conditions 1 and 3).*

*These conditions taken together serve to exclude interpersonal comparison of social utility either by some form of direct measurement or by comparison with other alternative social states.*

*Therefore, the Possibility Theorem can be restated as follows:*

***If we exclude the possibility of interpersonal comparisons of utility, then the only methods of passing from individual tastes to social preferences which will be satisfactory and which will be defined for a wide range of sets of individual orderings are either imposed or dictatorial.***

*The word "satisfactory" in the foregoing statement means that the social welfare function does not reflect individuals' desires negatively (Condition 2) and that the resultant social tastes be represented an ordering having the properties of rationality ascribed to individual orderings (Condition 1 and Axioms I and II)."*

The Arrow Theorem is quite simplistic but its conclusion may be unsettling at best. Namely if we all have different sets of values, opinions, then getting to a conclusion without each having a chance to voice their views can only be achieved by a dictator. This does not bode well for neo-Progressives.

In a broader context Sen has stated:

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<sup>169</sup> See Arrow, K., **A Difficulty in the Concept of Social Welfare**, *The Journal of Political Economy*, Vol. 58, No. 4. (Aug., 1950), pp. 328-346. He gives the conditions as follows:

**Condition 2:** If an alternative social state  $x$  rises or does not fall in the ordering of each individual without any other change in those orderings and if  $x$  was preferred to another alternative  $y$  before the change in individual orderings, then  $x$  is still preferred to  $y$ .

**Condition 3:** Let  $R_i$ ,  $R_j$ , and  $R_k$ ;  $R_l$ : be two sets of individual orderings. If, for both individuals  $i$  and for all  $x$  and  $y$  in a given set of alternatives  $S$ ,  $x R_i y$  if and only if  $x R_j y$  and only if  $x R_k y$ ; then the social choice made from  $S$  is the same whether the individual orderings are  $R_i$ ,  $R_j$ , or  $R_k$ ;  $R_l$ : (Independence of irrelevant alternatives.)

Sen stated<sup>170</sup>:

*Historically, capitalism did not emerge until new systems of law and economic practice protected property rights and made an economy based on ownership workable. Commercial exchange could not effectively take place until business morality made contractual behavior sustainable and inexpensive—not requiring constant suing of defaulting contractors, for example. Investment in productive businesses could not flourish until the higher rewards from corruption had been moderated. Profit-oriented capitalism has always drawn on support from other institutional values.*

Here Sen is looking at capitalism and in turn individualism during the current economic crisis.

*However, Keynes can be our savior only to a very partial extent, and there is a need to look beyond him in understanding the present crisis. One economist whose current relevance has been far less recognized is Keynes's rival Arthur Cecil Pigou, who, like Keynes, was also in Cambridge, indeed also in Kings College, in Keynes's time. **Pigou was much more concerned than Keynes with economic psychology and the ways it could influence business cycles and sharpen and harden an economic recession that could take us toward a depression (as indeed we are seeing now). Pigou attributed economic fluctuations partly to "psychological causes" consisting of variations in the tone of mind of persons whose action controls industry, emerging in errors of undue optimism or undue pessimism in their business forecasts.***<sup>[5]</sup>

The discussion of Pigou is quite interesting since in many ways he was one of the first of modern economists to deal with the psychology of the consumer.

*The contrast between Pigou and Keynes is relevant for another reason as well. While Keynes was very involved with the question of how to increase aggregate income, he was relatively less engaged in analyzing problems of unequal distribution of wealth and of social welfare. In contrast, Pigou not only wrote the classic study of welfare economics, but he also pioneered the measurement of economic inequality as a major indicator for economic assessment and policy.<sup>[7]</sup> Since the suffering of the most deprived people in each economy—and in the world—demands the most urgent attention, the role of supportive cooperation between business and government cannot stop only with mutually coordinated expansion of an economy. There is a critical need for paying special attention to the underdogs of society in planning a response to the current crisis, and in going beyond measures to produce general economic expansion. Families threatened with unemployment, with lack of medical care, and with social as well as economic deprivation have been hit particularly hard. The limitations of Keynesian economics to address their problems demand much greater recognition.*

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<sup>170</sup> <http://www.nybooks.com/articles/archives/2009/mar/26/capitalism-beyond-the-crisis/>

*A third way in which Keynes needs to be supplemented concerns his relative neglect of social services—indeed even Otto von Bismarck had more to say on this subject than Keynes. That the market economy can be particularly bad in delivering public goods (such as education and health care) has been discussed by some of the leading economists of our time, including Paul Samuelson and Kenneth Arrow. (Pigou too contributed to this subject with his emphasis on the "external effects" of market transactions, where the gains and losses are not confined only to the direct buyers or sellers.) This is, of course, a long-term issue, but it is worth noting in addition that the bite of a downturn can be much fiercer when health care in particular is not guaranteed for all.*

*For example, in the absence of a national health service, every lost job can produce a larger exclusion from essential health care, because of loss of income or loss of employment-related private health insurance. The US has a 7.6 percent rate of unemployment now, which is beginning to cause huge deprivation. It is worth asking how the European countries, including France, Italy, and Spain, that lived with much higher levels of unemployment for decades, managed to avoid a total collapse of their quality of life. The answer is partly the way the European welfare state operates, with much stronger unemployment insurance than in America and, even more importantly, with basic medical services provided to all by the state.*

## 6.5 CAS SUNSTEIN

Cas Sunstein is an attorney by profession and has been on the faculties of University of Chicago and Harvard. He is a self styled libertarian paternalism, which he contends means that people should have the freedom to choose yet Government should subtly influence the choice for the "better". It clearly is the quintessential oxymoron.

Libertarians are extreme individualists, individualists who take themselves and their freedom as a sine qua non. Having the Government act in a paternalistic manner to steer your choices is a direct conflict with the freedom sought. But we shall return to that later.

### 6.5.1 The Constitution

Sunstein is in many ways a Wilsonian progressive. The prime example of this is his work on the Constitution, specifically the trade press book, *A Constitution of Many Minds*. As Wilson had thought the Constitution as it was a hundred years ago had already outworn its use, so too does Sunstein in this work.

He begins with the defining of what he calls Burkean minimalists. He states<sup>171</sup>:

"Burkean minimalists believe that constitutional principles must be built incrementally and by analogy and with close reference to long standing practices. Like all minimalists

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<sup>171</sup> Sunstein, *Constitution*, p. 36.

Burkeans insist on small steps rather than earthquakes....they also emphasize the need for judges to pay careful heed to established traditions and to avoid independent moral and political arguments of any kind..."

He compares that to Rationalists and Traditionalists. To him a Rationalist seeks answers to "what is the reason for the tradition..." and Traditionalists are antithetical to so loose an approach.

Then he states:

"Burkean minimalists usually defend themselves by reference to a many minds argument..."

This is his jumping off point for taking the idea to extremes. Many minds means just that, minds in the US as well as elsewhere. The many minds doctrine is where he drags in to the Constitution the laws of any and all other lands, whether they apply or not. He does this by introducing the Condorcet Jury Theorem. Simply put the Jury Theorem states<sup>172</sup>:

"If there are N people making a judgment on a subject, and each of the people judge independently and each person is a rational entity possessing equal knowledge of the facts, then if the judgment is a binary choice between A and B, and the facts as perceived by any rational entity would favor A over B, then if a secret ballot is taken amongst the N jurors and a simple majority vote of the N is required to decide between A and B, then the probability of the jury choosing A goes to 1 as N goes to infinity."

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<sup>172</sup> Sunstein really is plowing over well worn ground. It was Arrow who in both his doctoral thesis and his early work at Rand developed his theory of social choices, it was Sen in his various earlier works and it was even Nozick who dismisses Sen's argument in Anarchy that others have focused on this point. It is also in Baumol where he goes through several detailed analyses showing the intransitive behavior of such choices (see Baumol 404-407). This Sunstein has gone back to a well worn argument which has been subsequently discredited in part and built his entire thesis about it. Let me demonstrate with an example from Baumol.

Assume three people with four choices, and each person ranks their choices from 1 to 4 as below:

	A	B	C	D
Jones	4	3	2	1
Smith	4	3	2	1
Brown	2	1	4	3
	10	7	8	5

Clearly choice A wins. And  $A > C > B > D$  is the ranking by the vote of each. Now let us assume we drop B, it is irrelevant since at best it was 3rd we obtain:

	A	C	D
Jones	3	2	1
Smith	3	2	1
Brown	1	3	2
	7	7	4

Now A and C are tied and there is no clear decision. The transitive nature does not exist. This is another example of the quirks of voting and decision making.

Frankly there are a lot of ifs in this Theorem. Let me state it simply with an example. We will assume the following:

1. There are N jurors.
2. Each Juror makes an independent decision.
3. Each Juror has identical information and is intellectually, morally, socially equal. There is no bias based on the facts presented.
4. The evidence is such that each and every Juror will have a probability of p of selecting outcome A and a probability q (1-p) of selecting outcome B.
5. There are an odd number of jurors.
6. The Jurors vote in blind ballots and the selection is based upon the majority vote. Namely if we have 1 Juror, that Juror decides, if we have 3 Jurors, 2 decide and so forth.

Now consider the case of 1 and 3 Jurors.

*One Juror:*

$$P[A]=p$$

$$P[B]=1-p$$

*Three Jurors:*

$$P[A]=p^3 + 6p^2$$

$$P[B] = (1 - p)^3$$

Clearly as N gets bigger the probability of B goes to zero and A goes to 1.

However, recent work has shown that there are substantial conflicts and inconsistencies. Dietrich has shown<sup>173</sup>:

*"that: (i) whether a premise is justified depends on the notion of probability considered; (ii) no such notion renders both premises simultaneously justified."*

Dietrich continues:

*Let me start by sketching a tempting but sloppy argument that seems to support the CJT.s two premises, and hence its striking conclusion. Consider for instance a group of judges*

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<sup>173</sup> See Dietrich, The premises of Condorcet's jury theorem are not simultaneously justified, Maastricht University & LSE. Web: [www.personeel.unimaas.nl/f.dietrich](http://www.personeel.unimaas.nl/f.dietrich), March 2008. Also see Yukio Koriyama and Balázs Szentes, A Resurrection of the Condorcet Jury Theorem, Department of Economics, University of Chicago, Sept 2007.

facing an "acquit or convict" choice (in a criminal law case); "convict" is correct if and only if the defendant has committed the crime.

First, the CJT's competence assumption requires (roughly) that each voter's probability of making a correct judgment exceeds  $1/2$ . While on a particular criminal-law case a judge may easily be mistaken .say, if there is highly misleading evidence ., surely such cases are rather the exception than the rule, and so within the large class of related court cases a voter's rate (frequency) of correct judgments exceeds  $1/2$ .

Hence the competence assumption holds. Second, the CJT's independence assumption requires (roughly) that it be probabilistically independent whether judge 1 is right, judge 2 is right, etc.

While it is true that the problem's circumstances .such as evidence observed by all judges, or the process of group deliberation .can make it likely that the judges cast the same vote (hence are all right or all wrong), probabilistic independence is secured if by "probability" we mean "probability conditional on the problem" : indeed, conditional on the exact body of evidence, process of group deliberation and so on, nothing can anymore create a probabilistic dependence between the voters (who do not look on each others' ballot sheets). What has gone wrong in the argument?

To justify the competence assumption, I have appealed to a variable decision problem: one that is picked at random from a class of relevant problems. But to justify the independence assumption, I have .xed (i.e. conditionalised on) the decision problem: its particular body of evidence, process of group deliberation, and so on. One cannot have it both ways."

In effect, there are a great many issues which one must assume that are at times in conflict and the convergence may very well not occur.

Koriyama and Szentzes state:

*The classical Condorcet Jury Theorem (CJT) states that large committees can aggregate decentralized information more efficiently than small ones. Its origin can be traced to the dawn of the French Revolution when Marie Jean Antoine Nicolas Caritat le Marquis de Condorcet [1785, translation 1994] investigated decision-making processes in societies. Recently, a growing literature on committee design pointed out that if the information acquisition is costly, the CJT fails to hold. The reason is that if the size of a committee is large, a committee member realizes that the probability that she can influence the final decision is too small compared to the cost of information acquisition. As a result, she might prefer to save this cost and free-ride on the information of others. Therefore, larger committees might generate lower social welfare than smaller ones.*

*These results suggest that in the presence of costly information acquisition, optimally choosing the size of a committee is an important and delicate issue.*

*On the one hand, we also identify a welfare loss associated to oversized committees.*

*On the other hand, we show that this loss is surprisingly small in certain environments.*

*Therefore, the careful design of a committee might not be as important an issue as it was originally thought to be, as long as the committee size is large enough. In fact, if either the information structure is ambiguous, or the committee has to make decisions in various informational environments, it might be optimal to design the committee to be as large as possible.*

*The reason committee design receives a considerable attention by economists is that in many situations, groups rather than individuals make decisions. Information about the desirability of the possible decisions is often decentralized: individual group members must separately acquire costly information about the alternatives. A classical example is a trial jury where a jury has to decide whether a defendant is guilty or innocent. Each juror may individually obtain some information about the defendant at some effort cost (paying attention to the trial, investigating evidences, etc.).*

We spend a great deal of time going back and understanding this Jury Theorem because it become the heart of Sunstein's view on how to deal with the Constitution. Namely he relies heavily on this principle having dozens of pages referring to it. He argues that by having an open Court with majority opinions using the same facts will result in the best result. In fact this then becomes his basis for introducing non US law since that just adds to the opinion base and he argues that the result will improve the judgments. However when one looks at the facts, the opposite is true.

As Sunstein states about the Constitution<sup>174</sup>:

*"...Madison did not believe that the Constitution ought to be set in stone. He accepted the Constitution's procedures for constitutional amendment...Jefferson had an altogether different view. Indeed he believed that Madison's approach badly disserved the aspirations for which the American Revolution had been fought. Jefferson insisted "the dead have no rights"..."*

This quote from Jefferson has become the cornerstone for all those like Sunstein who see a flexible Constitution, a document which means whatever a small group at the time seem to think it means. For Sunstein takes glee in stating<sup>175</sup>:

*"...Jefferson had his revenge - not through formal amendments, but through social practices and interpretations that render the Constitution very different from the founder's Constitution..."*

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<sup>174</sup> Sunstein, Constitution, pp 1-2.

<sup>175</sup> Sunstein, Constitution, p. 3.

Sunstein then spends endless pages telling why this Burkean approach relying on the Jury Theorem established the Jeffersonian dream of a flexible Constitution reflecting the changes in society. We have seen the same in Wilson a century earlier. They both accept the existence of the Constitution and then find reasons for abrogating the words and reinterpreting it in a manner consistent with whatever views may be current. All without any formal amendment to the Constitution itself.

Sunstein examines the Jury Theorem metaphor in many areas, and he seems to go back and forth on its validity and the influence of many minds on the decision process. Towards the end he raises the issue of foreign law. Specifically he states<sup>176</sup>:

*"There is an initial question, involving the Who Votes? problem. Supports the court seeks to determine whether some law X has some desirable effect Y. The court observes that most other nations have enacted X, but it also discovers that in the aggregate more legislators oppose X than support it - in the states with X a bare majority of the legislators are in favor, while in states without X nearly all legislators voted against the law. Should the court count the states with the law... Who votes?...the question is easy to answer...the court should focus on the people who have the best information and who are therefore most likely to be right..."*

Sunstein then expands this argument to international law. Simple, his words are often much too long and overbearing at times, suppose the US is considering to pass a law X, and that there are N countries with X already. They have the same underlying issue requiring X. Should the court take the fact that the N countries have X into account when adjudging the law? Sunstein seems to say it should. That is the more informed information the better, even if the US law is moot on the point at hand. This becomes the backdoor approach for using foreign laws in US jurisprudence.

This method of logic is used throughout the Sunstein work. He contends in a Wilsonian manner that the Constitution should reflect the conditions at hand and that those sitting in judgment must take into account all factors no matter whence they came. In a sense this approach is the antithesis of classic English law, the law of precedents, where the judge relies on prior cases under English law.

### **6.5.2 Libertarian Paternalism**

In the book Nudge, Sunstein and his co-author Thaler introduce what they see as an alternative approach to get people to do the right thing. They call it libertarian paternalism.

They state<sup>177</sup>:

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<sup>176</sup> Sunstein, Constitution, pp 192-193.

<sup>177</sup> Thaler and Sunstein, Nudge, p 5-6.



*"The libertarian aspect of our strategies lies in the straightforward insistence...people should be free to do what they like...when we use the term libertarian to modify paternalism we simply mean liberty preserving...libertarian paternalism is a relatively weak...type of paternalism because choices are not blocked...a nudge ... is any aspect of the choice ... that alters people's behavior in a predictable way without forbidding any options..."*

Simply put the Government, the central Government in most cases, will determine what is good and bad, and then it will establish speed bumps along the way to induce you to do the right thing. For example is cookies and sodas are deemed bad for you, then they will require that cookies and soda be placed behind all items on the lunch counter so that you get induce to getting the apple or orange because it is closer. At least that is how it works. However all one has to do is look at the drug problem and we try to make getting drugs more difficult than say candy and what happens, we spawn a drug business.

The approach they are trying to promulgate is one which has the elements of Governmental paternalism, the central Government decides and controls. The alternative is a Coasian approach. If you smoke, you pay a fee on your cigarettes which should go to reimburse the putative costs. If you are obese and have Type 2 Diabetes you pay a fee for carbohydrates or the pounds you are overweight. Cause and effect are connected.

In a review of the book by Cassidy he writes<sup>178</sup>:

*"Once you concentrate on the reality that people often make poor choices, and that their actions can harm others as well as themselves, the obvious thing to do is restrict their set of choices and prohibit destructive behavior. Thaler and Sunstein, showing off their roots in the Chicago School, rule out this option a priori: "We libertarian paternalists do not favor bans," they stare blankly. During a discussion of environmental regulations, they criticize the Clean Air Acts that banned some sources of air pollution and helped to make the air more breathable in many cities. "The air is much cleaner than it was in 1970," they concede, "Philosophically, however, such limitations look uncomfortably similar to Soviet-style five-year plans, in which bureaucrats in Washington announce that millions of people have to change their conduct in the next five years."*

*If you start out with the preconceptions about free choice of John Stuart Mill or Friedrich Hayek, it is difficult to get very far in the direction of endorsing active government. (This is precisely the problem that the New Liberals of the late nineteenth century, men like L.T. Hobhouse and T.H. Green, faced.) Once again, consider the subprime crisis. At this stage, it is hard to find anybody willing to defend some of the mortgage industry's practices, such as offering gullible borrowers artificially low teaser rates that shot up after a couple of years. Hard, but not impossible. "Variable rate mortgages, even with teaser rates, are not inherently bad," Thaler and Sunstein write. "For those who are*

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<sup>178</sup> <http://www.nybooks.com/articles/archives/2008/jun/12/economics-which-way-for-obama/?page=3>

*planning to sell their house or refinance within a few years, these mortgages can be highly attractive.” ”*

But the issues is that there are still two extremes being presented. At the one extreme, individualism, you can be informed of the consequences and the costs of those consequences can be factored into your decision set. The other extreme, the Sunstein approach, you are steered by a Governmental agent to "make" the right choice. Making the wrong choice has a cost. You should be aware of that costs and you should incur that cost should you make the choice. Part of the Sunstein approach is trying to prevent the individual from ever confronting a "bad choice" and in turn trying to prevent that individual from incurring a cost. Thus bank bailouts is the Sunstein on steroids, not individuals but major institutions. Bad choices have costs. The question is what are the externalities of those costs. If the externalities are high who should pay? If for example, this were China, such a massive bad choice would result in the death penalty. Clearly that is not an American choice, but something in between would work.

In a review by Leonard it states:

*Thaler and Sunstein begin with “**dogmatic anti-paternalists**” in their sights. Economists, traditionally heavily represented among those opposed to paternalism, hold three mistaken beliefs about paternalism. They are: **one, the belief that paternalism must be coercive, two, the belief that paternalism is avoidable, and, most important, three, the belief that people make choices that are better, by their own lights, than the choices that would be made for them by paternalists.** Each of these traditional beliefs is a misconception or false, say the authors.*

*Thaler and Sunstein regard three as simply false. In many situations, they say, paternalistic experts really do know better, and the proof is that those who have benefited from paternalistic expertise seem to concur. Traditional paternalism is coercive, so it is a stretch to label this belief a misconception, but never mind: Thaler and Sunstein want to rebrand the term, arguing that their “libertarian paternalism” is not an oxymoron. Nudgers, unlike bad old paternalists, help people without compulsion. A nudge steers the paternalized person, but always leaves open the option for the paternalized person to choose another course...*

*So, Nudge defends three main claims: one, the architecture of choice greatly influences how people make choices; two, choice architecture is unavoidable (so why not design in ways that improve well being), and three, libertarian paternalism is not an oxymoron: paternalists can nudge while preserving freedom of choice...*

*The irony is that behavioral economics, having attacked Homo Economicus as an empirically false description of human choice, now proposes, in the name of paternalism, to enshrine the very same fellow as the image of what people should want to be. Or, more precisely, what paternalists want people to be. For the consequence of dividing the self has been to undermine the very idea of true preferences. If true preferences don't exist,*

*the libertarian paternalist cannot help people get what they truly want. He can only make like an old fashioned paternalist, and give people what they should want.*

Thus the issue of people making bad choices, often because the costs of those choices are not present. They are deferred costs. Smoking is the example. There may be a deferred cost of an early death. That is a cost to the cigarette smoker, and that smoker takes the chance. There may be the externality of secondary smoking or inducing others to join in, costs which go beyond the demise of the smoker. Taxing cigarettes to reflect those costs have merit. The same would be the case for obesity and Type 2 Diabetes. The costs can much more likely be determined as substantial and thus can and should be reflected in the consumption decisions of the individual. The Sunstein approach is to paternalistically make the choice more difficult. The individualistic approach is to make the cost explicit.

### **6.5.3 Rights vs Freedom**

Sunstein wrote the book, *The Second Bill of Rights, FDR's Unfinished Revolution and Why we Need it More Than Ever*, recounting the FDR Second Bill of Rights, reflecting a speech FDR gave in January 1944. FDR presented this Second Bill of Rights as follows:

*The right to a useful and remunerative job in the industries or shops or farms or mines of the nation;*

*The right to earn enough to provide adequate food and clothing and recreation;*

*The right of every farmer to raise and sell his products at a return which will give him and his family a decent living;*

*The right of every businessman, large and small, to trade in an atmosphere of freedom from unfair competition and domination by monopolies at home or abroad;*

*The right of every family to a decent home;*

*The right to adequate medical care and the opportunity to achieve and enjoy good health;*

*The right to adequate protection from the economic fears of old age, sickness, accident, and unemployment;*

*The right to a good education.*

These are clearly rights to get something, not what we see in the existing Bill of Rights, which are protection from the Government and securing the individual. These rights are rights in line with Distributive Justice, they redistribute from those who have to those who do not. They are as we have previously described all positive rights. They are rights that cost others.

Unlike the Bill of Rights in the Constitution, which guarantee free speech, press, religion, right to own a gun, rights against self incrimination and the like, each of these rights are related to some economic standard that require the transfer of wealth from one group of people to another. In essence it is a Rawlsian like redistribution.

But Sunstein's books dwells upon what are rights, and what defines a right. Legally rights are we have under the law. The Bill of Rights details a few, all of the US laws lay out many more, including anti discrimination rights, labor rights, civil rights, and many more. They are codified, adjudicated, reinterpreted, and applied. A right has been memorialized into law. But as Sunstein states, the US public has often no idea what a right means or is under the law. Also many Americans have no idea who we fought during the Revolution. So much to many Americans.

But Sunstein makes his argument as follows:<sup>179</sup>

*"Americans are perfectly able to distinguish between rights and privileges. In 1991 a sample of the nation's citizens was asked whether certain goods were a" a privilege that a person should earn" or "a right to which he is entitled to as a citizen" By strong majorities the respondents answered that a college education, a telephone and annual salary increase are privileges...the following were rights; adequate housing, a reasonable amount of leisure time, adequate provision for retirement years, an adequate standard of living, and adequate medical care..."*

Clearly there seems to be a logical disconnect. He prefaces the statement by saying that everyone knows the difference between rights and privileges and then goes on to demonstrate the negative. For what purpose, one would assume to make his point while making a generalization that is a basic logical inconsistency.

Sunstein uses FDR's words to justify the role of the central government as follows<sup>180</sup>:

*"Roosevelt began by offering a brief account of the origins of government...the "victory of a central government was a haven of refuge for the individual" because that government ensured a "master far away" rather than "the exploitation and cruelty of the smaller master near at hand"...Roosevelt linked the existence of a powerful government with security, seeing public force as an ally of individual safety rather than its enemy..."*

Thus for Sunstein, a clear supporter of the FDR position, he echoes the position of FDR which is the central Government in Washington is better than a group of locals in your own community, you can trust Washington, you cannot trust your neighbor! The logic is amazing. Sunstein then recounts the Hamilton versus Jefferson battle, and in some

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<sup>179</sup> Sunstein, Bill of Rights, p 63.

<sup>180</sup> Sunstein, Constitution, p 68.

strange way it is FDR who comes down with Hamilton, the strong Federalist, yet they have become supporters of Jefferson the interpreter of a flexible and ever changing Constitution. It appears as if consistency is not one of their fine points.

Sunstein then states<sup>181</sup>:

*"I have emphasized that the New Deal was highly experimental and pragmatic, not organized by a clear theory of any kind."*

Indeed the New Deal was pragmatic to the extent of irrational flailing. They tried anything but they had a plan. Henry Wallace the Secretary of Agriculture, who prior to coming to Washington did nothing but run the family started farm magazine, near bankruptcy, was the extreme progressive that FDR put to take over production across many segments of the country. In fact it was Wallace who became VP during the War until it became obvious that his ways were so extreme that he was bounced for Truman. Thus there was a theory, the well worked out theory of the progressives, having Washington in control, having people look to Washington for everything, tell the people that what they are getting is their right, and then take from the means of production what was needed to pay out and redistribute the wealth. This is the world that Sunstein wants to reinvigorate, to bring to fruition. It is a world that will be the final death call for any form of individualism. In this world one cannot be an individual, one must be part of the whole.

Sunstein goes on to show in Chapter 9 how the Supreme Court during the Warren years actually empowered many of the rights that FDR sought to include in the Constitution. The selections which Sunstein recounts are the embodiment into Supreme Court decisions of many of the elements of these rights. Those from civil rights, housing, education, and the like. The Court managed via the penumbra of the Constitution in a Wilsonian manner to include many progressive "rights" into law by interpretation of existing law. In a sense that is the way the legal process function. However it is acceptable for Sunstein if it works that when he gets what he believes is due but he objects when it works the other way on the right to bear arms.

Thus for Sunstein the new rights presented by FDR should and must be included, despite whatever cost must be paid, and the way that it is accomplished is via an activist court and judges who interpret the Constitution in such a Wilsonian manner to achieve that change. In many ways this suggested approach of Sunstein is the antithesis of the Burkean approach we first started with.

## 6.6 AMY GUTMANN

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<sup>181</sup> Sunstein, Constitution, p 77.

There are other dimensions or neo-progressivism that are worthy of analysis also. Deliberative Democracy is one back door approach to neo-progressivism in that it proposes group ways to influence and ultimately control the individual. Amy Gutmann is a major proponent of that philosophy and she and Dennis Thompson on the topic of Deliberative Democracy. I will use their latest book, *Why Deliberative Democracy*, as the source for my current comments. Gutmann is currently President of the University of Pennsylvania and has written extensively on this topic as well as having commented extensively on Rawls and other academic neo-progressives<sup>182</sup>.

In a discussion on Rawls, Gutmann presents an interesting and somewhat compelling discussion on Rawls and a comparison to Habermas. The issue at hand is a comparison between political freedom and personal liberty and the issue of what Habermas called co-originality. This of course is at the heart of the discussion. Personal liberties is the core of individualism whereas political freedom is a more expansive term. My interpretation of Gutmann's view of what personal liberties entail is that they are not what we would assume are essential to individualism. They appear more ethereal and less fundamental.

### 6.6.1 Deliberative Democracy

Let us begin with a discussion of deliberative democracy. Gutmann and Thompson state<sup>183</sup> :

*"...we can define deliberative democracy as a form of government in which free and equal citizens (and their representatives) justify decisions in a process in which they give one another reasons that are mutually acceptable and generally accessible with the aim of reaching conclusions that are binding in the present on all citizens but open to challenge in the future."*

One must stress that in many ways the approach they take is very much akin to Rawls. In the Introduction to the Rawls book in which Gutman analyzes Rawlsian issue Freeman sets the stage for the Rawlsian view of the neo-progressive as follows<sup>184</sup>:

*"This raises the question of the relationship between the difference principle and the equal basic liberties. Rawls believes the two principles of justice cannot be appreciated or justified in isolation from one another. To be a liberal conception it is not enough to recognize basic liberties and assign them priority. A liberal conception of justice also recognizes a social minimum, a basic social entitlement to enabling resources, particularly income and wealth. For without a social minimum the basic liberties are merely formal protections and are worth little to people who are impoverished and*

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<sup>182</sup> See Gutmann's work on Rawls in Freeman, Rawls, pp 168-199. See the discussion on pp 172-176.

<sup>183</sup> Gutmann and Thompson, Democracy, p 7.

<sup>184</sup> Freeman, Rawls, p. 6.

*without the means to take advantage of those liberties. So Rawls contends any liberal view provides some kind of social minimum to guarantee the worth of basic liberties."*

Namely Freeman reiterates the entitlement position. We will look at the deliberative democracy approach as an alternative yet complimentary approach to Rawlsian justice.

Gutmann and Thompson in their book apply their definition of deliberative democracy to three examples of which I will discuss. They are:

1. **Iraq War:** In essence their argument was that the process failed to meet the requirements of a deliberative democracy by delimiting the discussion and having certain issue inadequately revealed and discussed. They contend that the debate should have lasted longer. In my view there were other issues as well. One was that the "Bush Doctrine" of a pre-emptive war was not fully understood by the populace, albeit the US had done this before, yet not to this scale. Second there was a strange tension in the US between the lingering strain of 9/11 and the massive separation politically of anti-Bush and everyone else in the electorate. I here argue that the political separation was "anti-Bush" and everyone else, because I believe that those not anti-Bush were not necessarily pro-Bush, just anti-anti-Bush. One then wonders in such an environment how the above definition could ever function in the first place.

2. **California Governor Recall Referendum:** They then critique the 2003 California Referendum on the Governor and basically state that the Referendum process is inherently flawed. They state without any basis in fact that "Because neither the procedure nor its results could be said to be democratic in the simplest procedural sense...judicial intervention to correct some of the defects may be called for..." (p 60) This is amazing because the Referendum process is in and of itself a full Democratic and Progressive process, rant with chaos and confusion, yet a process where one person and one vote counts. It may make California look like Italy but alas it may truly be such. Gutmann and Thompson disdain the true chaos of democracy if one takes their words at face value.

However one of the more concerning comments in this section regarding California is the Gutmann comment on Educational systems for she seems to believe that the function of educational institutions is to train people to think correctly. This is a Dewey concept and has always been a keystone in all progressive programs. The progressives see the state education and training of students as the sine qua non way to ensure the right thinking electorate in later years. Furthermore, to train them to think cohesively in a manner compliant with her definition of deliberative democracy. She states:

*"To prepare their students for citizenship in a deliberative democracy, schools should aim to develop the capacities of the students to understand different perspectives, communicate their understandings to other people and engage in the give and take of moral argument with a view toward making mutually justifiable decisions."<sup>185</sup>*

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<sup>185</sup> Gutmann and Thompson, Democracy, p 61.

This is highly laudable but she seems to mean that in the context of certain strictures and world views.

**3. Cervical Cancer Testing:** The authors then discuss a case as to whether an HMO should be made to pay for a patients perform tests on patients for cervical cancer which go beyond the standard Pap test. Here they apply the principles of deliberative democracy to having a free and open discussion, including the HMO, to decide this issue. One may look at this in another manner, namely if the test gives one more comfort, then one may just pay for the test themselves and not demand that the HMO do so. Or better one may choose another plan which may already pay for it. This argument for deliberative democracy is trumped by a simple economic rule: if something has perceived value to me then I can and should pay for it. It is not one where I am owed something and if I just haggle long enough I will get it. Thus this third example is specious at best.

It is interesting to see how the process of deliberative democracy did not apply to the recent Health Care debate. At least with Iraq there were confrontational hearings and an across the board vote with a large majority in favor. In Health Care it was near impossible to get the copy of the bill, it was discussed behind closed doors in an exclusionary manner, it was a much less democratic that any other such process and it will have a down the middle party vote. One could not think of a less deliberative democratic process. Yet those opposing it are almost always called traitors by the other side and the attempt is to marginalize them. One may then ask, where are the Gutmanns and Thompsons on this issue, for here is a truly critical issue calling for deliberative democracy.

As Young says in her critique of Gutmann and Thompson<sup>186</sup>:

*"It seems to me that advocates of deliberative democracy who believe that deliberative processes are the best way to conduct policies even under the conditions of structural inequality that characterized democracies today have no satisfactory response to this criticism. Many advocates of deliberative procedures seem to find no problem with structures and institutional constraints that limit policy alternatives in actual democracies, advocating reflective political reasoning within them to counter irrational tendencies to reduce issues to sound bites and decisions to aggregate preferences. In their detailed discussion of the terms of welfare reform in *Democracy and Disagreement*, for example, Amy Gutmann and Dennis Thompson appear to accept as given that policy action to respond to the needs of poor people must come in the form of poor support rather than changes in tax policy, the relation of private and public investment, public works employment, and other more structural ways of undermining deprivation and income inequality. James Fishkin's innovative citizens' forum deliberating national issues in connection with the 1996 political campaign, to take*

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<sup>186</sup> Activist Challenges to Deliberative Democracy Author(s): Iris Marion Young Source: Political Theory, Vol. 29, No. 5 (Oct., 2001), pp. 670-690 Published by: Sage Publications, Inc.



*another example, seemed to presume as given all the fiscal, power, and institutional constraints on policy alternatives that the U.S. Congress and mainstream press assumed. To the extent that such constraints assume existing patterns of class inequality, residential segregation, and gender division of labor as given, the activist's claim is plausible that there is little difference among the alternatives debated, and he suggests that the responsible citizen should not consent to these assumptions but instead agitate for deeper criticism and change"*

The above provides a reasonable nexus then between deliberative democracy as a back door to social justice and in turn an key corner stone of neo-progressivism.

### 6.6.2 Distributive Justice and Education

We now examine Gutmann's philosophy in the context of contemporary education. The Wall Street had an article on the failure of Science and Math education in the US. As one involved at the latter end of the process I see that I have had not a single US born student in my last five years<sup>187</sup>. They have been mostly Asian. I also once spent a year teaching at Columbia University School of Business and I found that most of the students had at best a 10th grade understanding of math and were generally ignorant of science, other than what the NY Times told them.

Thus I was not surprised when I read the Rawlsian head of U Penn state:

*"AMY GUTMANN: The Sputnik era didn't come because a lot of idealists said we had to be better. It came because there were idealists as there are today who said we're in trouble as a country, we have to compete against the Russians. We have to compete today against the Chinese and Indians who are graduating tens of thousands more very talented science, math and engineering graduates from their colleges. They're not doing better than we are at the college and university level, but they're doing massively better than we are in the numbers. They have hugely greater populations."*

She uses the term "idealists" to describe the decision makers. As one who participated in the process at the time there was abject terror about the Russians and the delivery of weapons from space. A good factual history is the recent book by Sheehan, **A Fiery Peace in a Cold War**, which recounts those times fairly accurately. I content that they may not be competing well against American at U Penn, in Arts and the like, but they are beating the heck out of Americans in graduate studies at MIT and Stanford!

Here is a Rawlsian educator who in my opinion is defective in basic facts. It is NOT the populations, of China and India it is their competitive spirit. They are more individualistic competitors than most American students.

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[http://online.wsj.com/article/SB10001424052748704754804574491180197671224.html?mod=WSJ\\_hpp\\_MIDDLENe xttoWhatsNewsForth](http://online.wsj.com/article/SB10001424052748704754804574491180197671224.html?mod=WSJ_hpp_MIDDLENe xttoWhatsNewsForth)

They have not spent time reading Rawls and Marx, in the Chinese case despite their underlying Government, they are striving for success, they are competing. They do not play games where everyone wins, there are many who do not make it and they have to "deal with it". Frankly it is the Rawlsian ethic of having the least do as well as the most, the idea of communal ownership of even one's intellect, that gives rise to what we see in the US today.

In contrast to the every Rawlsian Gutmann is Joel Klein who states:

**"JOEL KLEIN:** *The most important thing is to bring to K-12 education college graduates who excel in math and science. Those countries that are doing best are recruiting their K-12 teachers from the top third of their college graduates. America is recruiting our teachers generally from the bottom third, and when you go into our high-needs communities, we're clearly underserving them."*

Yes, teachers are from the bottom third. To teach Math and Science one needs the best educated. Thus if one has a PhD say from MIT in Math or Science, and if one has taught for say 30 years, one is hardly qualified to teach Geometry in a public school. Why, no certificate, no training in overhead projectors, no experience in the training of the psychology of dealing with inequality amongst class members, not training in developing a Rawlsian ethic, and not a member of the teacher's union.

Now back to Gutmann. She states:

**"MS. GUTMANN:** *The single biggest lever for economic innovation in our society is education, and it's not a direct lever of the President. So what he can do is only really fund excellence initiatives, and they have to be distributed to the states. And I think the key here is making K-12 education more competitive on the ground. Let me give you an example. When the stimulus went through, \$10.4 billion was put in for [National Institutes of Health] funding. That money in biomedical research is going to generate the innovations of tomorrow. There has to be at the K-12 level an understanding of how the federal government can incentivize competition."*

The single biggest lever for innovation is NOT education, that is necessary but not sufficient, it is an entrepreneurial environment, the willingness to take risks, to seek regards, to better the competition, to outright win. That is antithetical to a Rawlsian like Gutmann! Thus Klein is correct in his assessment whereas Gutmann is well off base. Yet it is the same ad hoc propiter hoc arguments of Gutmann that are used to justify the current Administrations efforts. In reality it is competition and reward that motivates and stimulates not the idealists of Gutmann. I can remember many of the idealists in the 50s and early 60s, and for the most part, I believe without exception, the developments came from the entrepreneurs, not the idealists!

## 7 VISIONS AND VIEWS

We now want to return to the question of why some become neo-progressives and some neo-individualists. To do this we do two things. First we look at a somewhat philosophical structure which concentrates on people and their world views as expressed in the architectures of the entities which they design. Then we go back and look at socialism a century ago and then look at the Obama administration. We then try to tie the philosophical structure and

### 7.1 ARCHITECTURES, WORLD VIEWS AND INTERPRETING GOVERNING STRUCTURES

We now will look at a general construct for political systems and how the various approaches we have been discussing may fit within them. We do so by introducing several concepts, principally that of architecture and world view.

Let us start with a simple example and then we will extend it to the political domain. Here is how it may work. Let us consider a builder of academic buildings, such as would be done on the MIT campus. The powers that be on the campus decide they want a new building to house some group of researchers, say electrical engineering and computer science, a group which has been separate and apart since the beginnings of computer science. But we now want them together.

They go off to an architect who will design the building and then have it built. The building will then create an atmosphere for getting these two groups to work with one another. So off the group goes and seeks out an architect. For each and every architect there exists some example of how things may be, how buildings should be, as say Frank Lloyd Wright would design them, and we use this example, this paradigm, as the foundation for say that school. Let us call this the Wrightian school for want of a better term. There may be a large group of such architects and they all share the same view, say openness and large windows and whatever. Thus we say they have the same world view of how to design. There may be other architects with other world views with other paradigms. We may have the Classicists who like large marble columns and grand openings. We may have the avant guard types with sweeping windows. But the first two points are that there are examples or paradigms which in turn inspire world views for groups.

Now the architect must have a roof, walls, windows, and other *elements* which define a building. The engineers define these things, it may need a foundation and the like. The elements are the general parts of a building, they are needed to make it work, they have been approved in some code. The architect using his world view may move them around, give each a different emphasis, a broader or lesser focus, but each must be there. Now the architect may have a variety of effectors, technologies, materials that he can use for each

of the elements. The windows may be glass, or they may be of some new materials but they function as a window and fit the overall architecture. The roof may be shingles, stucco, metal, stone, or any other type of effector available. The architect goes out and makes the choice.

After all of these are put together we have the final result and people then have to live and/or work in it.

Now we can take the same tale and apply it to politics. The paradigm is the example that gives definition to what the belief set of the proponent may then use to establish their world view. The Progressive may look at Trusts, oppressed workers, tenements, and further they may bring their religion to play as well, one or more paradigms which when combined create the world view that Government is the one and only way to remedy these ills.

Then the elements to build their political edifice is as with our prior example given to them. There are defined elements and in this case they are defined by the Constitution, they are the Executive, Legislative and Judicial. The Progressive must work in that framework. Even as we have shown this is a constraint for Wilson. Now what of the effectors, the choice of roof. They are the people who fill the roles in each branch. The President can choose the Executive along world view lines and also make changes to the Judicial as well. The Legislative has some lagging regarding the others. It was the check and balance process.

We then ask as the new architect remodels the building, namely the new president remodels the Government, how will it change? Or the corollary, if we see a Government changing what is the world view of the President and what paradigms has he used to form that view.

Looking at Government in this Kuhnian manner gives us a new way to understand what motivates the people who have been selected to rule us. Asking the question of what motivates them is critical and it is only one step to ascertain their world view. We must seek and understand the paradigms with which they had formed that world view. In many cases they may not even know the paradigms, they may but have absorbed the world view, for Presidents are often not the smartest of people. But let us explore a bit further.

If George W Bush was influenced by the neo cons was 9-11 a paradigm which dominated him and created his world view. If Obama was close to Alinsky and Reverend Wright and his theological sermons, were these the paradigms or was the abandonment by his parents one as well. Thus the paradigms in a Kuhnian sense are those new events, telling events, which impress upon the psyche of some person or persons a new world view. We examine this a bit further.

### **7.1.1 The Paradigm and Its World View**

The architecture is the framework within which we govern, and it is molded and framed

by the world view. The architecture may be the written, spoken, or even unspoken set of rules as to what the government is doing. In a sense the basic architecture that we started with was the Constitution, and as time has gone by, as Sunstein, and many of the others we have dealt with as the Progressives and neo-progressives, they see it as a malleable plan which can and should be changed to meet the changing world view.

The world view is the core framework of the mindset that those who govern bring with them to the table and what they use along with the other tools available to craft and restructure the architecture. Thus Reagan was somewhat of a neoliberal in a Lockean sense, with a bit of the laissez faire attitude towards markets and Government regulation. Obama is a strong neo-progressive, seeing the world in just the opposite direction, and thus interpreting the Constitution in a manner requiring strong Governmental intervention. Like TR and even to some degree Wilson, Obama seems to view the capitalist elements in an "us versus them" world, as cause of everything from the financial collapse, global warming, loss of jobs and the list would go on. TR had similar views on Trusts and their power a century ago.

What we see often is not the "world view" of the governing class, we see only their interpretation of the architecture via the acts they execute. The world view we will argue is critical to understand and all too often the world view is seen through the architecture implemented. Thus there is a deconstructing of a world view through the structures and actions taken.

The concept of an architecture has been a cornerstone in the development of new system, whether it be a technological system, political system, business system or social system. For example the US Constitution is in essence the architecture for the United States and its operations. However, the structural elements which make up these architectures have often not played a role in the development of policies. We will develop the concept of an architecture as a means to understand the network as both a market and regulatory entity, and will provide a new set of perspectives for viewing the network in terms of a new paradigms and world views.

The architecture is composed of the elements and the elements are reflected in the effectors which perform the functions of the elements. In a building the element may be a beam and the effector may be a steel reinforced concrete beam. In a political system the legislator may be an element and the effectors are the senators and representatives, the actual people performing the function.

An architecture, thus, first, requires that the underlying system be treated in terms of a set of commonly understood **elements** and that these elements have a clearly demarcated set of functions and interfaces that allow for the combining of the basic set of elements. The way the elements then can be combined, reflected against the ultimate types of services provided, determine the architecture. Thus for a government we may think of the elements as the executive, legislative and judicial, but that is but one of many alternatives.

An architecture, secondly, is also determined by **effectors** available, these may be the people, technology, the financial elements, the legal elements, or in the broadest sense what is available to make the elements function. People or technology for example places bounds on what is achievable, however those bounds are typically well beyond the limits that are self-imposed by the designer or architect in their view of the user in their world. This concept of architecture and the use of design elements is critical in understanding the paradigms used in the structure of information systems<sup>188</sup>.

World view is the most powerful driver in the development of an architecture. We argue in this paper that it is essential to develop a philosophical perspective and understanding of how to view what the architecture implements<sup>189</sup>.

We argue with Winograd and Flores, and in turn with Heidegger, that we must be thrown into the embodiment itself, to understand the needs of the users, and to understand the structure of the paradigms that are used to construct the world view.

To better understand the importance of an architecture we develop the concept of the historicity of architectures and world views based upon the classic work of Kuhn and then that of McLuhan.

Kuhn begins his thesis of how scientific revolutions occur by the introduction of the concept of paradigms. He defines these as<sup>190</sup> ;

*"...the term paradigm is used in two different senses. On the one hand, it stands for the entire constellation of beliefs, values, techniques, and so on shared by the members of a given community. On the other, it denotes one sort of element in that constellation, the concrete puzzle-solutions which, employed as models or examples, can replace explicit rules as a basis for the remaining puzzles of normal science, The first sense of the term, call it sociological, ...,"*

The concept of a paradigm is in essence the specific example, experiment, demonstration, that all those who follow a specific theory are explicitly or implicitly relying upon or basing their world view upon. The world is flat, man was created out of whole cloth, the universe is 4,000 years old, or that the speed of light is limited, or that DNA controls all life. The paradigm is that specific event, experiment, defining moment, from and upon which the believes will refer back to and build their world view upon. Thus we return to TR and his Progressive view of the Trusts. Yes there were trusts, a few, and yes they controlled some important portions of the US industry but there were a few facts that TR had not paid attention to.

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<sup>188</sup> See Winograd and Flores, pp 34-50, especially their discussion of Heidegger and Thrownness in terms of design

<sup>189</sup> See Kuhn, pp 72-85

<sup>190</sup> see Kuhn p. 175

Namely, the Trusts had control of very small portions of US production, farmers dominated in 1910, and he would not have understood the Creative Destruction of Schumpeter who saw the engine of the economy the entrepreneur who found alternatives to the Trust's and their specific monopoly niches. In fact it was the Government controlling the Trusts, such as AT&T and the Kingsbury Decision of 1913, that memorialized the Trust like structure and it was economists who for almost a century perpetuated the idea that monopolies in telecommunications were unavoidable. It was Government which in the Progressives world view would control the Trusts in the interest of the people allowed them perpetual existence until there was no other choice and plain black phones disappeared, with the FCC kicking and screaming!

But it was the example of the Trusts, the paradigm in Kuhnian sense, that placed that in the world view of TR and the Progressives. Wilson had a different world view, his example was the English Parliament and for that he wanted a consolidation of Executive and Legislative branches, and if that were no possible he interpreted Presidential powers as extensive and pre-empting Congressional intervention.

Kuhn, then goes on to demonstrate that the world view, that is how we view ourselves and our environment is based upon the our acceptance of these paradigms, as either collections of techniques and technologies or as collections of embodiments of these techniques and technologies in "examples". We then end to accept this as the way things are and should be. Then Kuhn argues, as the technologies change, changes in the paradigms do not occur in a continuous fashion but almost in quantum leaps.

The new paradigms build and congeal until they burst forth with new world views. It is this model that we agree applies to the evolution of the neo-Progressives and neo-Individualists.

It is this philosophical view, Hegelian in form, that is essential in understanding the underlying and formative changes in paradigms that will change our world view. It is not Hegelian in that there is no teleological end point of necessity for which it is progressing. There will be this continual Thesis, Anti-thesis and Synthesis and it starts again. Beneath each is a paradigm or set of paradigms which have elicited the corresponding world views of the players.

As a second perspective of the impact of technology as a dominant driver, we can refer to McLuhan and his development of the concept of media. Drucker has referred to the presentation of McLuhan's doctoral thesis and McLuhan is quoted as follows<sup>191</sup> :

*"Movable type, rather than Petrarch, Copernicus, or Columbus was the creator of the modern world view.."*

*"Did I hear you right," asked one of the professors as McLuhan had finished reading,*

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<sup>191</sup> See Drucker, p. 250

*"that you think printing influenced the course s the universities taught and the role of the university, altogether?"*

*"No, sir, " said McLuhan, "it did not influence; printing determined both, indeed, printing determined henceforth what was going to be considered knowledge."*

This concept later evolved into the medium being the message. In our context it is the fact that both Kuhn and McLuhan recognized, albeit in differing fields and in differing ways, that fundamental changes in technology and technique, call it paradigm or the medium, will change the world view, also the message. In fact the world view and its implementation in a governing architecture will also *determine what henceforth is to be considered the law!* That is applying McLuhan to this process, if we take the change in architecture to a change in the medium, then the message, the "law", is then morphed to what the underpinnings of the controlling group has of their world view.

Thus, architecture is the combination of three parts;

(i) the common elements, namely the entities which will comprise the structure we desire to build. This may be the electorate directly, each and every person, a selected in-group, property holders only, the exclusion of a selected out-group, such as women or slaves,

(ii) the underlying effectors; these are the governing tools available to the group governing;

(iii) the world view; the way the world works for those governing based upon a set of explicit or implicit paradigms, or examples, of what the world is like.

We have a conceptualization of architecture as the amalgam of these three elements. We shall develop this construct more fully as we proceed.

The concept of a world view is an overlying concept that goes to the heart of the arguments made in this paper. To better understand what it implies, we further examine several common views and analyze the implications of each. If we view our world as hierarchical, then the political structure may very well reflect that view. If we view our world as a conflict between good and bad, a Zorosateristic world, then we may establish bulwarks against the evil, namely a strong central government against the Trusts. The world view is what we bring to the table and around which we negotiate and try to establish terms for Governing. The very observations that we make about our environment and the needs of the users of that government which we put in place will be reflected against that view.

As an external observer, we at best can deconstruct the view and using the abilities of the hermenutic observer, determine the intent of the builder of the networks<sup>192</sup>.

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<sup>192</sup> See Gadamer's interpretation as discussed by Winograd and Flores, pp 27-30. Also see the historical context of the hermenutic approach in the sciences as discussed by Greene in Depew and Weber, pp 9-10



Thus, architecture can be defined as *the conceptual embodiment of a world view, using the commonly understood set of nonstructural elements, based upon the available set of technologies*. For example, Gothic architecture was a reflection of the ultimate salvation in God in the afterlife, in a building having a roof, walls, floors, and windows, and made of stone and glass. Romantic architecture was, in contrast, a celebration of man, using the same elements, but some employing a few more building materials.

The impact of the differences in world view are self evident in the embodiments of the architecture<sup>193</sup>.

### 7.1.2 Architectural Alternatives

Is there a natural taxonomy for the set of network architecture alternatives? Do these present limitations on what can be done or are they extensive? Is there a natural limitation in the existing architectures that prevent the new technologies from introducing the new paradigms to the communications world?

We address these issues in the context of several existing network hierarchies. We present them below:

1. Hierarchical: The current network architectures are structured in a hierarchical fashion. As we have already indicated, there are substantial historical reason for this political architecture. Indeed the classic structure of Rome and even through the Middle Ages has been a strong central Government, and in a strong sense this is Hobbesian. Specifically, we see the set of control and governance schemes connecting from a lower level to higher ones and back down. A political path may or may not go horizontally. It may go vertically, all controlled by a single control at the highest level. Hierarchical means a single point of political control.
2. Centralized: A centralized political architecture is similar to a hierarchical political system in that the control function is centralized focus but not a central person. The pure hierarchical structure is no longer present, but there is a single point of control and management but decision is shared. This is the form of government we have in the U.S. It is centralized but not hierarchical, at least most of the time. There are checks and balances.
3. Distributed: The distributed architecture has distributed control, distributed interconnection and flat transport alternatives. The network is much less dense and the switch is actually co-located with the interface. The local town meetings are typical of this. In a sense this is communitarian anarchy. Small communities

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<sup>193</sup> See the discussions on the impact of world view on architecture in Wolfe. In addition see the cultural or world view impact on the Gothic architectures in Jantzen and in Toy.

agree to what must be done in their community and the Federal Government is hands off. In a sense this is libertarian or as Miller calls them market anarchists<sup>194</sup>. Each to their own and each entity or individual is free to choose, decide and then a mechanism to clear any transactions and that mechanism is the market and not the government.

4. Segmented: A segmented political architecture is really a hybrid. Each segment uses a sub political architecture, a community, that meets the requirements of the existing system but then networks are interconnected through standard political, economic, or social interfaces. In a political sense this is a confederation, an architecture where states or communities have the ultimate power. Miller calls these communitarian anarchists<sup>195</sup>.

## 7.2 SOCIALISM: THEN AND NOW.

There has been significant talk that the current administration is socialistic. It is worth looking at this issue as compared to the neo-progressive approach which we have been arguing.

As regards to the socialist platform I can approach this in a rather personal manner having been brought up with the conversations at the kitchen table. In 1920 my grandmother, Hattie Kruger, ran on the Socialist Party ticket for Treasurer for the State of New York. In 1917 she was arrested by President Wilson for protesting the War and also for protesting the Women's failure to have the vote. In 1916 she was the Socialist Party candidate for US Senate from New York.<sup>196</sup>

Following on a previous discussion, we can now ask what were the paradigms that drove the Socialists world view and what is different from then and now, if anything. To do this we will examine the Socialist Party platform during this period<sup>197</sup>.

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<sup>194</sup> Miller, Political, p. 25.

<sup>195</sup> Miller, Political, p. 25.

<sup>196</sup> See: [http://memory.loc.gov/cgi-bin/query/S?ammem/mnwp:@FIELD\(SUBJ+@od1\(+kruger,+hattie+\)\)](http://memory.loc.gov/cgi-bin/query/S?ammem/mnwp:@FIELD(SUBJ+@od1(+kruger,+hattie+))) some of the picket line of Nov. 10, 1917. Left to right: Mrs. Catherine Martinette, Eagle Grove, Iowa. Mrs. William Kent, Kentfield, California. Miss Mary Bartlett Dixon, Easton, Md. Mrs. C.T. Robertson, Salt Lake City, Utah. Miss Cora Week, New York City. Miss Amy Juengling, Buffalo, N.Y. Miss Hattie Kruger, Buffalo, N.Y. Miss Belle Sheinberg, N.Y.C. Miss Julia Emory, Baltimore, Md. 1917 Nov. 10 Summary: Photograph of nine suffrage pickets standing single file along a tall lattice fence, with suffrage banners. Left to R: Catherine Martinette, Elizabeth Kent, Mary Bartlett Dixon, C. T. Robertson, Cora Week, Amy Jungling, Hattie Kruger, Belle Sheinberg, Julia Emory. Title transcribed from item. Cropped version of the photograph published in *The Suffragist*, 5, no. 95 (Nov. 17, 1917):

<sup>197</sup> Also see Kagan, E, *TO THE FINAL CONFLICT: SOCIALISM IN NEW YORK CITY, 1900-1933*, Thesis BA Princeton, April 1981. Kagan approaches this period in a manner which is dramatically different from what I had been exposed to. There were indeed many conflicts in the Socialists ranks, there were German Jews versus Eastern European Jews, intellectuals versus raw union types, and each group fought each other. The key factor for each however was state ownership of the dominant industries, railroads, telephone, water, and the like. It was a reaction to Trusts as was the entire Progressive movement.

### 7.2.1 The 1920 New York Platform

We will use the 1930 Socialist Party Platform as a stepping off point for a discussion for several reasons. First it was at the most mature point of the Party, second it was still while Debs was imprisoned, third it is readily accessible on line and fourth my grandmother was part of the process.

The Socialist Party of New York met in 1920 to select a slate for the State offices<sup>198</sup>. It was at this meeting that Hattie Kruger was nominated as Party candidate for New York State Treasurer.

The platform of the Part at that time included the following<sup>199</sup>:

*"1. Laws which empower municipalities to acquire land, construct dwellings, and rent them at rates adequate for upkeep and replacement but with no profit to eliminate the current housing shortage.*

*2. Establish a comprehensive system by which the State in conjunction with the municipalities can co-operative societies shall deal on a large scale in food and other necessities of life, buying directly from the producers and selling directly to the consumers at cost, thus eliminating the capitalist middlemen, stimulating production and diminishing the cost of living.*

*3. The rapid extension of State and municipal ownership and operation of transportation and storage plants of lighting and other so called public utilities and of industrial establishments beginning with those which are already most largely monopolized and those which have to do with the production of the prime necessities of life.*

*4. The conservation by the States of the forests, mineral deposits and sources of water power which it still owns, the reclamation of such as have been voted away and the exploitation of these resources by the State, not for profit, but for the production of raw materials and power to be sold at cost.*

*5. Legislation which will clearly exempt labor unions and farmer associations from prosecution under the so-called anti-trust laws, and will assure them the right of*

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<sup>198</sup> We have also reference the Kagan thesis from Princeton but we find her presentation wanting substantially. She seems to focus on a few fringe elements of the Socialist Party in New York and leave out the major portions which were aligned with Debs and the Socialist Party in power. Thus I refer to the Debbisian wing of the Party. This section was also dominated by many New York Jews but for the most part they seem to have been German Jews and generally secular in nature.

<sup>199</sup> Taken from the New York Times, July 5, 1920.

*collective bargaining in the sale of their labor power and their farm produce respectively<sup>200</sup>.*

*6. Legislation guaranteeing labor the right to organize and strike, free from interference by the courts through the power of injunctions.*

*7. Repeal of the war emergency laws concerning military service and military training in the schools and repeal of the so-called criminal anarchy law, which has been demonstrated to be in practice a law for the suppression of free speech and for the promotion of spies and provocators (sic).*

*8. Amendment of the State Constitution and all of the laws of the governing municipalities in such a manner as to introduce the principal of occupational as well as geographical representation in legislative bodies and administrative boards; to introduce the referendum and power of recall, and to take away from the courts the power to declare laws unconstitutional."*

In addition to the above seven points the Party also put positions out on the following:

1. Pledge the moral and financial support for the Jews suffering under pogroms in Poland, Ukraine, Hungary and Romania and calling upon the workers of America to do all in their power to prevent further persecution of the Jews.
2. Sympathy with and for the workers of Mexico and denounced the "attempts of American capitalists to force intervention.
3. Congress should affect an international conference to affect the freedom and recognition of the independence of Ireland, Haiti, Egypt and the Philippines. They specifically called for the immediate recognition of the Irish Free State.
4. Lift the blockade against Russia and the immediate recognition of the then current representative of the Communists as the legal representative of the Russian Socialist Federal Republic<sup>201</sup>.

To summarize, the Socialist Party in New York in 1920 had as the basis of its platform the following:

1. Ownership by the people the principle means of production including but not limited to food, utilities of all forms, housing, finance, and the like.

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<sup>200</sup> There is a Marxian construct here regarding the sale of labor, as a unit of production. It seems that these socialists did not fully extent the issue of labor being the ultimate in all including profits. In fact they seem to want to eliminate profits totally.

<sup>201</sup> The Russian Socialist Federal Republic was the official name of what is now Russia under the USSR structure.

2. Empowerment of Unions to the maximum degree.
3. A strong anti-war position and also a strong anti-military position.
4. A strong natural resources conservation and management position where the State takes the principal role.
5. Once the new laws are passed, the Courts should be stripped of their powers to modify them.

As to foreign policy, the additional positions can be seen to say:

1. Support oppressed people everywhere.
2. Move rapidly to recognize and support newly independent governments, especially those opposing entrenched capitalist or otherwise oppressive overlords and/or occupiers<sup>202</sup>.
3. Recognize and support the Soviet Union.
4. Reduce or eliminate the international presence of the US military.

As we try to clarify the positions of the 1920 Socialist Party we can see with some clarity that it starts to look more contemporary. Although there were no set policies regarding education, taxation and income re-distribution, or health care, they were inferentially addressed by means of general statements as to improving the welfare of the workers and the control of all means of production by the state.

Unlike the Communists, there was no single philosophy as that of Marx for the Socialists, and it appears that each time they met, there was extensive discussion regarding the many issues. Unlike the Progressives who wanted the Government to control but not own things, the Socialists wanted Government ownership outright. But the socialists did not want to have the state own everything, just the parts of industry which was a monopolist and in control of vital services such as power and water.

Most people fail to recognize that socialism is really limited Government ownership not total. Progressives want total Government control not just selective! In many ways the Socialist platform is more amenable to people than the Progressive.

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<sup>202</sup> One should remember that the Philippines was controlled and occupied by the United States at that time, Ireland and Egypt similarly by Britain and Haiti was also controlled and occupied by the US from 1915 thru 1934.

### 7.2.2 Current Political Views

The current view of what socialism is can at times be confusing, again, because unlike Marxist Communism, there is not codex written and left unquestioned. It is a fluid ideology but has some underpinnings.

The best view of the various forms of government is provided in the late 1940s by Schumpeter. Schumpeter defines socialism as follows<sup>203</sup>:

*"By socialist society we shall designate an institutional pattern in which the control over the means of production and over production itself is vested in a central authority - or as we may say, in which, as a matter of principle, the economic affairs of society belong to the public and not to the private sphere."*

The essence of this is central control and that the sphere of influence over the means of production, whatever they may be, is in the public sphere not the private.

From a late twentieth century main line socialists we see a critiques of some of the many pre-conceptions. This is from Irving Howe. Howe has addressed three classic assumptions of Socialism and discusses how they are in error<sup>204</sup>.

These are three key point and we state them as follows<sup>205</sup>:

*"1. The assumption that the proletariat would serve as the leading agency of social transformation. History has vetoed this idea...."*

*2. the assumption that nationalization of industry would, if accompanied by a socialist winning in office, smooth the way for a new society. Significant socialist text can be readily cited that make it clear that nationalization is not necessarily to be taken as an equivalent or even pre condition of socialism... Serious problems have arisen in the operation of such industries, some of them due to the inherent difficulties of functioning by a calculus of profit while trying within an economy still largely capitalist to satisfy social goals."*

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<sup>203</sup> See Schumpeter, J. A., *Capitalism, Socialism and Democracy*, Harper (New York), 1975 p. 167.

<sup>204</sup> Howe was born in New York and educated at CCNY. Since his CCNY days, Howe was committed to left-wing politics. He was a member of the [Young People's Socialist](#) and then [Max Shachtman's Workers Party](#), where Shachtman made Howe his understudy. After 1948, he joined the [Independent Socialist League](#), where he was a central leader. He left the ISL in the early 1950s. As the request of his friend Michael Harrington, he helped co-found the [Democratic Socialist Organizing Committee](#) in the early 1970s. DSOC merged into the [Democratic Socialists of America](#) in 1982, with Howe as a vice-chair. He was a vociferous opponent of both Soviet [totalitarianism](#) and [McCarthyism](#), called into question [standard Marxist doctrine](#), and came into conflict with the [New Left](#) after criticizing their unmitigated radicalism. See [http://en.wikipedia.org/wiki/Irving\\_Howe](http://en.wikipedia.org/wiki/Irving_Howe)

<sup>205</sup> See Howe, Irving, *Socialism and America*, HBJ (New York) 1985, pp 188-191.

*3. the assumption that economic planning is a unique aspect or virtue of a socialist society, ensuring both justice and orderliness in economic affairs, such as unplanned economies are not likely to match. By now we have learned otherwise. Planning does not necessarily offer an encompassing method for the solution of socio-economic problems."*

The third false assumption as Howe states it is an interesting one. He wrote this in 1977 and revised it in the mid 1980s. Thus in many ways it is reflective of the post 1960s radicalism and is also reflective of the generation of the teachers of the Baby Boomer generation, namely the initial indoctrinators. In contrast is the strong pro-central-planning ethos as advocated by Galbraith in his New Industrial State.

Now Galbraith states in his New Industrial State<sup>206</sup>:

*"For most socialists the purpose of socialism is the control of productive enterprises by the society. For democratic socialists this means the legislature. None, or not many, seek socialism so that power can be exercised by an autonomous authority. Yet this is where power must reside."*

Galbraith then goes on to analyze British Socialism post World War II and seek out its most favorable characteristics.

In the biography of Galbraith by Parker, the author presents clearly the major Theses of The New Industrial State. They are<sup>207</sup>:

*"Thesis 1: The giant corporation...is the characteristic organization of modern capitalism..."*

*Thesis 2: Shareholders, the nominal owners of the corporation, have little power over corporate decision-making...members of the "technostructure" ...have the power to shape culture, goals, and behavior..."*

*Thesis 3: The members of the technostructure ... do not own blocks of stock themselves and disliking uncertainty....seek to reduce risks by giving up classic "profit maximizing" principles...in favor of growth with predictable profits..."*

*Thesis 4: In lieu of classic "profit maximizing" the giant corporations pursue their ends of survival and independence by concentrating on steady but maximal sales growth, consistently predictable earnings...and insulation from ...interference (though not assistance) from government..."*

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<sup>206</sup> See Galbraith, J. K., The New Industrial State, Signet (NY) 1967, p. 111.

<sup>207</sup> See Parker, R., John Kenneth Galbraith, Univ Chicago Press (Chicago) 2005, pp. 439-441.

*Thesis 5: Advertising...may serve the giant corporation, but it misdirects the collective energies and attention of citizens from the truth that the United States for the most part is already awash in affluence...*

*Thesis 6: The key resource of the modern economy....is the capacity to mobilize organized intelligence..."*

The Galbraithian view, although it has taken many criticisms over the years, has certain merit. It also has insight into how we as an economy have gotten to where we are now and perhaps as to how we would progress forward.

Let me make several observations regarding these six Theses.

1. The large corporations do indeed control certain sectors. Yet they have all too often become a partner with Government rather than its adversary. There is less of an arm's length between the corporations and Government than ever before. One can paraphrase Marcuse, and call this the One Dimensional Corporation; its interests are no longer necessarily orthogonal to Governments. One need look at the recent automotive bail out attempts, the Government financing of the banks, the financing of insurance companies, the closeness of regulators with the incumbent telephone companies and the like. In many cases this closeness is driven by campaign financing, by the strength and presence of the lobbyist, by the desire to seek and obtain mutual favors between Government and the incumbent industries. Thus in many ways the interests align and the controlling mechanism no longer functions.

2. Shareholders have no power. It all depends on which shareholders. In a large publicly held company, say like a Verizon or even a GM, and GE, shareholders are so diluted that they indeed have no power individually. In fact one would not want to have shareholders take any part in the decision making; corporations were set up legally to hire managers to do that exact task. However shareholders have some rights.

3. The financial motivations of large corporations are all too frequently directed a profit maximizing for management. Galbraith did not see the explosive growth in senior management compensation in the mid 60s. At that time compensation was rational, options were not given away so freely and the like. Then again the tax rates were confiscatory. In today's world the management does what it has to do to maximize its own profit, and it does so with de minimis risk, at least the risk it can control.

4. The construct of all sales and growth being driven by advertising was an extension to the 50s book by Galbraith, *The Affluent Society*. This in many ways is consistent with the Marcuse view in *One Dimensional Man* that "repressive tolerance is generated by an economy based on planned obsolescence, an economy committed to the production of waste."<sup>208</sup> Like Galbraith, Marcuse sees that advertising generates false needs while

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<sup>208</sup> See Marcuse, H., *One Dimensional Man*, Beacon (Boston) 1964, pp 3-12, 49-52. Also see Eidelberg, P., *The Temptation of Herbert Marcuse*, *Review of Politics*, Vol 31 No 4 October 1969, pp 442-458. Eidelberg argues that it



suppressing the true needs, the needs that only the individual themselves could understand if only they were not bombarded by advertising.

### 7.2.3 Politics and Telecom

Let us return to the rather arcane area of broadband, an area that the Obama Administration has thrown tens of billions of dollars and is seeking massive legal and regulatory change. The Obama Presidency has proposed what it calls new positions in Telecommunications. We will look at them and use them as a platform to investigate the overall trend in the philosophical underpinnings.

The Obama positions have been stated as follows<sup>209</sup>:

#### *"III. Deploy a Modern Communications Infrastructure*

*To realize Barack Obama's vision of an interconnected democracy, the nation deserves the finest and most modern communications infrastructure in the world. The technology sector has helped keep the United States at the center of innovation and the job growth and wealth creation that has accompanied it. However, while the United States once led the world in Internet deployment, the Bush administration has surrendered that leadership through its indifference to technology and its lack of understanding of the 21<sup>st</sup> century economy. By rededicating our nation to ensuring that all Americans have access to broadband and the skills to use it effectively, Barack Obama will position our citizens, particularly our young people, to compete and succeed in an increasingly technology-rich, knowledge-based economy.*

*Deploy Next-Generation Broadband: Barack Obama believes that America should lead the world in broadband penetration and Internet access. As a country, we have ensured that every American has access to telephone service and electricity, regardless of economic status, and Obama will do likewise for broadband Internet access. Full broadband penetration can enrich democratic discourse, enhance competition, provide economic growth, and bring significant consumer benefits.*

*Moreover, improving our infrastructure will foster competitive markets for Internet access and services that ride on that infrastructure. Obama believes we can get true broadband to every community in America through a combination of reform of the Universal Service Fund, better use of the nation's wireless spectrum, promotion of next-generation facilities, technologies and applications, and new tax and loan incentives. Specifically, Obama proposes the following policies to restore America's world leadership in this arena:*

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was with the publication of the One Dimensional Man by Marcuse that he became the voice for the New Left, the establishment of a new socialism but with a philosophy that there are no absolute and common standards and that everything is subjective and that the capitalist society denies people their needs.

<sup>209</sup> See [http://www.barackobama.com/pdf/issues/technology/Fact\\_Sheet\\_Innovation\\_and\\_Technology.pdf](http://www.barackobama.com/pdf/issues/technology/Fact_Sheet_Innovation_and_Technology.pdf)

- *Redefine “broadband:” The Federal Communications Commission today defines “broadband” as an astonishingly low 200 kbps. This distorts federal policy and hamstring efforts to broaden broadband access. Obama will define “broadband” for purposes of national policy at speeds demanded by 21<sup>st</sup> century business and communications.*
- *Universal Service Reform: Obama will establish a multi-year plan with a date certain to change the Universal Service Fund program from one that supports voice communications to one that supports affordable broadband, with a specific focus on reaching previously un-served communities.*
- *Unleashing the Wireless Spectrum: Obama will confront the entrenched Washington interests that have kept our public airwaves from being maximized for the public’s interest. Obama will demand a review of existing uses of our wireless spectrum. He will create incentives for smarter, more efficient and more imaginative use of government spectrum and new standards for commercial spectrum to bring affordable broadband to rural communities that previously lacked it. He will ensure that we have enough spectra for police, ambulances and other public safety purposes.*
- *Bringing Broadband to our Schools, Libraries, Households and Hospitals: Obama will recommit America to ensuring that our schools, libraries, households and hospitals have access to next generation broadband networks. He will also make sure that there are adequate training and other supplementary resources to allow every school, library and hospital to take full advantage of the broadband connectivity.*
- *Encourage Public/Private Partnerships: Obama will encourage innovation at the local level through federal support of public/private partnerships that deliver real broadband to communities that currently lack it. "*

The Obama plan, frankly, in many ways, does raise a few key issues:

1. Universal Service: Universal Services is the mandate to provide services by any carrier to any person not individually financially able to obtain the service in the area in which they inhabit. The issues of political philosophy may seem a far cry from wireless communications but it is clearly in the middle of it. Any process which provides a service which the government is in the middle of will perforce have a political element and in turn an overriding political philosophy. We consider two philosophies and their implications. The first is the Rawls philosophy of John Rawls. His philosophy has three elements. The first is his concept of an Original Position. The Original Position is that all governments are based on a “contract” between its citizens and that the ideal contract is one developed in a consensus between all its citizens that allow it and them to agreement on principles of government. This is like Rousseau and the Social Contract. It is a contract amongst and between the citizens and the government, one and indistinguishable. From this follows the two Rawls principles of justice; First Principle,

each person shall have equal rights to the most extensive total system of equal basic liberties with a similar system of liberty for all, and Second Principle, social and economic inequalities are to be arranged so that they both, (i) provide the greatest benefit to the least advantaged, and (ii) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>210</sup>

One may say what this has to do with the Internet. Simply stated this philosophy controls access prices and who “must have” access. As to access prices, this is reflected in the Baumol-Willig theorem of access pricing. They have used the concept of Ramsey pricing, also known as second best pricing. This is a sub-optimal version of Pareto pricing. Pareto pricing is a pricing mechanism in the market whereby any change in one person to increase their welfare will not diminish the welfare of any other person. Thus something is Pareto optimal if I give you one more candy bar, that increase your welfare or happiness, and that their result of doing so does not upset anyone else. Hardly a reasonable assumption but a key basis of economic. The Ramsey scheme tries to balance welfare and profit. The Baumol Willig theorem states that we want to maximize the welfare of the populace while keeping the profits of the monopolies high. This is a classical example of an ad hoc propiter hoc theorem. Clearly the result is that we tax the people and subsidize the monopoly.

The other issue is how we measure welfare. If we are a Rawlsian then we measure welfare as the welfare of the least of us and not the average welfare. Rawls states that if we maximize average welfare then we disadvantage the least of us and this is not just. Thus as a Rawlsian we demand Universal Service. We must insist that all people have access to all service elements, whether it makes economic senses or not, we do so via wealth transfer.

Hopefully, this political theory should now not seem too foreign. Rawlsians favor the implementation of access fees and the implementation of Universal Service. Indeed, the true Rawlsian would impute Universal Service to even computer. That is if you do not have a computer the Government will give you one and if you do not know how to use it the Government will train you. If you are totally computer literate it is the Government's fault and not yours and the Government will spend whatever is necessary to assist you. If you are handicapped you will be assisted in whatever way is necessary so that the handicap is not a limitation.

In contrast to the Rawlsian world is the classic liberal, now called libertarian view. It is more a combination of minimal government involvement and maximizing utility to the consumer. This is the philosophy of the utilitarian. Here we assume that government has a de minimis role and that the market follows of its own accord and that the market, in an Adam Smith fashion, will clear any inefficiency of distribution and pricing mechanisms. It assumes that each business should stand on its own stead and that utility is maximized

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<sup>210</sup>See Kukathas, Rawls, Stanford University Press.

on average. The result from the libertarian school, as opposed to the contractarians or Rawlsians, is the elimination of access fees and the elimination of universal Service.

2. Administrative Law Control - Socializing Private Corporations via Regulation: It is interesting to note that the classic course of studies in law schools consists of civil law and criminal law. There is an elective in the third year for Administrative law. Administrative law is that rapidly expanding body of law which consists of; (i) Congress enacting a law and (ii) a Federal Agency, such as the FCC, writing the regulations. The adjudication in an Administrative dispute had two avenue, they run sequentially. First one seeks a remedy in front of an Administrative Law Judge, sand jury, and if that does not work then one seeks to overthrow the whole Administrative Code in the DC Circuit Court, a costly procedure, but often viable. This when one deals with the world of Administrative Law control one can only do so as a well financed incumbent. This also creates an interesting dynamic or dialectic, namely the incumbents will seek to influence the writing of the law and the code, and then the incumbents, in an ersatz partnership with the Government use the Administrative Law process as barriers to entry for any entrepreneurial competitor. In effect the Government is part not only of the oversight of the company but can actually take part in the management and decision making.

3. Public Control and Operation over Business: As we have argued under the rubric of Administrative law, the Government in many cases takes de factor control over many business decisions, and furthermore strengths the dominance by incumbents, it also drives our innovation. The Government also seeks to set standards and set policy as we have discussed in an earlier White Paper.

4. Income Redistribution Via Taxation and Public Entities: The use of Universal Service to deploy broadband to rural or otherwise 'underserved" areas, with a service level that is "world class" is clearly a taxation and further it is in essence a form of income re-distribution.

#### **7.2.4 Analysis and Implications**

We have looked at a set of diverse issues with early 20th Century Socialism and we then moved to the mid to late part of the 20th century, and then began to bring this to the nexus of our capitalist system and corporate America. We then introduced the Obama Telecom plan, brief as it may be, and a vehicle to make some points with a specific program of limited scope, but in so doing touched upon the issue of Universal Service and the expansion of Government power through Administrative law and outright execution of the business functions.

The following Table looks at a few key markers to determine Socialist positions as compared to positions of the current Obama Administration. We have laid out general Socialist positions and then have listed the specific 1920 positions and then the actions of the Obama administration.

<i>Principle</i>	<i>1920</i>	<i>2008</i>
Ownership by the People	Ownership by the people the principle means of production including but not limited to food, utilities of all forms, housing, finance, and the like.	Investments, control, and/or ownership of: <ol style="list-style-type: none"> <li>1. Banks</li> <li>2. Investment Banks</li> <li>3. Insurance Companies</li> <li>4. Auto Companies</li> <li>5. Broadband Networks</li> <li>6. Health Care</li> <li>7. National Power (TVA, local power companies, cap and trade)</li> <li>8. etc</li> </ol>
Support of Workers and Unions	Empowerment of Unions to the maximum degree.	Non secret ballots to Unions, bailout of UAW in auto companies.
Low Level Defense and Military Support	A strong anti-war position and also a strong anti-military position. They opposed WW I and were jailed by Wilson.	Reduction in DoD Budgets. Opposed the Iraq War.
Support Conservation and the Environment	A strong natural resources conservation and management position where the State takes the principal role.	Actively support Global warming initiatives like Kyoto as well as increasing the EPA oversight and Administrative controls.
Provide for Health and Welfare of the People	Establish public housing and public food distribution as well as public health facilities. Health provided by State run neighborhood clinics.	National Healthcare system
Avoid Court Overrides of Legislation	Once the new laws are passed, the Courts should be stripped of their powers to modify them.	Select appointees to Supreme Court and lower Courts to match Legislative agenda. Use litmus tests.
Non threatening and supportive foreign policy	Support oppressed people everywhere. Move rapidly to	Agree to meet and talk, work with national players, abandon pre-

	recognize and support newly independent governments, especially those opposing entrenched capitalist or otherwise oppressive overlords and/or occupiers <sup>211</sup> . Recognize and support the Soviet Union.	emptive war option (Bush Doctrine).
Foreign Military Presence	Reduce or eliminate the international presence of the US military. Includes leaving Haiti and Philippines.	Reduce or eliminate the international presence of the US military. Includes leaving Iraq.

As one has the opportunity to review this analysis it is clear that the Obama Administration has actually achieved more in its first two years than the Socialist Party in all of its existence.

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<sup>211</sup> One should remember that the Philippines was controlled and occupied by the United States at that time, Ireland and Egypt similarly by Britain and Haiti was also controlled and occupied by the US from 1915 thru 1934.

## 8 CONCLUSIONS

We may now step back and attempt to assimilate these positions in the context of where the U.S. is at in the early part of the 21st Century and where it may be going. It is clear that, for many people who get involved in politics, that there are paradigms and world views that dominate their behavior and that we must better understand these motivators and elements which form the way they act.

### 8.1 PROGRESSIVES

If one looks at Paine as one of the earliest Progressives one can study his motivations and see that in many ways he was reacting against what he perceived as a snub from the Americans. He had contributed substantially in thought and deed to the American cause but he felt he was short handed in return. He felt, and justifiably so, that he was denied remuneration, his distribution. Thus in his writings from France we see the birth of a redistributionist, a logical redistributionist, but still a redistributionist<sup>212</sup>.

If one looks back to Wilson one sees the following. Woodrow Wilson had compiled into the work, *The New Freedom*, his thoughts after the 1912 election<sup>213</sup>. This document is well worth the read today.

I have included a small section for reflection:

*What is liberty?*

*I have long had an image in my mind of what constitutes liberty. Suppose that I were building a great piece of powerful machinery, and suppose that I should so awkwardly and unskillfully assemble the parts of it that every time one part tried to move it would be interfered with by the others, and the whole thing would buckle up and be checked.*

*Liberty for the several parts would consist in the best possible assembling and adjustment of them all, would it not? If you want the great piston of the engine to run with absolute freedom, give it absolutely perfect alignment and adjustment with the other parts of the machine, so that it is free, not because it is let alone or isolated, but because it has been associated most skillfully and carefully with the other parts of the great structure.*

*What is liberty? You say of the locomotive that it runs free. What do you mean? You mean*

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<sup>212</sup> See various works on Paine, ...

<sup>213</sup> <http://www.gutenberg.org/files/14811/14811-h/14811-h.htm>

*that its parts are so assembled and adjusted that friction is reduced to a minimum, and that it has perfect adjustment. We say of a boat skimming the water with light foot, "How free she runs," when we mean, how perfectly she is adjusted to the force of the wind, how perfectly she obeys the great breath out of the heavens that fills her sails.*

*Throw her head up into the wind and see how she will halt and stagger, how every sheet will shiver and her whole frame be shaken, how instantly she is "in irons," in the expressive phrase of the sea. She is free only when you have let her fall off again and have recovered once more her nice adjustment to the forces she must obey and cannot defy.*

***Human freedom consists in perfect adjustments of human interests and human activities and human energies. Now, the adjustments necessary between individuals, between individuals and the complex institutions amidst which they live, and between those institutions and the government, are infinitely more intricate to-day than ever before.***

*No doubt this is a tiresome and roundabout way of saying the thing, yet perhaps it is worthwhile to get somewhat clearly in our mind what makes all the trouble to-day. Life has become complex; there are many more elements, more parts, to it than ever before. And, therefore, it is harder to keep everything adjusted,—and harder to find out where the trouble lies when the machine gets out of order.*

***You know that one of the interesting things that Mr. Jefferson said in those early days of simplicity which marked the beginnings of our government was that the best government consisted in as little governing as possible.***

*And there is still a sense in which that is true. It is still intolerable for the government to interfere with our individual activities except where it is necessary to interfere with them in order to free them.*

***But I feel confident that if Jefferson were living in our day he would see what we see: that the individual is caught in a great confused nexus of all sorts of complicated circumstances, and that to let him alone is to leave him helpless as against the obstacles with which he has to contend; and that, therefore, law in our day must come to the assistance of the individual. It must come to his assistance to see that he gets fair play; that is all, but that is much.***

*Without the watchful interference, the resolute interference, of the government, there can be no fair play between individuals and such powerful institutions as the trusts. Freedom to-day is something more than being let alone. The program of a government of freedom must in these days be positive, not negative merely.*

The ideas contained in Wilson's thought were so against what the Founder's had in mind it is terrifying to think how the country go through his reign. The ringing remark above of:



*It is still intolerable for the government to interfere with our individual activities except where it is necessary to interfere with them in order to free them.*

This is a terrifying remark. It states that the Government, whatever that means, determines on its own what makes us free. One would have thought the issue was settled in 1776!

## 8.2 INDIVIDUALISM

The libertarian view is individualism with little if any government. The individualists seeks government to just enforce the rules of the transactions which have been agreed to and in addition the individualists sees the government's role to enforce negative rights, and looks towards a few if any positive rights. The Progressives view of individualism, as exemplified by Croly, is the raw libertarian individualism of the frontier. The individual against the society in general.

This libertarian individualism is not what we speak of. The individualism we speak of is what the founders truly had in mind, a government assuring the equal and equitable rights of each citizen, and protecting citizens from the encroachment of a government akin to what the founders had seen and experienced from the King.

There is an interesting discussion of Mill and individualism in the context of the new liberalism of the 19th century<sup>214</sup>:

*"Mill's liberalism is committed to a largely secular state, democratic political institutions in which the franchise is widespread, private property rights, market economies, equal social and economic opportunity, and a variety of personal and civic liberties. To appreciate the significance of his brand of liberalism, it is helpful to focus on the substance of his conception of liberal essentials — the package of individual liberties and state responsibilities that he endorses — and the way he justifies his conception of liberal essentials. Millian liberalism is not laissez-faire liberalism, and it justifies liberal essentials as a way of promoting the common good.*

*The distinctiveness of this brand of liberalism is perhaps best seen in contrast with two other conceptions of liberalism — a more libertarian conception of liberal essentials and their justification that dominated the British Liberal Party at mid-century and the sort of contemporary political liberalism, currently fashionable in Anglo-American philosophical circles, that justifies liberal essentials as required if the state is to be neutral among rival conceptions of the good life that its citizens might hold.*

*It may be useful to try to locate Millian liberalism within the debate between so-called Old and New Liberalism within the British Liberal Party in the second half of the*

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<sup>214</sup> See <http://plato.stanford.edu/entries/mill-moral-political/>

*nineteenth century. A good part of the agenda of the Liberal Party during much of the nineteenth century consisted in reforms that sought to undo limitations that the state placed on the liberties and opportunities of citizens, especially when these forms of state intervention tended to reinforce class privileges. This political culture was exemplified in the repeal of the Corn Laws, opposition to religious persecution, and several electoral reforms.*

*The 1832 Reform Bill extended the franchise to the upper middle class; the 1867 Reform Act extended it to approximately one million urban workers; and the Reform Act of 1884 extended it still further to include another two million agricultural workers. But in the later part of the nineteenth century there emerged a new view about the role of such reforms within the Liberal agenda.*

***Earlier Liberals, such as Herbert Spencer, thought that reform should be limited to the removal of state interference with individual liberty. Liberalism, on this conception, stood for individualism and laissez-faire. By contrast, the New Liberals thought that these reforms that extended economic, social, and political liberties had to be supplemented by social and economic reforms in areas of labor, education, and health designed to redress the effects of inequality. These new reforms gave the state positive, and not just negative, responsibilities that required interference with individual liberties. It was these constructive reforms that drove a wedge between the Old and the New."***

The last set of sentences to some degree describe the expansive nature of the new liberalism in the sense of Mill versus the old liberalism which is Spencer in extremis. We argue here in the context of the new liberalism, a respect for the individual, but with a balance of negative and positive rights, yet with the Government having a role to play, albeit with continual respect for the individual.

### **8.3 NATIONALISM**

There is a debate amongst academics as to the meaning of nationalism and its evolution in our societies. There is also a debate amongst academics who are in the social justice camp that social justice is not just redistribution within a nation but across nations. Miller has written extensively on this as have many other social justice commentators. It is thus worthwhile in this conclusion to see what the implications of nationalism are regarding individualism.

Nations have been evolving for many years, for centuries in fact, and if one looks at the literature at the time of the Revolution, the Federalists as well as Thomas Paine amongst many, one sees a clear trend to create a nation, a separate and distinct nation, which culminated in the Constitution. It had become clear in short order that the Confederation, a loose "fishing, drinking and smoking" club was not sustainable. Thus in just a few years a true nation evolved, with limited philosophers to drive it, just the men who created its underlying law, the Constitution.

One may then ask as we go through one of our countries soul searching quests regarding the question, whither goest the country, we see a nation asking the question of just what a nation is and what type of nation we should become, if perchance we do not care for what we are. It appears that the current administration, the change agents of our nation as they had self proclaimed it, want such a change, and change is what we are getting. Yet we have seen all of this before, the Adams to Jefferson change, the Jackson revolution, Lincoln, Teddy Roosevelt and then Wilson, FDR, and to some degree even Reagan. It has been a continuing struggle to "change" while looking back in the principles which were at the foundation of the country.

To understand some of these issue I am reminded of how Will and Ariel Durant described James Joyce and his environs, the Irish nation, yet not allowed to be a nation under the captivity and heavy hand of the British. From the Durants' book on a grand collection of literary luminaries they open on the section on Joyce with the following<sup>215</sup>:

*"I have sometimes thought how high Ireland would stand in the world of letters if all her literary sons had stayed on her soil; Swift, Burke, Goldsmith, Wilde, Shaw, Joyce...The land was fertile, the moist cold air put blushing roses in the cheeks of the girls, and lust sons were eager to plant new life in willing wombs. But the spiritual atmosphere was deadly: a government Irish in name but foreign in humiliating fact; an Anglican Church more intolerant in Ireland than in England; a Catholic Church that loyal Irishman could not criticize or reform since she had suffered in fighting for Irish liberty. And just across the water was a Britain with a larger and more literate public, a freer press, a taste for Irish eloquence and wit. So Erin's genius crossed the Irish ea, and left a lovely island to destitute peasants and Joyce's Dubliners."*

In a recent book by a Northern Irish academic, McGarry, the author states<sup>216</sup>:

*"Where does the history of the struggle for Irish independence begin? For traditional republicans, like nineteenth century revolutionary John O'Leary, the story of Irish freedom stretches back over eight hundred years to Strongbow's invasion of Ireland in 1169; "If the English had not come to Ireland, and if they had not stayed there and done all the evil so many of them now allow they have been doing all along, then there would be no Fenianism." Although the English Crown's formal authority within Ireland can be dated to Henry II's expedition in 1171-1172...few historians would take such claims seriously, both because the Anglo-Norman invasion formed part of a much larger and more complex history of mutual interactions and colonization between hybrid peoples of the two islands, and continental Europe....For many nationalists, the formative era in the struggle for Irish freedom was the sixteenth and seventeenth century period of Reformation...."*

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<sup>215</sup> Durant, W., A Durant, 1980.

<sup>216</sup> McGarry, The Rising, 2010.

McGarry denies the nationalism which was part of Ireland, denies that it ever existed until the 19th century when the nationalists, by definition those seeking separatism, were brought to the fore. McGarry in good northern Irish form beknights the good English caretakers and implies that the struggle was at worst a religious struggle, and that nationalism did not arise until much later.

I would strongly disagree for Ireland was a nation as early as the late sixth century. The writing of Columbanus to Gregory I clearly demonstrate that the Irish saw themselves as a cohesive group, separate from the Gauls and Merovingians and the Angles and Saxons. It was in fact the choice that Gregory made in sending Augustine as Bishop of Canterbury in 598 that started the split between Ireland and Britain. Gregory was battling with Columbanus since Columbanus and the Irish hierarchy has favored Greek church rules and regulations and Gregory was commencing the separation of the Bishop of Rome from Byzantium, he was not yet a Pope, still just the Bishop of Rome.

Thus one can argue that a true Irish nationalism was in place in 600 AD. What basis can one use for that statement, I will use Stalin's words from his study on nationalism, a study which he subsequently put into action when he established the USSR.

As Joseph Stalin wrote<sup>217</sup>:

*"What is a nation? A nation is primarily a community, a definite community or people...Thus a nation is not a racial or tribal, but a historically constituted community or people...a common language is one of the characteristic features of a nation...a common territory is one of the characteristic features of a nation...a common economic life, economic cohesion, is one of the characteristic features of a nation...a common psychological makeup which manifests itself in a common culture is one of the characteristic features of a nation...a nation is a historically constituted community of people formed on the basis of a common language territory economic life and psychological makeup manifested in a common culture."*

This Ireland satisfied all of Stalin's demands as of 600, a common language, actually two, Irish and Latin, used intermingled, common land, the Island, common psychological makeup, common economic life. Thus one can argue Ireland was indeed a nation. But to the present, the US is one nation, we struggled through the darkest hours defining that during the Civil War.

Yet we are again facing a similar struggle, one where we on the one hand have the political divergence between progressives and constitutionalists, those who believe we can change anything we want whenever we so desire if it is in the best interests of the "people" versus the group who believes there is something sacred in the documents and philosophy upon which the country was founded. Secondly we have the change which could occur as we introduce new immigrants who may not have accepted the "rules" of

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<sup>217</sup> Petitto, ... p .

the game and vary from "common language territory economic life and psychological makeup manifested in a common culture".

This will be the double challenge we will face as a country over the next decades. A good leader or set of leaders can make this a smooth transition, a less than good set of leaders can turn it into chaos. I default to what happened in Ireland.

Nationalism is a barrier to expanding social justice. Yet there are camps when we look at immigration in the U.S. who see social justice as transcending national borders. The lack of enforcement of immigration is not a negative act as much as it is a positive act of social justice, redistributing from the haves to the have nots. Thus the next step in the evolution of individualism is the destruction of nationalism. If we see the national barriers fall then we see the negative rights disappear and there would remain but positive rights with redistribution of assets.

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