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THE INTELLECTUAL HISTORY OF LAISSEZ FAIRE*

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WHAT I propose to do in this lecture is to discuss the logical or rhetorical nature of the arguments by means of which exponents of laissez faire or of marked movement in its direction have attempted to win converts to their cause. My lecture will be focused not on the inherent merits or defects of laissez faire as social doctrine, but on the logical character of the case that its adherents have presented in support of it. My examination will be critical in large part, and in one major respect will not be judiciously balanced, since I would in many instances be even more critical of the arguments with which laissez faire has been attacked, but will not similarly examine these arguments. It does not add much, however, to the inherent strength of a doctrine that some deplorably bad arguments have been used against it.

It is really not the laissez faire doctrine as such, but the art of persuasion as used in social thought, which it is the purpose of this lecture to explore. I have chosen the history of the advocacy of laissez faire doctrine as the particular field in which to observe the art of persuasion at work, partly because it is a field with which I have some familiarity, and partly because the doctrine has legal and political and ethical aspects as well as economic ones, so that it is a subject of discourse more appropriate to the present occasion than would be a lecture on a narrowly technical economic issue. If in my wandering outside the boundaries of economics, I mishandle legal, political, or ethical concepts, I beg of the experts present to temper their judgments of my misdeeds in the light of the innocence of my intentions.

I will carefully avoid using the term laissez faire to mean what only unscrupulous or ignorant opponents of it and never its exponents make it mean, namely, philosophical anarchism, or opposition to any governmental power or activity whatsoever. I will in general use the term to mean what the pioneer systematic exponents of it, the Physiocrats and Adam Smith, argued for, namely, the limitation of governmental activity to the enforcement of peace and of "justice" in the restricted sense of "commutative justice," to defense against foreign enemies, and to public works regarded as essential and as impossible or highly improbable of establishment by private enterprise or, for special reasons, unsuitable to be left to private operation. Both the Physio-

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crats and Adam Smith gave some sanction to the limited expansion of governmental activity beyond these limits. Following their example, I will not deny the laissez faire label to any writer who in general accepts the limitations I have enumerated to governmental activity, even if he occasionally, incidentally, and inconsistently relaxes these limitations slightly to permit either of a restricted list of minor exceptions or of temporary suspension of the laissez faire code in case of emergency or abnormal conditions, such as war, famine, or earthquake.

No social doctrine has a meaningful historical life except with reference, explicit or implicit, to an existent or conceivable alternative or array of alternatives. It is a useful simplification as a first approximation to regard the alternatives to laissez faire as lying along a straight line measuring degrees of governmental intervention in the field of economic activity. Looking in one direction, this straight line represents Herbert Spencer's road to "The Coming Slavery," or Friedrich Hayek's "Road to Serfdom." It is only since the eighteenth century "Enlightenment" that slavery and serfdom have been regarded as pejorative terms. Those well-disposed towards laissez faire should therefore perhaps use in preference such terms as "Road to Tyranny" or "Road to Totalitarianism," labels which as far as I know no one would ever have chosen for highways on which he wished mankind to travel. Looking in the other direction, however, this highway also represents the Road to Anarchy. In any case, along this road are many conceivable stopping-places, and no one may be interested in either of its terminal points. Route 1, a great national highway which connects Boston, New York, Philadelphia, Baltimore, and Washington, begins at Fort Kent in Maine and ends at a sand-dune at the southern tip of Florida. Except on the arbitrary assumption that travel on this road, in either direction, is totally without benefit of brakes, the terminal points of our metaphorical road are often assigned an extravagant degree of practical significance in discourse in this field. Until quite recent years, actual and vital discussion in the public forum has turned mainly on the comparative merits as resting-places along our highway of points not greatly distant from each other, or perhaps more accurately, as between no movement at all and a limited amount of movement, sometimes in both directions simultaneously, from the existing resting-place. Before World War I the issue in debate was never, as far as I can see, between laissez faire and totalitarianism, or between the welfare state and philosophical anarchism. As I will be dealing mostly with pre-1914 facts or ideas, I will spend no time on St. George-and-the-dragon types of argument.

The historical debates in this field before the Bolshevik Revolution also were to but slight extent in form and to even less extent in substance debates about "freedom" in a general or universal sense. If the debate did use the terminology of "freedom," it was likely in form and even more likely in substance to be debate about particular "freedoms" or "liberties," often recog-

nized to be rival to, or only distantly related, if at all, to other particular "freedoms," or to be debates about desirable degrees of a particular freedom, about "true" freedom versus "false" freedom, or about "freedom" versus "license." Great men have differed, moreover, as to whether submission to an authority by voluntary consent, revocable or irrevocable, is a mark of freedom, or a mark of servitude, as to whether a man enslaved by force becomes truly a free man if he disciplines himself into, or has been brainwashed into, not wanting the things, including freedom from slavery, which his status as a slave makes inaccessible to him. If stone walls do not a prison make, nor iron bars a cage, "freedom" becomes a much less important concept historically than the historians have usually taken for granted. This is true also in the economic field if the important freedom here is freedom of choice, but absence of power in the sense of economic resources, or of acquired knowledge and skills, or of the appropriate complexion, makes subjective exercise of that freedom of choice little more than indulgence in wishful daydreaming. Freedom defined, as it often has been, as the power to do what it is right to desire to do, with some external authority, often claiming to be speaking for God, deciding what it is right to desire to do, also seems to me an intellectually uninteresting variety of freedom, although I would not for a moment deny that thousands of men have willingly died for that kind of freedom.

On the relation of freedom to act to power to act, the only kind of power to act which a sampling of the voluminous literature on freedom as an abstract or general concept persuades me it is usually safe to ignore is the kind of power to act which would be fairly represented by such acts as jumping over the moon or moving mountains by exhortation or hanging up one's cloak on a moonbeam. Even here, however, caution is needed lest we attribute the existent limitations on the power of a particular man to act which have a social origin to Providence or to the laws of physical or human nature. I will return to this later. In any case, not only does the history of discussion about "economic freedom" offer abundant evidence in support of St. Thomas Aquinas' dictum that "When reason argues about particular cases, it needs not only universal but also particular principles,"[1] but it provides some warrant for going farther, and maintaining that universal principles that are meaningful and serviceable to some good purpose can be derived, if at all, only from such particular principles as can be formulated in the attempt to deal wisely with particular cases.

As a general and systematically expounded doctrine, the doctrine of laissez faire made its first appearance in the eighteenth century. As is always the case for complex doctrines, however, it made use of ideas and maxims inherited from earlier times. Combining them with some new ideas, it constructed, from the old and the new, a doctrine which was without a close

[1] Summa Theologica. I. II. q. 58. a. 5.

previous counterpart. To point out some elements of earlier thought which were to be embodied in the eighteenth-century laissez faire doctrine will be my next task.

The economies of ancient Greece and Rome rested on a foundation of slavery, and, by the leading philosophers at least, the merchants were regarded with suspicion as to their morals and with aristocratic contempt as to their role and status in the good society. In this setting, an ethical doctrine of individual freedom in the economic sphere, whether for merchants or for manual laborers, would have had infertile ground to grow up in, and neither Greek nor Roman philosophers were sufficiently interested in such lowly matters as production and the market to apply their wits to the formulation of an economic case for or against economic freedom. Early Christian thought held temporal matters as of only trivial and transitory significance, regarded commercial activity as almost inevitably motivated by avarice and permeated by cheating and exploitation, and insisted that the only truly valuable freedom in temporal matters was the subjective freedom which could be won by the suppression of desire for temporal goods not unqualifiedly necessary for survival. The slave who had disciplined his passions was declared authoritatively to be in all that really mattered freer than his master who eagerly pursued worldly goods.

A few ideas from classical times, however, were later to be rediscovered and developed to constitute elements in a full-fledged laissez faire doctrine. The defense of private property as against communism presented by Aristotle, and taken over by several of the early Christian Fathers, included the proposition that private property alone imbued men with the incentives necessary for care in the preservation of scarce assets and for industrious application to producing useful goods. Aristotle's description of man as a political or social animal was to be made the keystone later of the case for laissez faire on the basis of a natural harmony of interests between individual and community. The beginnings of a doctrine of the providential ordering of nature included the proposition, later to be used to give a religious flavor to the argument for free trade in international commerce, that Providence had assigned different climates and resources to different peoples, in order that they should be mutually dependent on each other for subsistence, and thus, through the medium of commerce, should join in the universal brotherhood of man. The maxim of Horace, "You may drive nature out with a pitchfork, but it will always return," and other Roman maxims about the necessity of "following nature," were later to be repeatedly invoked to support the proposition that governments could not succeed in directing particular economic activities counter to the restraints set by physical nature and the instincts and drives of human nature. More to the point, though perhaps intended only as descriptions of the status of an elite rather than as general social norms, were the four freedoms which the priests of Apollo at Delphi around 200 B.C.

formulated as constituting the difference between freedom and slavery: protected legal status in society; freedom from arbitrary seizure or arrest—or *habeas corpus,* if you like; freedom of choice of economic occupation; right of unrestricted movement from place to place.[2]

The "rule of law rather than of men" doctrine which was later to be held to be an essential safeguard of economic and other freedoms was presented in a qualified and ambiguous version by Aristotle:

> . . . laws, when good, should be supreme; and . . . the magistrate or magistrates should regulate those matters only on which the laws are unable to speak with precision owing to the difficulty of any general principle embracing all particulars.[3]

It was later to be pointed out, and still later to be forgotten, that against the gain of legal certainty and of protection against tyrants afforded by "the rule of law" was to be set the loss of equity and of adaptation of rules to the peculiarities of particular cases.

It was a commonplace among the Romans that the most corrupt republics had the greatest number of laws. I suspect that this was sometimes not meant as advocacy of a minimum of law, but as an expression of a preference for "court law" and for common law over statutes, which were by the Romans resorted to comparatively infrequently, to deal either with emergencies or with situations requiring uniform applications of measured penalties, or measured uniformity in some other respect.

From the time of classical Greece on, there was prevalent the doctrine that government was as "natural" as the family or as society. Cicero held that government grew or evolved by as "natural" a process as did customs or mores, and later this was to develop into the doctrine that the growth of government made little more demand on genius and over-all design than did the growth of language. The counter-doctrine that government was a necessary evil, arising out of the fall of man and original sin, and having as its sole reason for existence the disciplining of sinful man, seems to have entered the mainstream of western thought with the advent of Christianity. "Law," said St. Paul, "is not made for a righteous man, but for the lawless and unruly, for the ungodly and sinners. . . ."[4] St. Augustine struck a similar note, and the Augustinian phase of the Christian tradition kept emphasizing this idea, which is prominent in Jansenism and also, as a reply to anarchistic ideas, in Luther and Calvin. In seventeenth and eighteenth century England, the idea in secularized form was repeatedly presented as an argument for narrowly restricting the range of activity of government. John Locke, David Hume, Adam Smith, all made some use of the argument, but its most famous statement was by Thomas Paine, in *Common Sense* (1776):

[2] See Westermann, Between Slavery and Freedom, 50 Am. Hist. Rev. 216 (1945).

[3] Politics, iii. 11. 19; 1282b ff. 125 (Jowett, tr., Oxford, 1908).

[4] I Timothy, 1:9.

[Natural] Society is produced by our wants, and government by our wickedness; the former promotes our happiness positively by uniting our affections, the latter negatively by restraining our vices. The one encourages intercourse, the other creates distinctions. This first is a patron, the last a punisher.

Society in every state is a blessing, but government, even in its best state, is but a necessary evil. . . . Government, like dress, is the badge of lost innocence.[5]

Modern Catholic critics of what they term "capitalistic individualism" and "economic liberalism" have charged the spread of Roman law teaching throughout Europe from the thirteenth century on with facilitating their rise by undermining Church and canon law influence in favor of civil power and secular law, and thus replacing the moral influence of the Church by the individualistic spirit of the Roman law. They claim that there was for centuries an open and sharp conflict between the Church and the Roman lawyers, with the ultimate victory of the latter preparing the way for the disastrous dominance of laissez faire and of the undisciplined capitalist spirit.[6] Other scholars have claimed that the extent of the hostility of the Church to Roman law has been exaggerated and that what friction there was resulted in the main from other causes, political rather than doctrinal.[7]

It would not be fair to compare for their level of edification, as has been done, a treatise on Roman law, with its strict attention to practicality and working-rules for adjudication of property rights, to a medieval *Summa,* with its disorderly mixture of legal rule, ethical precept and counsel, and spiritual exhortation. It may be true that there was in Roman law an individualistic spirit and a degree of recognition of individual "rights" which influenced Continental lawyers in a direction favorable to the reception of an approach to the laissez faire doctrine. But the great Roman law codes concentrated on private law, and the issues involving the relations of citizens and government arose mainly in the fields of public and administrative law. A major precept of private law always is "to render to every man his own," and much of the content of the Roman law of property and of sales consisted of rules framed, apparently admirably, on the basis of convenience rather than on abstract principle, for determining the validity of claims of individuals *on other individuals.* The claims of government against individuals were a matter of public law. A large area, moreover, even of private law was left uncovered by specific

[5] I The Writings of Thomas Paine 69 (Conway, ed., New York, 1894).

[6] See, for example, C. de Monléon, L'Eglise et le Droit Romain (Paris, 1887); G. Ardant, Papes et Paysans 40–41 (Paris, 1891); J. Jannsen, II History of the German People at the Close of the Middle Ages 169 ff. (translated from the original German) (London, 1896). *Cf.* P. Vinogradoff, Roman Law in Medieval Europe 142 ff. (2d ed., Oxford, 1929).

[7] See Digard, La Papauté et l'Etude du Droit Romain au XIII^e Siècle, 51 Bibliothèque de l'Ecole des Chartres (1890); Fournier, L'Englise et le Droit Romain au XIII^e Siècle, 14 Nouvelle Revue Historique de Droit Français et Etranger 80–119 (1890), with useful bibliography.

rules, and was governed by so-called principles of "good faith" or of equity, which meant in practice the discretion of the magistrate, guided by his interpretation of the prevailing moral code.[8]

In criticisms of Roman law on the ground that it gives unduly free reign to economic individualism, two specific charges are repeatedly made: that it defines individual property rights in too absolute a manner and that in the law of sales it follows the doctrine of *caveat emptor*. It has been asserted by modern experts, however, that the first charge rests on a definition of property rights which is mistranslated and cannot be found in any Roman law text; that the second charge is based on a term which is not meaningful in Latin, and is also not to be found in any Roman law text; and that both charges misinterpret the spirit of Roman law.

With respect to property law, the phrase *jus utendi et abutendi,* on which the charge is made to rest, has never been found in a classic Roman law text. In any case, instead of being translated, as it usually is, as "the right to use and abuse," it apparently should be translated as "the right to use and to use up in consumption," which takes the sting out of it.[9] In the Middle Ages there was cited as a maxim of Roman law: "It is expedient for the commonwealth that a man should not use his own property badly."[10]

In the Roman law of sales, the dominant principle was that "a bargain was a bargain," but only subject to complete absence of fraud or deception, to reasonable disclosure of defects of merchandise by the vendor, enforced by strict rules of warranty, and to good morals in general.[11] The great Roman law codes cited the dictum that the law tolerates a certain amount of "overreaching" in the higgling of the market. This did not mean, however, sanction of fraud, and modern experts have ascribed more rigor in some respects to the Roman law of sales than to the corresponding provisions in English or American common law as applied in our times.

What seems to be true is that by its precision and its systematic and practical character the Roman law provided valuable foundations for the development of a body of commercial law under which private enterprise could successfully operate. Beyond this, it does not seem likely that the "free market" of modern capitalism has any important indebtedness to Roman law.

[8] *Cf.* C. P. Sherman, II Roman Law in the Modern World 149 ff. (Boston, 1917); F. Schulz, Principles of Roman Law 30, 150 ff. (Oxford, 1936); Levy, West Roman Vulgar Law: The Law of Property, 29 Memoirs of the American Philosophical Society, *passim* (1951).

[9] See D. L. Douie, The Nature and the Effect of the Heresy of the Fraticelli 203 (Manchester, 1932) for insistence by a medieval cleric that this latter was the correct translation. See also V. Brants, L'Economie Politique au Moyen-Age 61–62 (Louvain, 1895), for the origin of the phrase.

[10] B. Tierney, Medieval Poor Law 38 (Berkeley, 1959).

[11] *Cf.* Levy, Natural Law in Roman Thought, Pontificum Institutum Utriusque Juris, 15 Studia Et Documenta Historiae Et Juris 21 (Rome, 1949); M. Radin, The Lawful Pursuit of Gain 30 ff., 52 ff., 137 ff. (Cambridge, Mass., 1931).

Medieval moral theology appears to have laid down only a few points of doctrine which have close bearing on the issue of laissez faire. The primary concern of the scholastics in their treatment of economic matters was to keep economic behavior, and especially the intentions and objectives of the merchant, within the limits of moral principle, as defined by Revelation and by the law of nature. Aside from the issue of usury, where dogma was rigorous and was to prove excessively specific and inelastic for permanence, the scholastics condemned no specified objective behavior, no concrete acts as such, in the economic field, unless they found in them clear evidence or a strong presumption of a violation of commutative justice. Aside once more from the issue of usury, the scholastics and canonists generally exercised great care not to lay down precepts which would interfere unnecessarily with the pursuit by individuals of legitimate economic gain. On the other hand, they showed no interest in freedom in the abstract, or in particular freedoms, except as the freedom was from a tyrant forcing evil practices on or dealing unjustly with his subjects or was from burdensome legislation not directed toward the "common good." They condemned no existing social institution, not even either slavery or feudal serfdom. They always dealt respectfully with government as such, except perhaps when it engaged in tampering with the coinage, and insisted that unquestioning obedience to official authority, except where divine law would thereby be violated, was a religious and moral obligation. On concrete economic issues, they accepted official decisions as presumptively correct or wise, and in any case as lying outside the realm of criticism by ordinary individuals. St. Thomas Aquinas, like other theologians before and after him, rejected the doctrine that government was in any way unnatural, was a necessary evil, and had become necessary only with the fall of man. Leadership and rule would have been necessary, Aquinas stated, in an earthly Paradise, even if Adam had not sinned, as it was necessary among the angels.[12]

On at least two points, however, the scholastic doctrine provided material which nineteenth-century Catholic writers with laissez faire tendencies were to make use of in building up a case against state interventionism in the economic field.

The medieval moral theologians were united in holding that an essential part of the merit in charity to the poor was in its being voluntary. Almsgiving from one's superfluity was urgent precept, not counsel, but how much to give was a matter of private conscience. For this reason, there was considerable opposition within the Church to tithes. For this and other reasons, there was strong opposition to provision of poor relief under state supervision and from tax revenues. After the Reformation, the Elizabethan poor laws making it compulsory for English local authorities to relieve the poor out of special taxes levied for that purpose were criticized by a long succession of Catholic

[12] **Summa Theologica, I. q. 96. a. 4.**

writers as constituting an illegitimate encroachment of the state into an area which should be left to private initiative and to the Church. In the nineteenth century, this objection to poor relief under state auspices was by many Catholic writers made part of a wider case against attempts to deal with the problem of poverty through state action, as compromising with socialism.[13]

More important for present purposes was the medieval doctrine of the "just price" and, though to a lesser degree, of the "just wage." The scholastics maintained that it was a violation of commutative justice to sell at a higher price or to buy at a lower price than the "just price," which they explained as the price according to "common estimation." Until recently, this has been commonly interpreted as meaning the fixing of prices by civil authorities or by wise men, in the interest of justice and as a restraint on the avarice of merchants, and as demonstrating that the medieval Church was hostile to the free market. Modern scholarship, however, has conclusively demonstrated that, except for a few nominalists, the standard late-medieval meaning of "common estimation" was market price under free competition, and that some of the scholastics even used the term equivalent to "common estimation in or by the market." That they meant by the "market" a competitive market, operating under normal circumstances, they made sufficiently clear by their uniform condemnation of all monopolies, and by the exceptions they made for appeal to official or non-market determination of prices when abnormal conditions, such as famine or siege, or unusual absence of business skills or lack of bargaining power, made particular individuals unable to cope adequately with market processes.[14] To interpret the scholastics, however, as enthusiasts for the free market either because of zeal for economic "freedom," or because of recognition of the merits of competition as an organizer and regulator of economic activity in general, would be to misinterpret them in the opposite direction. As far as is apparent from their texts, their acceptance of the desirability of competition rested solely on belief in its efficacy in protecting individuals from exploitation as sellers or as buyers.

From the sixteenth century on, there began to appear briefs on behalf of greater freedom of business from government interference, including defense of practices charged with being monopolistic. In the sixteenth century, de-

[13] See G. Ratzinger, Geschichte der kirklichen Armenpflege 447 ff., 556 ff. (Freiburg im Bresgau, 1884); F. M. L. Naville, De la Charité Légale (Paris, 1836); Abbé A. Delaporte, Le Problème Economique et la Doctrine Catholique 422 (Paris, 1867).

[14] On this issue, see the various writings of J. Höffner, especially Wirtschaftsethik und Monopole im fünfzehnten und sechszehnten Jahrhundert (Jena, 1941), and "Statistik und Dynamik in der scholastischen Wirtschaftsethik," Arbeitsgemeinschaft für Forschung des Landes Nordrhein-Westfalen Geisteswissenschaften, Heft 38 (Cologne, 1955). See also: A. Sandoz, La Notion de Juste Prix, 45 Revue Thomiste 291 ff. (1939); de Roover, Joseph A. Schumpeter and Scholastic Economics, 10 Kyklos 134 ff. (1957). For material which seems to me to point to a similar interpretation of the scholastic doctrine of the "just wage," see L'Abbé Manuel Rocha, Travail et Salaire à Travers la Scolastique (Paris, 1933).

fense of rugged individualism even when it had a monopolistic taint appeared paradoxically enough in Protestant apologetics for Old Testament morality, in connection with discussions of the account in Genesis of Joseph's successful venture in grain speculation. The defense sometimes took the form of justifying Joseph's operations on the ground that they were not for private profit but were carried out in the public name and for the public good. John Calvin used this argument, but he carried his defense further so that it should cover Joseph's transactions even if he had acted on his own behalf as a profit-seeking merchant. In the first place Joseph did not have a complete monopoly, since others were free to store grain if they wished. Secondly, if others out of free choice sold at a low price in time of plenty what they could have held for a time of scarcity, the losses they thus incurred were just punishment for their negligence, presumably in mastering the technique of business forecasting. Calvin did not meet squarely the issue that Joseph, enjoying divine guidance, had kept his inside knowledge to himself, instead of broadcasting it and thus adding to the probability that enough grain would be stored in the fat years to enable the Egyptians to withstand with less suffering the lean years, but he ended his defense of Joseph's conduct with the comment that divine guidance sometimes excuses actions otherwise reprehensible.[15]

It was in England that a stock of ideas and values from which a general doctrine of laissez faire could be constructed with the aid of some ingenuity in selection and synthesis was soonest and most abundantly available. Many modern scholars, mistaking scattered and discrete ideas as constituting a general theory, have found essentially laissez faire doctrine prevalent in England long before Adam Smith. The language of "freedom" was popular in England from really ancient times. There was constant appeal to "freedoms," or "liberties," or "immunities," or "franchises," or "properties," or "rights," all of these being substantially synonymous terms and none of these being synonymous with "freedom" in the singular. There was Magna Carta and all that. There was as early as 1040 the message which a rebellious lot sent to King Hardecanute when his agents roughly demanded payment of taxes for which there was no precedent: "We are freemen born and freemen by nurture; we will obey no ruler who treats us unjustly; we are dedicated either to liberty or to death."[16] Even when specific "liberties" were being argued for, the most ardent advocates explained that what was in issue was "liberty within the law," and not an absolute liberty to do as one pleased, which would be "license," that was in issue. "Liberty within the law" meant liberty from the exercise of authority by an unqualified agency, or without "due process of law"; it did not mean liberty from interventionist legislation; it often meant

[15] See A. Williams, The Common Expositor. An Account of the Commentaries on Genesis 1527–1633, 225 ff. (Chapel Hill, 1948).

[16] The incident is reported in William of Malmesbury, Gesta Regium Anglorum, [1125], but I have misplaced my source for the Latin text of this anticipation of Patrick Henry.

submission without complaint to a severe but accepted agency of coercion where even a mild exercise of authority by a disliked agency would be furiously rejected. Of the notion of adding specific liberties to each other so as to obtain a maximum amount of liberty in general, I can find no clear trace before Adam Smith. Of the notion that "freedom" is indivisible, I can find no clear trace until the twentieth century,[17] and then I cannot fathom its meaning.

It has been held that the English common law was a great and good friend of economic freedom. The common law lawyer inevitably has a professional jealousy of any forms of law-making other than through court decisions resting their claims to validity on earlier court decisions. In the Stuart period, law was not only being promulgated without the customary sanction of Parliament, solely by royal prerogative, but new courts had been established by monarchial act which decided cases without express appeal either to statutes or to past court decisions. It was in this period that Sir Edward Coke appealed to the common law as a traditional barrier to the interference by government with the economic and other "freedoms" of the individual. It seems now to be generally agreed, however, that Coke, in his righteous indignation against usurpation of power by the king, distorted and misinterpreted the past common-law tradition to make it seem more strongly favorable to what we would now call economic liberalism than it was in fact.[18]

Even to Coke, moreover, the "liberty" of the common law was a much narrower, a much more specific and limited obstacle to any species of government interference with private economic activity, than would be the "liberty" or "freedom" of full-fledged laissez faire doctrine. It was a maxim of Coke himself that "the common law will rather suffer a private injury than a public inconvenience," and evidence is lacking that common-law lawyers were less adept or less willing than bureaucrats or legislators to discover public inconvenience or "public policy" reasons for not protecting a private right. In a 1607 common law case, where a candlemaker was indicted for causing a nuisance by the odor of his process, the court held that "Le utility del chose excusera le noisomeness del stink,"[19] but it could equally well have decided otherwise.[20]

[17] Compare, however, 77 Edinburgh Rev. 224 (1843): "Be assured that freedom of trade, freedom of thought, freedom of speech, and freedom of action, are but modifications of one great fundamental truth, and that all must be maintained or all risked; they stand or fall together."

[18] See Wagner, Coke and the Rise of Economic Liberalism, 2 Econ. Hist. Rev. 30–44 (1935–36); Letwin, The English Common Law concerning Monopolies, 21 U. Ch. L. Rev. 355–56 (1954). But see, *per contra,* Pound, The Development of American Law and its Deviation from English Law, 67 Law Q. Rev. 58 (1951).

[19] Sir James Fitzjames Stephen, A General View of the Criminal Law of England 106 (London, 1890).

[20] See the comment on this case in R. Burn, II The Justice of the Peace, and Parish Officer 482 (7th ed. 1762).

Material for building up a case for laissez faire exists even in the writings of the mercantilists, despite the fact that what we now call "mercantilism" consisted primarily of a body of doctrine expounding and of practice employing ways and means whereby government could make private interest, when subjected to taxes, import and export duties and prohibitions, subsidies, and other regulatory and coercive measures, operate to augment national wealth and national power.

Few if any mercantilists had an undiscriminating, unmotivated, and unlimited passion for state intervention in all its conceivable forms, degrees, and applications. Most mercantilists had some particular freedoms which they cherished either for themselves or for their fellow-citizens. Even mercantilists were aware that there were limits to the capacity and wisdom of government; that attempts of government to interfere where individuals had interests to which they were intensely devoted were liable to result in breakdown; that, as compared with direct controls, indirect controls often were more efficient, aroused less resistance, involved the public in less inconvenience. Horace Walpole was a routine moderate mercantilist, but it was with genuine amusement that he related how his "aunt, Mrs. Kerwood, reading one day in the papers that a distiller had been burnt by the head of the still flying off, said she wondered that they did not make an Act of Parliament against the heads of stills flying off." On specific issues, the moderate mercantilist could often sound like a moderate exponent of laissez faire, and mercantilists would not dispute the general principle that the state should not interfere except where the public interest or the common good would best be served by interference. Even between extreme mercantilists and extreme advocates of laissez faire the difference in avowed general principle might consist only in that the mercantilist would stress the duty of intervention unless, by exception, good reason existed for leaving things alone, while the laissez faire doctrinaire would insist that the government should leave things alone unless by exception special reasons existed why it should intervene. It is thus not difficult, by judicious selection of passages from the literature of English mercantilism, to make out a plausible case for its "liberal" character. The only questions that remain are what we are to do about the passages, by far more numerous, which have a contrary tenor, and how we are to explain the three centuries of statute books stuffed with legislation of a nature to set Adam Smith's teeth violently on edge. It does not seem possible, on the basis of any reasonable definitions, to find any trend in England away from "interventionism" and toward laissez faire, in doctrine or in legislation, between, say, 1660 and decades after the publication of the *Wealth of Nations* in 1776. In the field of public administration, of enforcement of interventionist legislation, the period was marked by slackness, by an approach to administrative nihilism. But the slackness had no doctrinal basis. It was commonly deplored, not lauded.

The mercantilists adhered to the ancient psychological doctrine that man

was a "selfish," or at least a "self-regarding" animal; they followed the unanimous opinion of their predecessors that out of individual selfishness, unless regulated and disciplined by a superior authority, there could not come a good society; they accepted without scrutiny the proposition that for individuals (though not for governments or princes) the predominant self-regarding interests were economic in character; they accepted man's selfish nature as a fact, without special interest in appraising it in moral or religious terms; they saw in an active and interfering government the only force strong enough to harness all of this selfish energy to a desirable social, that is, national, set of objectives.

I turn now to an English author, Thomas Hobbes, who is occasionally cited as one of the sources of English laissez faire doctrine, but is more often cited as an early exponent of the totalitarian state. It is not too difficult to explain how Hobbes came to be for some the archetype of the totalitarian and for others a pioneer exponent of liberal doctrine. Hobbes was an exponent of centralization of coercive power, of its monopolization by the sovereign. That is why he is regarded by many as an exponent of totalitarianism. But, like the later Physiocrats, who were greatly influenced by him, he wanted power centralized in order to minimize its use, in order that no one except the sovereign should be in a position to exercise coercion over individuals. The sovereign should exercise the power under his command only for legitimate purposes and to the minimum degree consistent with the realization of such purposes. In all his many writings there is very little advocacy of any use by the sovereign of his power except for national defense and to assemble, and so-to-speak to put under lock-and-key so that it would not be used, any segments of coercive power which might otherwise be available for use by Church, by private armies, by particular groups, or by over-rugged individuals. According to Hobbes, man living in a state of nature would be constantly engaged in a war of all against all, and government was necessary if man's wolfish instincts were not to govern his behavior. It seems clear, however, that Hobbes would have conceded, if asked, that man, once he is living in civil society, displays and, with safety to himself and benefit to his community, exercises a wide array of social and cooperative instincts which in the state of nature would be fatal to his survival. In any case, Hobbes put less stress than did the mercantilists generally on the strictly economic character of man's objectives in civil society. "The business of the World," he stated, "consisteth in nothing else but a perpetual contention for Honor, Riches, and Authority." In a well-policed state such contention could presumably proceed without undermining civil order and with beneficial effect on the community's general well-being. Beyond its policing function, the state need not be an active or meddling or planning state. It is not absurd, therefore, to interpret Hobbes as primarily an exponent of a state powerful enough to assure and protect individual freedom. His political and ethical doctrines, and his intolerance of any sharing of

power with the Church, however, made his views exceedingly unpopular in the England of his time. In France, the wide acceptance of Gallicanism with respect to the relations of Church and State, and of monarchical absolutism and centralization in the political field, made for a more receptive attitude towards Hobbesian doctrine.

In England the most important intellectual developments which finally prepared the ground for the formulation of an economic doctrine of laissez faire consisted of contributions by moral philosophers and theologians whose major objective often was to rebut Hobbes, even though on strictly economic matters Hobbes was probably less state-interventionist than many of those who opposed him on ecclesiastical and moral issues. The major ethical doctrines developed to rebut Hobbes were in the eighteenth century distinguished as the "selfish" and the "sentimental" schools. Both of these schools provided ingredients for the laissez faire doctrine even in its mature nineteenth-century form.

The "selfish school" consisted predominantly of a long succession of Cambridge University moral philosophers, to whose doctrine there was given in the nineteenth century the appropriate-enough label of "theological utilitarianism." To serve their purpose of demonstrating a vital social function for the belief in immortality and in future rewards and punishments, or in other words for orthodox religion, they attacked Hobbes's stress on the adequacy of the state—or of the policeman—as a moralizer of society. On the other hand, to rebut the optimistic account of human nature given by the sentimental school, which seemed to make unnecessary either a strong police force or powerful religious sanctions, they retained and even accentuated the pessimistic appraisal of human nature when left to its own devices presented by the Augustinian tradition within religion and by Hobbes and the libertines outside it. The connection with laissez faire of this school is a tenuous one—by stressing the theological sanctions for good social behavior and the limited scope and efficacy of governmental sanctions, they directed attention away from, though without expressly denying, the need for extensive social discipline applied by government.

The "sentimental school" had much greater importance for laissez faire doctrine. It was launched in the seventeenth century, as a reply to Hobbes, by theologians of deist tendencies and by laymen of even more doubtful religious orthodoxy, of whom Lord Shaftesbury was most prominent. The essence of their doctrine for present purposes was the stress on the social sentiments, on the non-rationalistic social instincts and affections of men, which led them to serve their fellowmen out of sympathy and fellow-feelings. Francis Hutcheson, the teacher of Adam Smith at Glasgow, was a member of this school, and the "moral sentiments" of Adam Smith's *Theory of Moral Sentiments* were essentially variants of the sympathy, the benevolence, and "the moral sense"

which were the key elements in the social philosophy of Shaftesbury and of Hutcheson.

It is necessary to mention one other line of doctrine formulated in rebuttal of Hobbes, the doctrine of Bishop Richard Cumberland, which influenced both the Physiocrats and Adam Smith. Cumberland argued that the social order was so constituted that there was essential harmony between rational self-interest and the common good, and that even in the absence of government, or of hope for future rewards and fear of future punishment, rational men would constitute a good society—though not as good a society as if religious and political sanctions for good social behavior were also operative. It needs to be noted that while the sentimental school relied on instincts for good social behavior, Cumberland put his emphasis on the double rationality: of men and of good social behavior.

The Physiocrats arrived at their laissez faire doctrine by way of a curious blend of the myth of a beneficent physical order of nature, of Hobbesism, of Cumberland's and Cartesian rationalism, and of some fresh and important economic analysis of the coordinating, harmonizing, and organizing function of free competition. There was a providential harmonious and self-operating *physical* order of nature, which, under appropriate social organization and sound intellectual perception, could be matched in its providential character, in its automatism, and in its beneficence, in the *social* order of nature. Through proper education this would become "evident" (in a special sense of the word) to all men; by *reasonable* men what was the "evident" course of behavior to follow in the social interest would be seen also to be the proper course of behavior in their own individual interest. It was the role of economists to perceive and to expound, to government and to the public, this "evident" truth. It was the role of government, through its Hobbesian monopoly of power, its "legal despotism," to bring about, with the help of the economists, the general acceptance of the "evident" doctrine, and to suppress inconsistent or hostile action on the part of ignorant or malicious individuals, of monopoly groups, and of unfriendly foreign countries. Beyond this, the normal operation of free competition would suffice, without further state intervention, to produce in the social order that harmony, mutual cooperation, and efficiency "evident" in the physical order of nature. It can be argued that, aside from their economics, for which their indebtedness was to earlier French writers, notably Boisguilbert and Cantillon—who was really Irish—and from their doctrine of "evidence," which derived, with distortions, from Descartes, the heaviest indebtedness of the Physiocrats was to Hobbes and Cumberland.

In Adam Smith's system of laissez faire, the functions assigned to government were substantially identical with those assigned by the Physiocrats: maintenance of inter-individual justice; defense; and essential "public works," including education as such, of a kind which private initiative would not or could not undertake, or which for special reasons, such as their monopo-

listic character, it would not be safe to leave in private hands. For Adam Smith, laissez faire in the economic sphere found its intellectual basis in terms of a comprehensive system of social thought which drew eclectically from a wide variety of earlier sources, but added discussion of freedom or "natural liberty" understood in a general or universal sense to discussion in the traditional way of particular "freedoms" or "liberties." For the social system as a whole, excluding its market aspects, the beneficial outcome of laissez faire, according to Smith, results from the social instincts imbedded in human nature, as well as from the "moral sentiments": sympathy for others, the desire for social approval, the dictates of conscience, and, to a minor extent, benevolence toward others. In the economic market-place, as described in the *Wealth of Nations,* the beneficial outcome of laissez faire is ascribed to other factors than instincts and social sentiments, except as the simple rules of commutative justice are voluntarily obeyed. Within the family, in relations with one's friends and one's immediate neighbors, in one's operations as a patriotic citizen of one's country, the instincts, the social sentiments, conscience, the desire for public approval, sympathy, benevolence, patriotism, suffice to produce a good society. In the market, however, one is dealing as with strangers; to use later terminology, the market is "anonymous," is ruled by the "cash nexus." The social sentiments, therefore, are not aroused into action, and man behaves in response to calculating, rational self-interest. Fortunately, however, the nature of economic process is such, it involves such a high degree of harmony of interests between the individuals participating in it, that government, provided only that it enforces the rules of justice, need do little else to assure a flourishing economy.

It is not clear that Adam Smith believed that laissez faire would carry the wealth of a nation to some kind of theoretically-conceivable maximum. What is clear is that, subject to a vague and in part logically inconsistent list of qualifications, he believed that economic society left to its autonomous operation would produce a higher level of economic welfare than would accrue if government, inefficient, ignorant, and profligate as in practice it was, should try to direct or regulate or operate it. It is clear, moreover, that for Adam Smith laissez faire, beyond its material benefits, had ethical or moral value in that it left to the individual unimpaired that "natural system of liberty" to which he had a natural right. It is quite probable, therefore, that Adam Smith would have rejected an extensive program of state regulation of economic enterprise even if he had believed that the wealth of nations could thereby be augmented.

The post-Smithian English doctrine of laissez faire as expounded by the English classical economists, while heavily indebted to the Physiocrats and to Adam Smith, did have some original ingredients. The classical economists thoroughly secularized the doctrine, and dispensed with appeal to the "invisible hand" to bolster up the argument that man acting in the pursuit of his

own interests would at the same time best serve the community interest. In the second place, here following Adam Smith but deviating from Cumberland and the Physiocrats, they attributed the socially beneficial behavior of individuals not to a rationalistic perception by these individuals that the common good was also their own private good, but to an inherent quality in competitive economic behavior which made the common good an incidental and not deliberately sought by-product of the pursuit by the individual of his own particular good. Thirdly, as an analytical device, instead of relying on the real man psychologically speaking such as they observed him to be in fact, they invented a construct, the economists' "economic man," who, as an abstraction, corresponded closely to Adam Smith's whole man or real man as he was when operating in the market-place. But the classical school did not present the "economic man" as more than a somewhat distant approximation to the real man even as he behaved in the market-place. They accepted this as a useful abstraction, in the belief that it was sufficiently close to reality to provide a substantially correct over-all account of the behavior of the competitive market under laissez faire. In principle, however, they were always, and in practice they were sometimes, prepared to qualify their analysis whenever it was observed that the behavior of the real man was substantially different from that of the "economic man."

With the later Manchester School and with that most facile and most superficial of the expounders of laissez faire, the Frenchman Bastiat, as with the early academic exponents of laissez faire in the United States, the "invisible hand" returned as a substitute for genuine economic analysis in the explanation of the natural harmony between private and public good. For Richard Cobden, "Free trade was the international law of God" and presumably domestic laissez faire was the domestic law of God. In principle, however, if by no means universally in practice, later exposition of laissez faire by economists was made contingently to rest on the presumed behavior of an "economic man" coldly calculating, rational, alert, well-informed. But they recognized this "economic man" to be an analytical construct differing in some unspecified degree in the psychology attributed to him from the real flesh-and-blood and heart-and-incomplete-mind types that were alone visible in the real world. They all consequently acknowledged at one time or another that the issue as to the desirable degree or kind of state intervention could not be satisfactorily resolved logically by abstract argument alone, based on the workings of a system of free competition in a society composed of "economic men." Judgment, wisdom, knowledge, even upon occasion charity, needed also to be called upon. This might justifiably lead in particular instances, transient or lasting, to major exceptions being properly made to the principle of non-intervention. This was true particularly of the later classical and neo-classical economists. They all expressly and vehemently disassociated themselves from the Manchester School and from those other fanatic exponents of laissez faire

who proclaimed with much assurance and sometimes with the appearance of complacency that it was impossible for the state to assume any general and positive responsibility for the relief of even major distress without ultimately accentuating that distress.

A detailed listing of the concessions and qualifications ceded by writers who were or who later were regarded as leading expositors of the doctrine of laissez faire would constitute a lengthy and impressive document. But these exceptions and qualifications were rarely, if ever, integrated with the laissez faire part of their doctrine in such a way as to disclose the principles by which the proper time and form and degree of departure from laissez faire could be judiciously determined, or by which the cases where departure was indicated could be differentiated from those which fell unquestionably within the scope of laissez faire. Bentham, perhaps, came closest of all to formulating on a reasoned and consistent basis the considerations which should decide, to use his terms, the "Agenda" and the "Non-Agenda" for government, but later Fabian socialists as well as later economic liberals were to derive their doctrinal inspiration from him.

To quote a second time a dictum of St. Thomas Aquinas which impresses me as having direct and weighty bearing on the intellectual history of laissez faire: "When reason argues about particular cases, it needs not only universal but also particular principles." Except for playful intellectual exercise, or as a first stage of a first approximation in a sustained logical argument, universal principles seem to me to have no useful role in argument, and particular cases or restricted classes of cases to comprise almost everything that is worth arguing about—or dying for. And information, wisdom, judgment, measurement-of-a-kind of things not scientifically measurable, compassion for the weaker segments of mankind, always—or nearly always—need to be permitted to corrupt the logical rigor of abstract argument if the final result is to be reasonably applicable to particular cases, and if in a democratic society it is to find wide and lasting acceptance. Good abstract argument is an essential tool for the organization of knowledge and for bringing values to bear on public issues. But the rhetoric of abstract argument has no built-in devices to guard against neglect or oversight of relevant major values, and abstract argument is a tool for processing information, not a substitute for it.

The good citizen will—or should be—passionately devoted at any moment to a number of general principles, often recently acquired, often part of an ancient intellectual inheritance, often largely contradictory among themselves. In practice, he will unconsciously compromise them, or choose between them in the light of the emphasis being given them in the current flow of rhetoric to which he is being subjected. The effective crusader for good causes will in any campaign of persuasion deliberately or by temperament or in ignorance select for emphasis as supreme above all others at least in the existent circumstances a single general principle, or a small number of presumptively harmonious

general principles, and will leave to those hostile to his cause the search for intellectual or practical flaws in his argument. There is a third kind of rhetoric which also has logical and practical claims to merit and to utility, whose task it is to explore the conflicts between principles, to search out the importance of degree, relation, and proportion, to discover for particular values their appropriate place in the process of persuasion. To me this last kind of rhetoric seems a most appropriate one for the academic scholar and providing moral and material support for those who attempt to use it seems the most valuable service a great university can render to the process of reaching worthy decisions on questions of social policy.

It is permitted to the crusader to argue for the desirability of laissez faire, as a routine application of some general principle, such as that liberty is desirable and laissez faire is an important form of liberty. The rhetorician in my third category, however, does not permit himself to forget that there is a great variety of species and degrees of liberty, interrelated in complex and changing patterns of mutual dependence, of mutual reinforcement, of rivalry, of conflict, and that particular species of liberty can have widely-different significance for individuals differing in their psychological make-up and in their material circumstances. Even if liberty in some general sense were the one supreme and absolute good for all men, it would still remain necessary—and often difficult—to seek light on whether the establishment or retention or restoration of a particular liberty added to or subtracted from the system of liberties as a whole. Particular liberties may clash, moreover, not only with other liberties, but with other values than liberty, as, for example, individual or national security, prosperity, internal peace and order, equity. The tragic element in decision-making arises often, not from the conflict of good with evil, but from the conflict of true values with each other.

A "general principle" always beloved of those content with the status quo is that since major social institutions evolve slowly through time, without benefit of over-all design by geniuses, there is a strong presumption that at any given time existing institutions of ancient origin must have wisdom and merit in them. This is another of those general principles whose axiomatic character is not obvious to me, but whatever its validity, it has weight only as an argument against rapid social change, or against certain procedures for bringing change about. Governmental interventionism has also, until recently, and with a nineteeth century interlude of retrocession, evolved slowly. The bearing of all this on laissez faire seems to be only that movement away from laissez faire or movement towards laissez faire should be cautious and piecemeal. Cournot, a distinguished nineteenth-century economist and philosopher, held that the limits of state intervention must be set piecemeal, by trial and error, in the light of circumstances, of established customs, of ruling ideas, and cannot be dealt with as within the realm of scientific determination. I would be prepared to buy this as a persuasive "general principle." He pro-

ceeded, however, to argue that there were excellent reasons why, in the conflict between freedom and regulation, freedom should in the last resort be the winner. For just as each freedom leads to other freedoms, so each governmental regulation leads to other regulations, with this difference, that there is only one method of letting things alone, whereas there are an infinite number of ways of interfering, all more or less arbitrary.[21]

I am puzzled as to what weight should be given to this ingenious argument against state-interference. Testing its cogency by applying it to other situations where the issue lies between acting and not acting, I find, for instance, that there is only one way of not eating whereas there is an infinity of ways of eating, all of them more or less arbitrary.

For economists laissez faire is most persuasive when it is presented as an argument for the free market. If the market is a competitive one, it is an impersonal—more-or-less—social institution performing a great organizing service with respect to allocation of resources to production, determination of prices, distribution of the current products of industry. There is no theoretical basis that I know of whereby, without introducing assumptions counter to fact, it can be demonstrated that the resultant allocation of resources, price structure, or distribution of current income is an ideal or "optimum" one. But what can be persuasively argued—perhaps even "proved" in the sense in which David Hume and John Stuart Mill used that word, as meaning an argument so persuasive that any reasonable man will accept it and act according to it until a better argument or fuller information comes along—is that random interferences with the working of a competitive market will make it a less efficient organizer of economic activity. A fortiori, stupid or malicious or clumsy interference by legislature or bureaucrats will impair its working. The total suppression of the free market would, I am sure, for any modern country, including Soviet Russia, mean an approximation to total chaos, but no one of consequence has apparently ever proposed it seriously.

This still leaves open, however, a large area suitable for reasoned debate even about the market. Can anything like a general rule in the service of economic efficiency, or of an ethical ideal, or of "freedom" in general, be laid down against selective tampering with the free-market process by a government well intentioned and reasonably intelligent? Tampering of a kind continuously goes on in the courts or legislatures of all countries in the interest of commutative justice: to take care, for instance, even in cases of free contract between two individuals, of the interests of the young, of the especially ignorant, of those caught in emergency situations not foreseeable at the time of the contract, and of particular individuals not parties to the contract, but affected by them.

[21] A. A. Cournot, **Considérations sur la Marche des Idées** 87 (F. Meurtre, ed.; Paris, no date).

Bentham, in his general exposition, held that to interfere with a free contract in a free market in the supposed interest of the parties, where there was no recognized adverse impact on particular non-participants in the contract, would be to make the absurd assumptions that a government or an official can know better than a man knows what that man wants, and can know better than that man knows what are the most efficient means for him of satisfying his wants. I can only say that I fail to see the axiomatic nature of either of these propositions, and that a plausible case can be made for a substantial mass of legislation and of court-law which takes for granted that reasonably definable sets of circumstances do arise under which an authority can know better than an individual both what that individual wants, if more than a moment is taken into account, and how that individual can most efficiently satisfy his want.

The classical exponents of laissez faire always qualified their enthusiasm for the free market by the condition that it should be a competitive market. Adam Smith, for instance, intensely disliked monopoly in all its forms. He regarded merchants as perpetual seekers of monopoly power. Also, because he thought that in all but routine activities they would inevitably be inefficient, he disliked all large-scale privately owned companies. Adam Smith believed that the merchants of his time, large-scale and small-scale, were in constant conspiracy to establish monopoly control over prices, and that their conspiracies were often successful.

In one field of commerce, however, the internal corn trade, where opinion in general was most disposed to share his belief in the prevalence and the evil of a monopolizing tendency, Smith displayed a marked scepticism. It was here, he said, of all trades that monopoly is least possible of organization, because of the great size of the industry, the great number of dealers, and their general geographical dispersion. He also clearly believed that rural landlords and farmers were of all economic groups least disposed to seek monopoly profits, and that therefore their cooperation could not be obtained by would-be organizers of a corn-trade monopoly.

The English classical school all followed Adam Smith in their dislike of monopoly. They extended, however, to almost the whole range of industry and trade Smith's argument *re* the corn-trade that the size of the task, the number of persons involved, and their dispersion over space, made the establishment of an enduring monopoly a practical impossibility. They applied this reasoning also to the question of the possibility of raising wages through the formation of trade unions. The general position of the post-Smithian classical school in this respect is accurately and compactly stated in the following quotation from David Buchanan:

> It is well known that no body of traders ever can frame an effectual combination against the public, as all such engagements are broken by the partial interests of

the individuals concerned. No trader will keep up his prices for the profit of others; he will always sell when it suits his own convenience; and upon this principle accordingly is founded all that rivalship of trade.[22]

The later verdict that this was substantially erroneous reasoning seems valid to me. Even in the corn-trade the high transportation costs of the period made a regional monopoly much less difficult to establish, at least temporarily, than Adam Smith supposed. Adam Smith and his followers argued excessively from the tacit assumption that a monopoly which was temporary only or which was not "perfect" in the modern sense could not yield appreciable monopoly revenue. In any case, we now know that, apparently without exception, every English industry of Adam Smith's time whose history has been studied was riddled with price-rings or equivalent arrangements, often only on a regional basis but sometimes on a national basis. There is no a priori reason for assuming that these were predominantly or universally of negligible effect, and the fact that their practice was so widespread provides an empirical presumption that they brought to their practitioners in some significant degree the realization of their price-raising objectives.

To this scepticism of the English classical school about the possibility of monopoly must undoubtedly be attributed in significant part the absence of any anti-monopoly legislation in nineteenth-century England. On the other hand, it was the continued fear of monopoly when the scale of enterprise was large which was responsible for the withholding of general statutory sanction for the incorporation of limited-liability joint-stock companies without limitation as to scale of operations until after the middle of the nineteenth century, and the classical economists of the time were divided as to the wisdom of this repeal of the ancient restrictions on "big business." It is quite clear that the general public was confused by the combination in the doctrine of the classical school of a pronounced condemnation in principle of monopoly and a refusal to recognize its existence in fact; a confusion well expressed by a cartoon of the time which showed one of the marchers in a street-demonstration carrying a banner reading: "No Monopoly!" and another carrying a banner reading: "No Competition!"

In any case, monopoly is so prevalent in the markets of the western world today that discussion of the merits of the free competitive market as if that were what we were living with or were at all likely to have the good fortune to live with in the future seem to me academic in the only pejorative sense of that adjective.

Modern advocates of an approach to laissez faire recognize that whatever rationale it has rests on the assumption that economic society under laissez

[22] In a note in his edition of A. Smith, I Wealth of Nations 100 (Edinburgh, 1814).

faire would be, or could be made to be, substantially competitive. Towards the monopolistic aspects of modern society they take various attitudes. Some look upon them as serious obstacles to economic welfare, and would have an otherwise laissez faire state vigorously suppress all important manifestations of monopoly that are not for special reasons to be accepted. Others maintain that government itself is, directly or indirectly, the major support of monopoly and that in a laissez faire economy monopoly, with minor exceptions, would not be able either to establish or to maintain itself in the absence of government support. Others while expressing in principle hostility to monopoly deny its practical importance and contend that in the main moderate elements of monopoly can be tolerated without serious loss, or even with benefit, in a predominantly competitive, laissez faire economy; like the competitive "economic man," the monopolistic firm, without intending it, is, as if guided by an invisible hand, serving the public interest.

I would not dispute that even a monopoly-ridden market would be preferable to any economic system trying to operate without any kind of a market. But given the prevalence or the danger of substantial intrusion of monopoly into the market, the logic of the laissez faire defense of the market against state-intervention collapses and there is called for instead, by its very logic, state-suppression or state-regulation of monopoly practices, which one may wish to call, as Henry Simons called it, an instance of "positive laissez faire" or, as I prefer, as an instance of deliberate departure from laissez faire.

The free-market phase of the laissez faire doctrine is only one phase of that doctrine and is most relevant to the issues of commutative justice, of just relations in economic transactions between pairs of individuals. There is also the area of distributive justice, of the intervention of state-authority directly or indirectly with the intention of changing an existing pattern of distribution of this world's goods. When economists discuss the workings of a free competitive market, they agree that the existing pattern of distribution of wealth, of income, and of individual knowledge, capacities, and skills, affects the price-structure. They presumably agree also that the price-structure of today affects the income-structure of tomorrow. It is not appropriate, therefore, in a final appraisal from either an ethical or an economic-efficiency point of view of the mode of operation of an economic system, to consider the operations of the market on the assumption that the existing pattern of income distribution is the consequence of a dispensation of Providence. It is not reasonable to treat an existing income distribution, for the purpose of analyzing the market, as if it just "happened," as if it were as independent of influence by the market and as incapable of influence on the market, through the effect of aggregate human exercises of will and economic power, as the Rocky Mountains or storms and earthquakes are free from human control. Even the impact

of storms on mankind, moreover, is affected by the pattern of distribution of income.

> The rain it raineth on the just
> And also on the unjust fella;
> But chiefly on the just, because
> The unjust steals the just's umbrella.
>
> FERGUSON BOWEN

It is not necessary, nor helpful, to my argument to introduce any suspicion that "stealing" plays a significant economic role in a modern society. But the decline of laissez faire in England, and the growth there of systematic state-interference not only with the economy as a whole, but with the free market, came largely as the result of dissatisfaction with the prevailing distribution-of-income pattern. Sir Winston Churchill, writing when a young man about the breakdown of the hold of laissez faire on English public opinion, which he dated as occurring in the decade of the 1880's, commented that with it came to a close "the long dominion of the middle classes," and "the almost equal reign of liberalism."

> The great victories had been won. All sorts of lumbering tyrannies had been toppled over. Authority was everywhere broken. Slaves were free. Conscience was free. Trade was free. But hunger and squalor and cold were also free and the people demanded something more than liberty. . . . How to fill the void was the riddle that split the liberal party.[23]

No modern people will have zeal for the free market unless it operates in a setting of "distributive justice" with which they are tolerably content. There is, however, a great deal to be said, much of the best of which has been said on this Chicago campus, for so devising any measures aiming at distributive justice as to minimize their interference with free-market processes, and for making such interference as has general objectives operate indirectly, rather than by direct controls, on market transactions. But a laissez faire program which confined its efforts to preserving or restoring a free market, even a competitive market, while remaining silent on or opposing any proposals for adopting new or retaining old measures in the area of distributive justice, would seem to me glaringly unrealistic with respect to its chances of political success, and highly questionable also with respect to more exalted criteria of merit. It was the combination, in the nineteenth-century English laissez faire program, of hostility to measures aiming at distributive justice and a hands-off attitude to the market which resulted in England getting a "welfare state" with what is to my very private taste an excess of "distributive justice" and a deficiency of free competitive market. A prettier Utopia to me would be a society with as completely free and competitive a market as was attainable in the setting of

[23] W. S. Churchill, Lord Randolph Churchill 268–269 (New York, 1906).

a welfare state in which mass poverty had been eliminated, the business cycle tamed, and opportunity made as equal as was consistent with the survival of private property, the family, and biological differences, as between men, in capacities and motivations. Such a Utopia would be nearer to the modern "welfare state" than to laissez faire. It would nevertheless be a Utopia in which many attractive freedoms could flourish and prosper side-by-side with other ingredients of the good life not consistent with laissez faire. I would not make a plea for it, however, by appeal to "general principles," nor would I make any claim that any others are bound by logical considerations to accept it as their own Utopia.