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Frantz Fanon and John Locke at Stanford

by George H. Smith

In 1814, Thomas Jefferson denounced one of the "Great Books of the Western World," Plato's *Republic*:

While wading through the whimsies, the puerilities and unintelligible jargon of this work, I laid it down often to ask myself how it could have been, that the world should have so long consented to give reputation to such nonsense as this? [F]ashion and authority apart, and bringing Plato to the test of reason, take from him his sophisms, futilities and incomprehensibilities, and what remains?¹

John Adams agreed with Jefferson's assessment. Recalling the "tedious toil" of reading Plato's works, Adams declared: "My disappointment was very great, my astonishment was greater, and my disgust shocking." Adams believed that Plato's defense of communal prop-

erty (including a community of wives) was "destructive of human happiness" and was "contrived to transform men and women into brutes, Yahoos, or demons."²

The great books are under fire once again, this time at Stanford University. Stanford has scrapped its required Western culture course and replaced it with a program called "Cultures, Ideas, and Values" (CIV). The pilot course for this program, "Europe and the Americas," retains some great books, but it has also made room for minority, feminist, and Third World writers—including Rigoberta Menchu, Zora Neale Hurston, and Frantz Fanon. These writers, their advocates argue, will offset the racism, sexism, and cultural bias inherent in the traditional great books. (One traditional author, Augustine, was born and reared in Africa, but his culture and race presumably strip him of African credentials.)

The traditionalists, of course, are duly alarmed by Stanford's attack on Western civilization. If the reformers have their way, if Stanford freshmen

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Bohdan A. Futey and Loren A. Smith, judge and chief judge of the U.S. Claims Court, and Roger Pilon, a senior fellow at the Cato Institute, talk after a recent Policy Forum.

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no longer read the great books, what will become of our treasured Western values? What will become of Plato's communism, Augustine's spiritual masochism, Machiavelli's cynical amorality, More's critique of private property, Luther's strident irrationalism, Marx's authoritarianism, and more?

How important is this debate? Will the great books read by freshmen profoundly influence their lives? Probably not, especially when students breeze through several books (or selections from books) in a semester or two. The great thinkers of the past were not addressing American college students of today. As Robert Hutchins observed, "To read great books, if we read them at all, in childhood and youth and never read them again is never to understand them."³

A great books program, skillfully conceived and executed, can accomplish two things: it can fire students with the love of reading and learning, and it can acquaint students with some perennial problems confronting human

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Consumers Pay a High Price for Regulation

Editorial



The Food and Drug Administration, which banned the artificial sweetener cyclamate 20 years ago, plans to reapprove it, possibly this year. Once accused of causing everything from bladder cancer to birth defects, cyclamate is now widely thought to be harmless.

"I have no reluctance in saying that with cyclamate we made a mistake," Robert Scheuplein, acting director of the Office of Toxicological Sciences at the FDA's Center for Food Safety and Applied Nutrition, told the *Washington Post*. The irony of the agency's mistake is that until aspartame was approved a few years ago, Americans who use artificial sweeteners were forced to buy products containing saccharin, which might well be harmful, rather than cyclamate, which is not.

This cyclamate episode is a dramatic but hardly unique example of the failure of government regulation. For about 100 years Americans have tried to solve perceived problems in the marketplace by creating federal regulatory agencies. In the past 20 years scholars have built up an impressive body of literature demonstrating the failure of most of those agencies.

The economic problem in every society is how to use the scattered bits of knowledge that billions of consumers and producers possess to bring about the best possible allocation of resources. The market process, which involves competition, free exchange, and freely determined prices, enables its participants to identify each other's abilities and desires—called supply and demand in the economist's parlance. Market competition is what F. A. Hayek called a discovery procedure. The desire for profit motivates entrepreneurs to discover the best possible allocation of resources.

Attempts by government regulation to improve market outcomes are likely to block or distort that subtle and complex discovery process. There is no way to know the "correct" price or quantity of any resource, and controls may prevent activities that have not yet been envisaged. Intervention in the market process can only bring about a result that differs from the one desired by consumers.

Consider a few examples of regulation failures. By 1977 a number of scholars had concluded that regulation had raised trucking rates by 40 percent or more; the Congressional Budget Office estimated that deregulation would lead to annual savings of \$5 billion to \$8 billion. But in 1987, after about seven years of deregulation, Robert V. Delaney estimated in a Cato Institute study that the annual savings had been \$56 billion to \$90 billion. Why the huge discrepancy? Delaney found that improved trucking practices had allowed companies to make massive reductions in

their logistics and inventory costs—savings that even advocates of deregulation had not anticipated.

In 1962 Congress instructed the FDA to approve new drugs only if they had been proven effective as well as safe. Sam Peltzman of the University of Chicago found that the consumer costs of that law had been four times as great as the benefits. The 1962 amendments had halved the number of new drugs introduced each year and delayed approval by an average of four years. Only a one-year average delay in new-drug approval can cost 37,000 to 76,000 lives in a decade—several times the worldwide total of new-drug-related fatalities. The delay of the heart drug TPA alone may have cost 3,000 lives.

The AIDS crisis has dramatized this issue, as FDA bureaucrats claim the right to forbid terminally ill patients from using drugs of unknown safety and efficacy. Given the subjectivity of values, the diversity of medical circumstances, and the difficulties of assessing medical risks, drug safety can be meaningfully defined only in terms of individual choice, not societywide mandates.

A final example shows that as part of its response to the energy crisis, the government required each car company to increase the average fuel economy of the cars it sells by a set amount each year. One way that companies have met the Corporate Average Fuel Economy standards is by making large cars more expensive. A recent study by Robert Crandall of the Brookings Institution and John Graham of Harvard University found that CAFE has cost Americans \$4 for every gallon of gas saved, forced them to pay up to \$1,200 more for a big car, and eliminated 130,000 jobs. But the most striking—and surely unanticipated—consequence is that traffic fatalities have increased because people have been forced to buy smaller cars. Crandall and Graham estimated that there are 2,200 to 3,900 more fatalities every year, along with 10,000 to 20,000 additional serious injuries.

To make informed choices, consumers need to be able to identify the products that have proved safe and effective, the products that have proved unsafe and ineffective, and the products whose safety and efficacy are unknown. The market process, along with a court system that enforces contracts, provides that information. Regulation simply forces consumers to purchase products they do not want.

And regulation has moral implications as well. Dry and academic terms such as "public policy," "market failure," "social costs," and "regulation" don't convey the full reality of this discussion. When government uses its coercive power to tell us whether we may enter a given occupation, what wages we may contract for, how much of our compensation must be in the form of safety and fringe benefits, whether we may hire or fire an employee, whether we may sell all the oranges we grow, what medicines we may use to treat life-threatening illnesses, and what we may broadcast on our radio and television stations, we are that much less free.

David Boaz
—David Boaz

War on Drugs Has Failed

Drug Prohibition Criticized at Cato Conference

Drug prohibition has created a criminal enterprise "larger than anything experienced before in the United States and perhaps the world," argued Baltimore mayor Kurt Schmoke at a Cato conference held at the Mayflower Hotel in Washington on June 2. Citing his extensive experience as a prosecutor and the 107 percent increase in drug arrests in Baltimore since 1984, Schmoke rejected the contention that a determined effort to stop drug trafficking has not yet been made. He asserted that the war on drugs is a failure because of the effects of prohibition, not because we lack either the will to enforce it or the money.

Schmoke charged that prohibition is eroding the basic American principle of fairness. Because the negative effects of drug prohibition are largely con-



Princeton University professor Ethan Nadelmann addresses the conference participants as Baltimore mayor Kurt Schmoke (left) and Cato executive vice president David Boaz look on.



A Baltimore television station interviews Ethan Nadelmann. Other media included the *Washington Post*, *Time*, the *New Republic*, and National Public Radio.

finied to the inner city, poor people bear the brunt of the policy. Schmoke favors a new strategy: acknowledging that drug use is a health problem and should therefore be addressed "by the surgeon general, not the attorney general."

Princeton University professor Ethan Nadelmann stressed the issue's complexity. Just as it is impossible to speak of a single economic problem, it is impossible to speak of "the drug problem." Asserting that it is impossible to stem the flow of drugs, he charged, "Prohibition can't work better than it does now." Nadelmann noted that federal spending to enforce drug laws has increased from \$1 billion to \$3 billion since 1980; that law enforcement budgets have typically doubled or tripled;

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that 37 percent of federal prisoners were incarcerated on drug indictments; and that, under the status quo, over the next 10-15 years prison populations are expected to double with 50 percent of inmates serving sentences for drug law violations.

Attorney James Ostrowski, author of a recent Cato study, charged that drug prohibition, like communism, cannot last because "It is intellectually bankrupt and it doesn't work." Ostrowski noted that, increasingly, prominent people from Milton Friedman and William F. Buckley to Louis Nizer and Alan Dershowitz are advocating legalization



Attorney James Ostrowski discusses his recent Cato study on drug prohibition.



Conference participants line up to ask questions.

of drugs.

"The uncertainty argument must be discarded," Ostrowski asserted. He claimed prohibitionists cling to the uncertainty argument—the fear of an explosion of drug use if drugs were legalized—as a substitute for evidence demonstrating the efficacy of prohibition. Pointing out that there is already heavy drug use among the poor, asserting that drugs are easily available to the rich, and citing the experience of Alaska and the Netherlands, Ostrowski argued that legalization would not re-

sult in an explosion of drug use. He proposed that drugs be legalized on a trial basis for five years, after which a permanent decision could be made.

Each of the three speakers contended that ending drug prohibition is a moral imperative. Ostrowski concluded, "It is immoral and absurd to force some people to bear costs so that others might be prevented from choosing to do harm to themselves."

The three papers are scheduled to be published in book form later this year. ■

Roberts Speaks In Moscow

Cato adjunct scholar Craig Roberts spoke at a Moscow conference entitled "What You Need to Know about Western Civilization." Under the auspices of the American Foreign Policy Council, the conference took place on June 18-23 at the Moscow Summer School, Moscow State University. Formally invited by the Philosophical Society of the USSR Academy of Sciences, Dr. Roberts spoke on "Why the Soviet Economy Doesn't Work: Requirements for Successful Economic Reforms." Other speakers were Jeane Kirkpatrick; William B. Allen, chairman of the U.S. Civil Rights Commission; and Sen. Phil Gramm. ■

St. Thomas, Virgin Islands, Site Of Next Benefactor Summit

The Stouffer Grand Beach Resort on St. Thomas, U.S. Virgin Islands, will be the site of Cato's second annual Benefactor Summit, scheduled for January 25-28, 1990. The 1990 summit is modeled after the successful 1989 Benefactor Summit, held at the Hyatt Regency Hotel on Grand Cayman Island.

The Benefactor Summit provides an opportunity to learn more about the Institute's work and the goals of Project '90, the Cato Institute's \$10 million capital campaign. Invited to speak at the St. Thomas Summit are Manuel H. Johnson, vice chairman of the Federal Reserve Board; Frederick W. Smith, founder of Federal Express; Charles

Murray, author of *Losing Ground* and *In Pursuit*; Lee Atwater of the Republican National Committee; and Cato officers Edward H. Crane, David Boaz, and William A. Niskanen.

Set in an island paradise, the event promises to be more than just intellectually stimulating. As on the Grand Cayman, this summit promises to be much fun in the sun, on the beaches, and about the island. Because attendance is limited to 100, Benefactors are urged to make reservations soon to ensure a spot and to take advantage of airline discounts. For reservations and further information, contact Sandra McCluskey at the Cato Institute. ■

Federal Budget Deficit, Constitution Topics of Forums

Cato Events

April 18: "Reducing the Federal Budget Deficit: Why Tax Increases Aren't the Answer." Daniel J. Mitchell, a legislative assistant to Sen. Bob Packwood and a former director of tax and budget policy at Citizens for a Sound Economy, argued that President Bush should invoke the Gramm-Rudman sequester if Congress seeks to lower the deficit through a tax increase. A sequester would not represent a breakdown of the budget process, and Mitchell cautioned against an administration-congressional budget agreement. Mitchell stated that such an agreement would not go far enough in reducing the deficit and would probably make meeting future Gramm-Rudman deficit targets impossible without tax hikes. Taking a contrasting viewpoint, Robert Greenstein, director of the Center on Budget and Policy Priorities, pleaded with the audience "not to treat the issue ideologically." He called for increasing tax revenues through measures that he maintained would not be anti-growth.

May 3: "Liberating Eastern Bloc Entrepreneurs." Jan Winiecki, a professor of economics at the Catholic University of Lublin, Poland, spoke on the determinants of change in the communist economies of Eastern Europe. Winiecki asserted that systemic decline is pushing those economies toward market solutions and that the role of individuals, such as Mikhail Gorbachev, is minimal. Winiecki argued that there can be no economic change without political change; for change to succeed, the bureaucracy must be dismantled, and the prices and exchange rates must be liberalized.

May 10: Luncheon for José Pinera, president of Asset Chile and former labor minister of Chile. Pinera described Chile's successful economic reforms, including the privatization of social security and dramatic tariff reductions, and he discussed the prospects for continued prosperity after the country's return to democracy.



Hal Stratton, attorney general of New Mexico, discusses ways in which state governments can encourage free enterprise.



Daniel J. Mitchell, a legislative aide to Sen. Bob Packwood, says tax increases are not necessary to reduce the budget deficit.



Jan Winiecki talks with Marek Michalski of the embassy of Australia.

May 11: "State Initiatives and Private Enterprise." Hal Stratton, attorney general of New Mexico, discussed some steps he has taken to reduce the size and inefficiency of the state's government. Stratton said his inability to curb government growth and waste when he was a state legislator had increased his determination to enforce the rule of the law as attorney general. He cited staggering abuses within New Mexico's employee retirement program, including the state's overpaying billions of dollars in illegal benefits to government workers. Stratton plans to publish an economic report detailing government policies and regulations that impede economic growth and efficiency.

May 25: "The Constitution: Myth, Reality, and Logic." Loren A. Smith, chief judge of the U.S. Claims Court, launched a series of luncheon speeches planned by Cato's Center for Constitutional Studies. He spoke of the need for people engaged in judicial review to see the Constitution not simply as a legal document but as an official statement of our public philosophy and as a reflection of a higher law. Conservatives' approaches to judicial review—from judicial restraint to legal fundamentalism to original intent—were useful in countering the dominant school of judicial activism, but we now need a more affirmative position. Majoritarianism, Judge Smith contended, is at odds with the Constitution. The Framers had experience with an arbitrary Parliament and sought to restrain legislative power. Smith called for a civil exegesis of the Constitution that provides a coherent theory of rights and a justification of the separation of powers.

June 15: Cato staffers Edward H. Crane, William A. Niskanen, David Boaz, Roger Pilon, and Ted Galen Carpenter met with Jozsef Szajer, professor of law at Eotvos Lorand University in Budapest and cofounder and legal adviser to Fidesz, the independent youth organization and political party founded in 1988 in opposition to the official communist youth organization. They discussed political, economic, and legal developments in Hungary. ■

On the Foundations of Economic Liberty

by Roger Pilon

I. Introduction: Two Kinds of Liberty?

As the celebration of the bicentennial of our Constitution continues, we are coming increasingly to appreciate the connection between our economic liberties and our judiciary. It is a commonplace, of course, that enterprise has come under increasing restraint and regulation over the course of this century. In a review of yet another proposal to federally charter the corporation, for example, L. E. Birdzell, Jr., writing in the bicentennial year of our independence, pointed to some 40 to 50 significant federal statutes that "may reasonably be viewed as imposing requirements on corporate management in favor of employee, consumer, investor or environmental interests, ranging all the way to comprehensive regulation of entry, prices and services in much of the transportation, communication, energy, and banking industries."¹ The dozen years that have passed since that bicentennial have witnessed no appreciable measure of relief. On the contrary, in many areas the burdens upon enterprise have only increased, so much so that President Reagan, speaking from the Jefferson Memorial on the eve of last year's celebration of our founding, thought it fitting to call for an Economic Bill of Rights, which he later characterized as a "fundamental reform that sees to it that our economic freedom is every bit as protected as our political freedom."²

That the president was thus driven to distinguish economic from political freedom is a mark of our times, of

Roger Pilon is a senior fellow of the Cato Institute and director of its Center for Constitutional Studies. This essay, which was originally delivered as a speech at the American Bar Association's annual meeting in 1987, is reprinted from the September 1988 issue of the *Freeman*. It has just received the 1988 Benjamin Franklin Award for excellence in writing about the U.S. Constitution, presented by the National Press Foundation and the Commission on the Bicentennial of the United States Constitution.

course. Two hundred years ago one could scarcely imagine so peculiar a distinction, so entwined were economic and political liberty thought to be. Indeed, in the recently discovered working draft of the Bill of Rights, written by Roger Sherman in July of 1789, Article 2 declares that "the people have certain natural rights which are retained by them when they enter into Society"; listed second in that article, after rights of conscience but before rights of speech, writing, and publishing, are rights "of acquiring property, and of pursuing happiness & Safety,"³ understood ordinarily as rights of pursuing economic well-being. In so conjoining economic and political liberties, as we

"If consent is the foundation of political legitimacy, then political power exercised over a minority on behalf of the majority is simply illegitimate."

would now speak, Sherman reflected simply the wisdom of his age. By way of evidence we need look no further than to John Locke, the philosophical father of our Revolution: "Lives, Liberties and Estates, which I call by the general Name, *Property*."⁴

There is more at issue here, of course, than a mere distinction, a semantic refinement. For behind this distinction is a set of ideas, a history of ideas—indeed, a whole vision that separates us from our forefathers. Yet the vision with which we are living today is increasingly being called into question: in economics, in law, in philosophy, the suspicion is developing that the Founders may have had the better of

it—analytically, morally, and practically. A growing literature, pointing often to the opinions of our judiciary by way of evidence, is saying that along the way we lost our bearings.⁵

II. Our Ideological Roots: Individualism

To explore these issues of ideology more fully, albeit briefly, we need to begin at the beginning, at our beginning, with the essence of the Founders' vision, nowhere set forth more clearly than by Thomas Jefferson in the Declaration of Independence. In the space of a mere seven phrases the Declaration distills the moral, political, and legal vision of the classical liberals, beginning, not surprisingly, on a point of epistemology, that the conclusions that follow are asserted not as empirical, much less as evaluative, but as "self-evident" truths, truths of reason. Far from the stuff of a living, evolving conception, these are the truths that speak eternally and unchangingly to the human condition, transcending both time and circumstance. The moral truths come first, beginning with the premise of moral equality: "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." Then come the political and, by implication, the legal truths: "that to secure these Rights, Governments are instituted among Men, deriving their just Powers from the Consent of the Governed." Finally, to make it clear that political power derives from and remains ultimately with the people, the Founders point to the right of the people to alter or to abolish their government and to institute new government in its place.

As has often been noted, what we have in these few, revolutionary phrases is nothing less than the inversion of the ancient order. No longer would politics come first, ethics second.⁶ No longer would we begin with the group, the individual deriving his meaning, and his rights, from the group. No, we would begin instead with the individ-

ual. It is the individual who first has rights, which he has by nature, not by government grant. Indeed, it is government that gets its rights, or authority, by grant, from the individual, who yields up to government whatever rights he does, rights to be exercised on his behalf.⁷ Thus it is that governments derive their *just* powers from the consent of the governed.

A. Political Legitimacy: Grounded in Consent

This final point—that to be just, government's power must be grounded in consent—marked a critical insight. Political legitimacy, the Founders were saying, is a function not of results but of process. It is not from the good deeds it does that government derives its legitimacy: if that were the case then the King's rule too would be legitimate, provided only that he produced good results—indeed, would be more legitimate than democratic rule if the results produced were better. No, political legitimacy has nothing at all to do with consequences, good or bad, but instead has everything to do with process. As with any ordinary contract, the distribution of power that results from the social contract will be legitimate only if the parties consent to that distribution. How else could individual autonomy, the right of the individual to rule himself, be respected and preserved unless the individuals over whom political power is exercised have consented to that exercise?

B. The Limits of Consent Theory

But if political legitimacy depends upon thus preserving individual autonomy, if powers of government are legitimate only if consented to, then a moment's reflection will suggest how difficult it is to establish political power that is morally legitimate. Because the argument here has been long known, if not widely known, let me simply summarize it.⁸ It begins by amplifying the points just made, that if a particular grant of government power arises from unanimous consent, it is legitimate: that, after all, is precisely what "deriving their just powers from the consent of the governed" means. The problem arises when there is less than unanimous consent, which of course is almost always the case in the real world.

For even if a supermajority consents, we are still left with the basic question: By what right does that majority exercise power over the minority when the minority, by definition, has not consented? If consent is the foundation of political legitimacy, then political power exercised over a minority on behalf of the majority is simply illegitimate. Since the numbers per se carry no moral weight—we don't suddenly get legitimacy once we've gotten over the 50 percent threshold—the majority is in no better position than the King when it comes to justifying its exercise of power over the minority.

The classical solution, of course, was by way of a social contract with two levels of consent. Turning once again to process, this solution provided that political power exercised with less than unanimous consent would be legitimate if but only if there had been prior unan-

"The central moral problem with socialism is that it uses people. It treats individuals as means, not as ends."

animous consent to be bound by the outcomes of subsequent votes. We still need unanimous consent, that is, but only to get the government off the ground, to give it legitimacy in the first place. After that, whatever rules had been unanimously agreed to at the outset must be followed, including decision-making rules that enable subsequent adoption of other rules by less than unanimous consent. Thus on any given vote the minority could be legitimately bound by the result because it had previously agreed to be so bound. Indeed, this is precisely the theory that underpins our government, at least as between the states. Article VII of the Constitution reads as follows: "The Ratification of the Conventions of nine States, shall be sufficient for the establishment of this Constitution *between the States so ratifying the same*" (em-

phasis added). Satisfaction of this provision enabled the Constitution to get off the ground. But by implication, states not so ratifying could not have been bound by the subsequent decisions of ratifying states.

While this solution may have worked among the states, especially since all did vote to ratify, the problem it poses for individuals is of quite a different order: that problem, quite simply, is that in point of historical fact, no such prior unanimous consent by individuals can be located, not even in America, where we came closer to it than perhaps anywhere else in the world. Moreover, even if we could locate such primordial unanimous consent, if we take the individual seriously, as indeed we do, then the theory affords no solution at all to the problem of how to bind succeeding generations: those who in fact consented could be bound, but they could hardly bind their heirs.

Consent theory finds its last refuge, then, in the idea of "tacit" consent: even if we don't give explicit consent, this argument runs, by staying we implicitly bind ourselves. But the argument from tacit consent is plausible only if we don't press it. Once we do, the problem becomes apparent. For it amounts to the majority saying to the minority: "Come under our rule or leave." It amounts, that is, to the majority putting the minority to a choice between two of its entitlements: its right not to come under the rule of the majority—the very hurdle the majority has to overcome if its power is to be legitimate—and its right to stay where it is, free from the will of the majority. To argue otherwise, quite simply, is to beg the very question at issue, namely, how does the majority come to have authority, or legitimate power, over the minority? The argument from tacit consent, in short, is patently circular.

What this all comes down to, then, is not a little disturbing to those who have grown up with the belief that democracy is the final word in matters of political legitimacy. Democracy may indeed be the best word we have, but it is not the final word. For if legitimacy can be derived neither from results nor even, as a practical matter, from process, then we are left with the conclusion that government per se has a certain air of illegitimacy about it. Yet

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Liberty (Cont. from p. 7)

the Founders seem to have understood this point, however disturbing it may be to some today. As Professor William Stoebuck has written, Locke's social-contract theory, which says that "government is a servant, necessary but evil, to which its subjects have surrendered only what they must, and that grudgingly, . . . was the accepted theory of government when the [Constitution] was being hammered out."⁹ In sum, the Founders understood both the moral virtues and the moral limits of democratic rule.

C. The Solution: Limited Government

If government is a necessary evil, then, necessary largely because of the practical problems that surround attempts to secure our rights in a state of nature,¹⁰ but evil because of the impossibility of satisfying the consent condition that alone would make it legitimate, what follows is as straightforward as it is compelling, namely, that government should be called upon to do no more than is necessary to enable it to carry out its principal purpose, securing our rights. From considerations of morality, from respect for the moral right of every individual to be free to live his own life, we may call upon government only in a limited way: we must settle, in short, for limited government, for to do otherwise is to violate the rights of those who ask only to be left alone.

The world that emerges from this vision is also straightforward. It is a world in which individuals are left free to pursue their own values, to live their own lives as they think best, to chart their own courses through life, alone or in association with others, free from government dictate or interference, provided only that in the process they do not violate the rights of others, which it is the business of government to prevent. Notice that there is no distinction here between economic and non-economic pursuits. Why should there be? Provided, again, that they respect the rights of others, individuals or groups are free to pursue whatever ends they wish—artistic, entrepreneurial, political, eleemosynary, worthy or foolish. That, after all, is what freedom is

all about. Notice too how different this conception of government is from the conception so common today: government is a necessary evil, instituted simply to secure our rights, not an instrument through which to pursue social goals, even worthy social goals. I will say more about this contrast shortly. For the moment, however, I want to draw very briefly a still sharper contrast, between the classical vision and the vision that is its polar opposite.¹¹

III. The Opposite Ideology: Collectivism**A. Rights as a Product of Development**

That opposite vision stems from Karl Marx, of course, at least in its modern version. In 1987 I had the privilege of attending the 43rd Session of the UN Human Rights Commission in Geneva,

"Justice Holmes erected 'the right of a majority to embody their opinions in law,' which of course is nowhere to be found in the Constitution."

where I served as the political adviser to the head of the American delegation. Representing the Soviet Union at one point in those proceedings was Boris Kravtsov, the Soviet minister of justice, who told the assembly that in his country "insuring human rights is one of the main aims of social, political, and economic development." In so putting the matter, Mr. Kravtsov clearly was speaking of a very different conception of rights and of social organization than we have thus far been considering here. Rights, on this view, do not belong to individuals as such; rather, they are "by-products," if you will, of development. Indeed, Mr. Kravtsov went on to say: "Recently we gave certain collectives the right to participate in these developments." And again,

"We are giving unions the right to participate in state and social life." Like the ancien régime, the Soviet government gives rights. Individuals do not have rights by nature; instead, they get them from government. And "government," Article 6 of the Soviet constitution tells us, means the Communist Party.

What is most striking about this vision, because most fundamental, is that it begins not with the individual but with the group, as represented by the government, which inevitably means the Party. For all its pretense to historical progress, the system is thus a throwback to the ancient order, with the Party standing in the place of the King. The Party "determines the general perspectives of the development of society"—I quote here from Article 6 of the Soviet constitution. As development progresses, presumably, "rights" to jobs, housing, and so on get distributed by the Party, all according to the plan. Social and economic development are thus conscious undertakings, centrally planned by the Party, in pursuit of which the individual is an instrument to be used.

B. Using the Individual for the Common Good

Setting aside the economic impoverishment that necessarily accompanies central planning, I want to focus here on the moral impoverishment this vision entails. It begins, of course, with the sublimation of the individual, with the assumption that the individual has no rights that his government has not first given him, and the implicit assumption that government has rights to give out in the first place. But in making rights a function of development, the burden, if rights are to be insured, is placed upon continuous development; for without it, there would be no rights. This means, however, that if individuals are to have rights they will be obligated to contribute to this centrally planned development, however out of their hands the decisions and planning of the development may be. What started out as a *right* to work, then, has suddenly become a *duty* to work. Indeed, as has often been noted, the central moral problem with socialism is that it *uses* people. It treats individuals as means, not as ends—to be

used in carrying out the Party's development plan.

The socialist system thus violates the cardinal principle of ethics, as articulated by John Locke, by Immanuel Kant, by every great religion, that the individual is not to be used, is not to be treated as a means, but rather is to be treated as an end in himself. He has a right to be so treated, a right to what is his, a right to chart his own course through life, a right not to be chained to the pursuit of someone else's vision, whether Marx's, or Lenin's, or Stalin's, or the Central Committee's, or whoever's. To so chain him, to so use him in pursuit of the chimera of development is to deny him his right to choose for himself, to strip him of his inherent dignity, to deny him his fundamental right to be free. Is it any wonder that around the world people have fled and are continuing to flee from socialist systems? For in the end, individuals cannot but choose for themselves. Either they flee, often at great, even tragic personal cost, or they resign themselves to lives of quiet desperation, serving a master they did not choose, leading a life they could not wish.

Now I have drawn this contrast not because I believe that in the 200 years since our founding we have come close to the Soviet model—let me be clear about that—but because the contrast between the vision of the Founders and the vision that is Soviet reality sharpens our appreciation of the essential moral issues. At the same time, a number of disturbing parallels have developed over these 200 years, if not in scope at least in kind, so much so that a decade ago we heard much about the convergence thesis, the idea that in their social and political organization the two societies were converging. In this decade the convergence thesis seems to have waned—in part, no doubt, because there are many who have come to realize that the Soviet Union, by its very structure, is indeed an evil empire. Nevertheless, the not-unrelated moral equivalency thesis, the idea that as a moral matter there is not much difference between the two societies, remains very much alive in many quarters, suggesting a substantial measure of confusion as to what the moral issues really are. Let us return, then, to the Founders' vision to see what has

happened along the way that might help to account for this confusion.

IV. The Demise of the Classical Vision**A. The Democratic March: From Rights to Results**

The first thing that happened, one could say, was the demise of the natural rights foundation on which the Founders' entire vision rested. David Hume, the Scottish philosopher who died in the year America was born, prepared the ground for that demise when he observed that from factual propositions no normative conclusions could be drawn,¹² an epistemological observation so startling that it awakened Kant from his dogmatic slumber, as he later put it. But while Kant was struggling mightily to restore the ra-

"By the design of our system we depend upon an unelected judiciary to brake the democratic engine, to protect the right of the individual to live his own life."

tional foundations of ethics, Jeremy Bentham, the father of British utilitarianism, was declaring that talk of moral or natural rights was "simple nonsense: natural and imprescriptible rights, rhetorical nonsense,—nonsense upon stilts."¹³ Thus began the long emergence over the course of the 19th century and into the 20th of utilitarianism, rooted not in reason but in values, which held that acts, or laws, or policies were just not by virtue of their respect for individual rights but by virtue of their serving to produce the greatest good for the greatest number. In America, especially as we worked our way into the 20th century, utilitarianism had its counterpart in law in

what Professor Robert Summers has called "pragmatic instrumentalism," the conception of law as an instrument for accomplishing social goals.¹⁴ The Progressive Era was the intellectual seedbed for this view, although it reached fruition only with the New Deal.

By itself, however, pragmatic instrumentalism in law, even coupled with utilitarianism in ethics, could not have brought about this shift from rights to results. For results-based rationales of policy and law have always failed to deeply satisfy: first, because of the impossibility of computing the utilitarian calculus, owing to the incommensurability of interpersonal comparisons of utility;¹⁵ second, because even if we could compute that calculus, we are still left with Hume's dilemma, that from factual knowledge of the greatest good for the greatest number it does not follow logically that we ought to pursue that good; and third, even if we could compute that calculus and could make that logical leap, we are left with a nagging doubt, even absent a well-grounded theory of rights, that pursuing that good, especially when doing so would be at the expense of some among us, would not be right, might even violate rights.

Enter, therefore, democratic theory, which emerged through the 19th and 20th centuries as the handmaiden of utilitarianism and pragmatic instrumentalism. What democratic theory purported to supply was both a solution to the problem of making the utilitarian calculus—we find out what the greatest good for the greatest number is by taking a vote—and a moral rationale—democracy is merely the moral right of each to rule himself writ large. Armed with the explanatory and justificatory force of democratic theory, or so we believed, we could shift our focus from rights-based to results-based policy and law, we could shift from limited government, instituted to secure our rights, to expansive government, engaged to pursue our goals—we could shift, in short, from government as a necessary evil to government as an engine of good.

B. The Institutional Manifestation: Judicial Abdication

Because this shift, at bottom, was from a reason-based vision to a will-

(Cont. on p. 10)

Liberty (Cont. from p. 9)

based vision, it is not surprising that as an institutional matter the locus of the evolution was in the Congress and the executive, the will-based branches of government. With the growth of the democratic impetus and the increase in the scope of the franchise, the pressure grew to enact "the will of the people." Standing athwart this democratic engine over the years had been the judiciary, the reason-based branch of government. But even the judiciary was not immune to the march of ideas, especially in the absence of satisfactory countervailing ideas, and so in time it too joined in the procession, abandoning reason to will, nowhere captured more clearly, perhaps, than in Mr. Justice Holmes's famous dissent in the infamous *Lochner* case—or so the conventional characterization would have it.¹⁶

In *Lochner*, you will recall, the Court found that a New York State statute regulating the hours of employment of bakery workers violated the liberty of contract protected by the Fourteenth Amendment to the Constitution, prompting Holmes to declare, in dissent, that the case was "decided upon an economic theory which a large part of the country does not entertain" and to offer further that his "agreement or disagreement [with the theory] has nothing to do with the right of a majority to embody their opinions in law."¹⁷ Having thus characterized the Court's decision as grounded not on a legal and moral but on an economic theory, having then disparaged the Court for reading its economic philosophy into the Constitution, Holmes proceeded to read out of the Constitution all economic substance, saying that "a constitution is not intended to embody a particular economic theory, whether of paternalism and the organic relation of the citizen to the state or of laissez faire."¹⁸ In so emptying the Constitution, Holmes ignored a number of its powerful substantive clauses, of course, from the takings, to the contracts, to the privileges and immunities, to the due process of law clauses, not to mention the histories of their enactment, which would have given additional weight to this substantive understanding.¹⁹ And in place of a substantive

reading he erected "the right of a majority to embody their opinions in law," which of course is nowhere to be found in the Constitution and indeed was carefully constrained by the Founders.

So powerful was this majoritarian impulse, however, that in time it prevailed even with the judiciary. By the time we reached *Carolene Products*²⁰ in 1938, following *Nebbia*²¹ in 1934 and *West Coast Hotel*²² in 1937, the distinction between economic and political liberties was finally established, as was the idea that these "different" rights should be subject to different levels of judicial review—the operational manifestation of the distinction. Once again, this distinction and its operational manifestation, like Holmes's "right of the majority," were nowhere to be found in the Constitution. But ignoring this and oblivious to the moral limitations inherent in democratic theory itself, yet driven by the unrestrained democratic vision, the Court simply abdicated its responsibility to protect the rights of the minority in their economic activities. Rights of democratic process would

be protected, for this was what the unrestrained vision called for; but rights of economic substance would go unprotected, for deciding these was what the process was all about.²³

V. The March of Ideas: Restoring Our Roots

Thus have we continued to the present, but there are signs that changes may be in the offing. In 1984, for example, the Supreme Court decided a case called *Hawaii Housing Authority v. Midkiff*,²⁴ reversing a Ninth Circuit opinion that had found unconstitutional a Hawaii statute that permitted the state to condemn private land not so that it could be converted to public use but so that it could be purchased by private tenants who occupied it. What was noteworthy about this case was not the Supreme Court's opinion—far from it—but the Ninth Circuit opinion the Court reversed, which had held that "it was the intention of the framers of the Constitution and the Fifth Amendment that this form of majoritarian tyranny should not occur."²⁵ That

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language, together with the Supreme Court's opinion to the contrary, prompted an outpouring of critical comment, all of which may have played into the Supreme Court's more recent decisions in the land use area, at least to the extent that the Court remains susceptible to the march of ideas. I allude here to the *First English*²⁶ and *Nollan*²⁷ decisions in 1987, both of which appear to be moving back toward a regime of restraint on public power over private individuals in the economic domain.²⁸

And why should the judiciary not be susceptible to the march of ideas if indeed it is our reason-based institution. Earlier I noted that the rise of utilitarianism, pragmatic instrumentalism, and democratic theory was unaccompanied by satisfactory countervailing ideas. Well, that has changed in recent years. On the critical side, the idea that democracy affords a solution to the problem of deriving the utilitarian calculus has been exposed by those working in the area of public choice.²⁹ And in moral theory the idea that democratic rule is self-rule writ large has long been exploded, as earlier discussed. But on the constructive side also much work has been done, aimed at developing the foundations for natural rights theory that admittedly were not there at our founding.³⁰

All of which should encourage those judges who are disturbed by the march of the public domain to dip into this literature, the better to gain the intellectual confidence that is helpful when standing against this march.³¹ For the ultimate outcome of the march of the public domain is not a pretty picture, as earlier outlined. When all is public then by definition there is no private domain, no place to go to escape the public demand, as those who manage to flee such regimes will attest. By the design of our system we depend upon an unelected judiciary to brake the democratic engine, to protect the right of the individual, alone or in association with others, to live his own life, free from tyranny, free even from majoritarian tyranny. That was the original vision. It continues today to be the only vision that can ultimately be justified. ■

Footnotes

¹Birdzell, Jr., "Constitutionalizing the

Corporation: The Case for the Federal Chartering of Giant Corporations," 32 *Bus. Law.* 317 (1976).

²Remarks by President Reagan to the citizens of Port Washington, Wisconsin (July 27 1987). White House Press Release.

³"Handwritten Draft of a Bill of Rights Found," *New York Times*, July 29, 1987 §A, at 1.

⁴J. Locke, *The Second Treatise of Government* §123 (P. Laslett ed. 1966).

⁵See, e.g., B. Siegan, *Economic Liberties and the Constitution* (1980); *Economic Liberties and the Judiciary* (J. Dorn & H. Manne eds. 1987); *Public Choice and Constitutional Economics* (J. Gwartney & R. Wagner eds. 1988).

⁶Cf. Aristotle, *Nicomachean Ethics*, Bk. I, ch. 2.

⁷See R. Nozick, *Anarchy, State, and Utopia* 6 (1974). Cf. the text at note 3, *supra*.

⁸See Nozick, *supra* note 7; R. Wolfe, *In Defense of Anarchism* (1970).

⁹Stoebuck, "A General Theory of Eminent Domain," 47 *Wash. L. Rev.* 553, 608 (1972).

¹⁰These practical problems are surveyed in Locke, *supra* note 4, and Nozick, *supra* note 7.

¹¹The contrast that immediately follows draws from my monograph *Human Rights and Politico-Economic Systems*, Cato Institute, Washington, D.C., 1988.

¹²D. Hume, *Treatise on Human Nature* 469-70 (Selby-Bigge ed. 1888).

¹³J. Bentham, "Anarchical Fallacies," in 2 *Collected Works* 501 (Bowring ed. 1843).

¹⁴Summers, "Pragmatic Instrumentalism: America's Leading Theory of Law," 5 *Cornell L. F.* 15 (1978).

¹⁵The classic attempt was by Henry Sidgwick, *The Methods of Ethics* (7th ed. 1907); see A. Donagan, *The Theory of Morality* (1977).

¹⁶*Lochner v. New York*, 198 U.S. 45 (1905).
¹⁷*Id.* at 75.



Law professor Jozsef Szajer (left) of Eotvos Lorand University in Budapest is interviewed by a reporter for Radio Free Europe at a recent Cato Policy Forum.

¹⁸*Id.*

¹⁹See especially Siegan, *supra* note 5; R. Epstein, *Takings: Private Property and the Power of Eminent Domain* (1985).

²⁰*United States v. Carolene Products Co.*, 303 U.S. 144 (1938).

²¹*Nebbia v. New York*, 291 U.S. 502 (1934).

²²*West Coast Hotel v. Parrish*, 300 U.S. 379 (1937).

²³For a contemporary version of this view see J. Ely, *Democracy and Distrust* (1980).

²⁴467 U.S. 229 (1984).

²⁵*Midkiff v. Tom*, 702 F.2d 788, 790 (1983).

²⁶*First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, California*, 107 S. Ct. 2378 (1987).

²⁷*Nollan v. California Coastal Commission*, 107 S. Ct. 3141 (1987).

²⁸For an outline of a resolution of the takings question see my "Property Rights, Takings, and a Free Society," 6 *Harv. J. L. Pub. Policy* 165 (1983).

²⁹See, e.g., K. Arrow, *Social Choice and Individual Values* (2d ed. 1963); Riker, "Implications from the Disequilibrium of Majority Rule for the Study of Institutions," 74 *Am. Pol. Sci. Rev.* 432 (1980); and the classic by J. Buchanan and G. Tullock, *The Calculus of Consent: Logical Foundations of Constitutional Democracy* (1962).

³⁰See, e.g., A. Gewirth, *Reason and Morality* (1978). Cf. R. Pilon, *A Theory of Rights: Toward Limited Government* (Ph.D. dissertation, University of Chicago, 1979). For an application in the area of economic liberty, see Pilon, "Corporations and Rights: On Treating Corporate People Justly," 13 *Ga. L. Rev.* 1245 (1979).

³¹I have discussed the issues of judicial review more fully in "On the Foundations of Justice," 17 *Intercollegiate Rev.* 3 (1981); "Legislative Activism, Judicial Activism, and the Decline of Private Sovereignty," in *Economic Liberties and the Judiciary*, *supra* note 5, at 183.

Fanon and Locke (Cont. from p. 1)

existence. If a student does not leave an introductory course with the desire to learn more, then that course was a waste of time.

This is where the instructor's skill comes into play. A great book, when taught by a bore, is boring. A great book, when taught by a professor who doesn't understand its relevance, seems irrelevant. A great book, when taught by a professor with an ax to grind, will be chopped into small, unrecognizable pieces.

Required reading in college may become despised reading in later life. Even today I do not enjoy reading Shakespeare. I want to read Shakespeare, but when I try, I am flooded with horrific school-day memories—flashbacks of barely literate students stumbling aloud through Elizabethan verse in monotone draws—flashbacks of drudgery, pedantry, and suppressed yawns. Who has not had similar experiences?

If the Stanford faculty does to Fanon what my teachers did to Shakespeare, then traditionalists can take heart: No Stanford student, after leaving that institution, will ever read Fanon again.

Social Justice at Stanford

Stanford's CIV program has been defended by Charles Junkerman, assistant dean of undergraduate studies.⁴ "[B]ooks," Junkerman asserts, "are to be read and valued for what they have to say, not for the name recognition of their authors." This is reasonable enough, though it would be difficult to find anyone who advocates reading great books because they bear famous names.

Fanon's *The Wretched of the Earth* is now required reading for Stanford freshmen; John Locke's *Second Treatise of Government* is not. Junkerman defends this peculiar choice as follows:

50 years ago John Locke seemed indispensable in answering a question like "What is social justice?" In 1989, with a more interdependent world order, a more heterogeneous domestic population, and mass media and communications systems that complicate our definitions of "society" and "individual," it may be that someone like

Frantz Fanon, a black Algerian psychoanalyst, will get us closer to the answer we need.⁵

An interdependent world order, a heterogeneous domestic population, and mass media and communications systems—seldom are so many clichés crowded into one sentence. But what do they mean? England doesn't have an especially heterogeneous population—even today. Should we therefore dismiss all English theorists of social justice? As for mass media and communications, is Locke outdated because he didn't have a television, a phone, or a computer? If Junkerman uses these devices, do they render him a more able philosopher than Locke? And have modern conveniences really complicated our definitions of "society" and the "individual"? (Here's a useful test: If you can touch it, it's definitely not a society.)

Junkerman apparently finds Fanon more to his liking than Locke; that is his prerogative. But to recommend Fanon over Locke in a course on "Europe and the Americas" is intellectually irresponsible. Few writers have exerted more influence on modern Western thought than Locke. Adam Smith and Karl Marx are possible candidates, but, of these, only Marx has found his way into the Stanford program. A course on Western thought without John Locke or Adam Smith is like a course on ancient Greek philosophy without Plato or Aristotle.

Locke vs. Fanon

Junkerman has targeted Frantz Fanon and John Locke for comparison, so let's take a look at these two authors.

First published in French in 1961, *The Wretched of the Earth* emerged from Fanon's experiences during the French-Algerian war. Fanon's angry indictment of colonialism and racism is insightful, sometimes brilliant. The same cannot be said, however, of Fanon's socialist agenda for an independent Algeria.

Fanon writes of "the necessity for a planned economy" and "the outlawing of profiteers." A revolutionary government, if it is to rescue the economy of a newly liberated country, "must first and foremost nationalize the middleman's trading sector." While under French

rule, Algerian peasants learned a valuable economic lesson—a lesson that Stanford's wealthy donors should ponder as well:

The people come to understand that wealth is not the fruit of labor but the result of organized, protected robbery. Rich people are no longer respectable people; they are nothing more than flesh-eating animals, jackals, and vultures which wallow in the people's blood.⁶

The government, Fanon writes, should educate the masses politically; this will "make adults of them." Fanon's elitism becomes even more apparent in this passage: "We ought to uplift the people; we must develop their brains, fill them with ideas, change them and make them into human beings."⁷

Why don't Algerians qualify as adults and human beings until their brains are filled with ideas by Fanon and his ilk? Partially because the "young people of the towns, idle and often illiterate, are a prey to all sorts of disintegrating influences." In other words, Algerian youth may pursue activities of which Fanon disapproves—corrupt "capitalist" values, including "detective novels, penny-in-the-slot machines, sexy photographs, pornographic literature, films banned to those under sixteen, and above all alcohol."⁸ (Apparently the idle youth have sufficient money to spend on slot machines and movies, and the illiterate youth are sufficiently literate to read detective novels and pornographic literature.) Even the "capitalistic conception of sport," according to Fanon, poses a serious threat to underdeveloped countries.

To combat such evils, "the government's duty is to act as a filter and stabilizer." Youth commissioners will combat the main evil, idleness, by putting young people to work. "For this reason the youth commissioners ought for practical purposes to be attached to the Ministry of Labor"—and this Ministry of Labor ("a prime necessity in underdeveloped countries") will cooperate with the Ministry of Planning ("another necessary institution in underdeveloped countries").⁹

With his call for a planned economy and its attendant bureaucracy, Fanon

appears to favor a highly centralized government. But this is not true, he assures us. Throughout his book, Fanon stresses the need to keep power out of the hands of a ruling elite and in the hands of the people. This requires "decentralization in the extreme."

But how can a socialized economy function (to the extent it can function at all) without a centralized government? Perhaps Stanford freshmen can mull this problem over while they wade through Fanon's book.

Fanon vs. Africa

Fanon's economic program is a prescription for disaster modeled, ironically enough, after Western theories of economic planning. So where is the African perspective that Fanon is supposed to offer Stanford freshmen? Does he call for a revival of African culture? Far from it. Fanon attacks African culture with a vehemence second only to his attack on capitalism.

European colonizers demeaned Africans culturally and racially. Understandably, therefore, many Africans seek to reclaim their African heritage through literature, poetry, music, and art. This love of African culture, Fanon says, is shared by some black Americans who "experience the need to attach themselves to a cultural matrix."

But the quest for an African culture, Fanon warns, leads up a blind alley; "There will never be such a thing as black culture." It is "mystification, signifying nothing."¹⁰

"[E]very culture," Fanon believes, "is first and foremost national." An Algerian who seeks out a precolonial African culture "feels the need to turn backward toward his unknown roots and to lose himself at whatever cost in his own barbarous people." The native should tear himself away from these roots, "painful and difficult though it may be"; otherwise, "there will be serious psycho-affective injuries."¹¹ (The psychiatrist Fanon, the enemy of Western culture, revels in Western psychobabble.)

African traditions—"the good old customs of the people"—should be jettisoned. Why? Because Fanon worries that Algerians, freed from the yoke of colonialism, will reject his vision of how they should live; they might choose instead to return to the tribalism

and feudalism of precolonial Africa. Presumably, those misguided Algerians who feel they have a right to live as they see fit have been corrupted by that Western value known as freedom of choice.

Instead of adopting old customs, Algerians should develop an authentic (Fanon's favorite word) national culture based on revolutionary realities. Authentic culture "is opposed to custom, for custom is always the deterioration of culture." During a revolutionary struggle, the desire to attach oneself to tradition or to revive old traditions means "opposing one's own people." The African artist who looks to the African past for inspiration turns away from actual events and embraces "the castoffs of thought, its shells and corpses." If the native artist wishes to produce an authentic work of art, he must join the revolutionary struggle.¹²

"[Locke's] *Second Treatise* is one of the most vigorous and compelling defenses of violent revolution ever penned."

What does all this mean? Put simply, it means that Fanon regards African culture as a pernicious and reactionary myth; it is "a stock of particularisms," "mummified fragments," and "symbols of negation and outworn contrivances." If these elitist remarks had come from a white writer, he would be excoriated as racist, culturally biased, and unsuitable for the Stanford CIV program. But Fanon was a black revolutionary socialist, so never mind.

Was Fanon included in the Stanford program to represent African culture? If so, the Stanford planners have perpetrated a cruel hoax. Fanon is pushing a revolutionary socialism and its national culture, nothing more.

John Locke's Revolutionary Ideas

While in college, I imbibed my John Locke through a professor who was

under the spell of C. B. MacPherson's book, *The Political Theory of Possessive Individualism*. I was told that Locke was a political conservative, a defender of a nascent capitalist class, and a member of the "bourgeoisie" (i.e., "middle class" uttered with a sneer). Even this mangled view, however, is a cut above an interpretation based on Locke's culture, race, sex, and time. We may concede the point: Locke was Western and white and male, and he died a long time ago. If these flaws expel him from Stanford classrooms, so be it.

Whether Locke should be included in the Stanford program narrows to a single point: Should freshmen read one of the most influential philosophers of the modern era—a man whose philosophical, political, and educational writings profoundly influenced leading thinkers in England, Scotland, France, America, Germany, and elsewhere?

Locke's *Essay Concerning Human Understanding* set the stage for modern empiricism, and it was deeply admired by the luminaries of the French Enlightenment, such as Voltaire. The impact of Locke's *Second Treatise of Government* is difficult to exaggerate. Reading that tract is essential if students are to understand the ideological background of the American and French Revolutions—two of the most cataclysmic events of the modern era.

In short, it is virtually impossible to understand the past 250 years of Western civilization without referring to Locke. He upheld natural rights, government by consent, religious tolerance, the right to resist unjust laws, and the right to overthrow tyrannical governments. These principles have become indispensable to our vision of a free and open society.

Nevertheless, in the mind of Junkerman, Fanon may "get us closer to the answer we need" in the search for social justice. Ironically, Fanon occasionally sounds like Locke. "The land belongs to those that till it," Fanon asserts. Locke agrees wholeheartedly:

The labor of man's 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 labor with, and joined to it something that is

Fanon and Locke (Cont. from p. 13)

his own, and thereby makes it his property.¹³

Fanon tells how Algerian revolutionaries refused "to tolerate any encroachment of this right of ownership." The Algerians, he boasts, "are men of property."¹⁴ Locke would have been very pleased indeed.

Locke, like Fanon, was a revolutionary. Wanted by the English government for sedition, Locke spent six years hiding out in Holland. And his *Second Treatise* is one of the most vigorous and compelling defenses of violent revolution ever penned.

Who decides when a revolution is necessary? Locke answers: "The people shall be judge." In a passage later drawn upon by Jefferson for his Declaration of Independence, Locke writes:

If a long train of abuses, prevarications, and artifices, all tending the same way, make the design [to oppress] visible to the people, and they cannot but feel, what they lie under, and see, whither they are going; 'tis not to be wondered, that they should then rouse themselves, and endeavor to put the rule into such hands, which may secure to them the ends for which government was first erected.¹⁵

What if a revolution involves considerable bloodshed? In this event, argues Locke, the fault lies with the oppressors, not with the oppressed:

If any mischief come in such cases, it is not to be charged upon him who *defends* his own right, but on him that *invades* his neighbors. If the innocent honest man must quietly quit all he has for peace sake, to him who will lay violent hands upon it, I desire it may be considered, what a kind of peace there will be in the world, which consists only in violence and rapine; and which is to be maintained only for the benefit of robbers and oppressors. Who would not think it an admirable peace betwixt the mighty and the

"Locke . . . provides a philosophical justification for restoring the rights of life, liberty, and property to oppressed peoples everywhere."

Boaz, Dorn Promoted

The Cato Institute's board of directors has promoted David Boaz to executive vice president of the Institute and has named James A. Dorn as vice president for academic affairs.

The board also officially designated Cato president Edward H. Crane as chief executive officer of the Institute. Crane said, "These promotions demonstrate the board's confidence in the important role that Boaz and Dorn have played in Cato's growth over the past several years. The appointment of a vice president for academic affairs also affirms Cato's commitment to involving academics in public policy work."

Boaz, who was previously vice pres-

ident for public policy affairs, is in charge of most of the Institute's policy research and publications. He edits *Cato Policy Report*, the Policy Analysis series, and many Cato books. He recently was editor of *Assessing the Reagan Years* and coeditor, with Crane, of *An American Vision: Policies for the '90s*.

In addition to serving as editor of the *Cato Journal*, Dorn has directed most of Cato's conferences, including the annual monetary conferences and "Economic Reform in China," which was held in Shanghai last year. He is coeditor of a number of books, including *The Search for Stable Money* and the forthcoming *Dollars, Deficits, and Trade and Economic Reform in China*. ■

mean, when the lamb, without resistance, yielded his throat to be torn by the imperious wolf?¹⁶

Perhaps Junkerman can explain why these and many similar passages no longer apply to the modern quest for social justice. Locke, far more than Fanon, provides a philosophical justification for restoring the rights of life, liberty, and property to oppressed peoples everywhere. ■

Footnotes

¹*The Writings of Thomas Jefferson* (Washington, D.C.: The Thomas Jefferson Memorial Association, 1903), XIV, p. 148.

²*Ibid.*, pp. 156-57.

³*The Great Conversation: The Substance of a Liberal Education* (Chicago: Encyclopedia Britannica, Inc., 1952), p. 76.

⁴Letter to the Editor, *The Wall Street Journal*, January 6, 1989.

⁵*Ibid.*

⁶Frantz Fanon, *The Wretched of the Earth*, trans. Constance Farrington (New York: Grove Press, 1968), p. 191.

⁷*Ibid.*, p. 197.

⁸*Ibid.*, p. 195.

⁹*Ibid.*, p. 196.

¹⁰*Ibid.*, pp. 216, 234-35.

¹¹*Ibid.*, pp. 216-18.

¹²*Ibid.*, pp. 224, 226, 233.

¹³John Locke, *Two Treatises of Government*, ed. Peter Laslett (New York: New American Library, 1965), p. 329.

¹⁴Fanon, pp. 192-93.

¹⁵Locke, p. 463.

¹⁶*Ibid.*, p. 465.

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Scott Rasmussen, cofounder of the ESPN cable sports network, recently joined Cato as chairman of Project '90, the Institute's \$10 million campaign to raise funds for Cato's new headquarters building and to endow certain programs.

This fall, Rasmussen will speak before business groups and civic clubs around the country. The theme of his speech, "Entrepreneurial Politics: The Founder of ESPN Talks about America's Future," will be that American politics is mired in the policies of the past. Rasmussen's talk promises to bring a fresh entrepreneurial perspective to issues ranging from the social security system to America's global military role.

Coincidentally, 1989 is ESPN's 10th anniversary. Scott Rasmussen and his father, William, started in business by covering high school hockey games. ESPN, which the Rasmussens have sold, has since grown into a billion-dollar cable network that is on the air 24 hours a day and covers everything from NBA games and the French Open ten-

nis tournament to amateur skateboarding events.

Scott Rasmussen said, "In 1984 I started studying politics and public policy seriously, coming to Washington and talking with lots of people about the direction of our country. I became convinced that the Cato Institute had the best perspective on policy issues and was doing an effective job of advancing ideas that make sense to me. I'm delighted to be able to help make Cato a success."

Cato president Edward H. Crane said, "Scott Rasmussen and ESPN are a great American success story. He shares our vision of an America that will continue to offer that kind of opportunity to all its citizens, and we're pleased that he's going to help us make that vision a reality."

A schedule of Rasmussen's speaking tour is available through Cato's Public Affairs Department.

Fundraising for Project '90 is going well, even though the formal fundraising effort hasn't been kicked off yet.



Scott Rasmussen

Project '90 received a major boost in May with pledges of \$250,000 from Richard Dennis and \$100,000 from Federal Express founder Frederick W. Smith, both members of Cato's board of directors. Anyone interested in assisting with Project '90 or becoming a member of the Finance Committee should contact Cathi Smith, vice president for development and public affairs. ■

Drug Laws Cause 8,250 Deaths a Year, Study Says

Drug prohibition causes at least 8,250 deaths each year, according to a new study from the Cato Institute.

Attorney James Ostrowski states that each year there are 1,600 murders committed by addicts seeking money to buy drugs that prohibition makes more expensive, 750 murders related to black market drug transactions, 3,500 drug-related AIDS deaths, and 2,400 deaths from drug reactions and overdoses resulting from a lack of quality control.

Ostrowski writes, "Since the black market in illegal drugs is the source of most drug-related problems, that market must be eliminated." He argues that the most efficient means of doing so is legalization and states, "The day after legalization went into effect, the streets of America would be safer."

In 1988 Ostrowski asked nine leading supporters of drug prohibition—including vice president George Bush and future drug czar William Bennett—to cite any study demonstrating that

the beneficial effects of drug prohibition outweighed its costs. None was able to do so.

The negative effects of prohibition abound, points out Ostrowski. Because drug laws greatly increase the price of illegal drugs, users are often forced to steal to get money. Ostrowski documents that drug users commit at least 40 percent of all property crime in the United States so they can maintain their habit, amounting to about four million crimes per year and \$7.3 billion in stolen property. All told, the economic cost of prohibition is about \$80 billion a year.

Furthermore, jails and courts are overloaded. Ostrowski states, "In a world of scarce prison resources, sending a drug offender to prison for one year is equivalent to freeing a violent criminal to commit 40 robberies, 7 assaults, 110 burglaries, and 25 auto thefts."

The history of alcohol Prohibition provides an important reference when considering drug prohibition. Ostrow-

ski writes, "The murder rate rose with the start of [alcohol] Prohibition, remained high during Prohibition, then declined for 11 consecutive years when Prohibition ended."

Ostrowski details how drug prohibition leads to the corruption of law enforcement officials, to civil liberties abuses, and to the destruction of inner-city communities. He rejects the contention that legalization would result in greatly expanded usage citing that, on a per capita basis, the use of heroin, opium, and morphine is no less prevalent today than it was before prohibition; the use of cocaine is more widespread today than when it was legal. Furthermore, marijuana use appears to be lower in Alaska and the Netherlands, where it is legal, than in the continental United States.

"Thinking about Drug Legalization" is no. 121 in the Cato Institute's Policy Analysis series. It is available for \$2.00. ■

"To be governed..."

Now they'll know we mean business

President Bush [approved] a subsidized sale of 1.5 million tons of wheat to the Soviet Union. . . .

Senate Minority Leader Robert J. Dole (R-Kans.) praised the decision in a statement, saying it would be "a strong signal America is playing to win in the international marketplace."

—*Washington Post*, May 3, 1989

The case for comparable worth

What's a job worth? Differing needs dictate wide divergence in pay boosts. . . .

The pay outlook varies sharply region to region. Industrial workers in the Southwest can expect 7.8% raises in 1989. In the Southeast they'll be getting only 4.4%. Similarly, Temp Force finds typists will earn 6.2% more in the West but only 4.1% more in the Midwest.

—*Wall Street Journal*, May 9, 1989

Curses! Foiled again

Record inflation and unprecedented unemployment have played havoc with the efforts of . . . Zimbabwe, Africa's newest nation and one of its most richly endowed, to improve living standards.

—*Washington Times*, May 11, 1989

With conservatives like this . . .

[Wyoming Republican congressional candidate Craig] Thomas says the issue is simple: "I'm a conservative. John's a liberal."

Thomas defined "conservative": . . . "I'm a believer in the private sector. I want a limited government, limits on these welfare programs."

And yet Thomas . . . argues for increased funding of the federal Wool Subsidy Act and Sugar Subsidy Act, and more federal money for Fontenelle Dam. He constantly reminds voters that he has been assured a seat on the House Interior Committee if he wins. "That's important to make sure we get our share [of Federal funds]," he says.

—*Washington Post*, Apr. 23, 1989

Well, it's sort of a business

[The Shorebank Corporation, a Chicago neighborhood development program,] is a business that will go under if it makes too many bad investments. . . . Government normally spends its money in response to community desires, political clout, or need. Shorebank seeks out those who can thrive in the marketplace. . . .

After 15 years, it is clear that the Shorebank model will not spread unless the public sector is willing to invest.

—*New Republic*, May 8, 1989

Me, me! I could be president

It is also the custom to pay many corporation presidents 3 million bucks a year or more, and the rationale is that they guide a company into the high roads of profit. The truth is a corporation goes along about the same no matter who is president.

—Henry Mitchell in the *Washington Post*, Apr. 28, 1989

At last, results from drug enforcement

Ramon Salcido, a Mexican-born winery worker wanted in the killings of his wife, two daughters and four other persons in northern California, was arrested early today by federal police at a roadblock in northwestern Mexico . . . set up to check for drug traffickers.

—*Washington Post*, Apr. 20, 1989

When it's his own money

[A television ad for] Quality International Hotels . . . features [former House speaker Tip] O'Neill . . . saying that now that he's out of the House and on the road more, he gets a 30 percent senior citizen discount from the hotel chain. His pitch ends with, "Who says a politician can't control spending?"

—*Washington Post*, May 9, 1989

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