

JUSTICE SECURED?

AN EXAMINATION OF THE PRINCIPLES AT ISSUE
IN THE AMERICAN REVOLUTION AND THE DECADES FOLLOWING

WRITTEN BY

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PART I
PRESCRIPTS FOR THE JUST SOCIETY

Americans of the late eighteenth century found themselves with a unique opportunity to virtually recreate an entire system of positive law and, thereby, steer a course very different from that of any contemporary eighteenth century society. An appropriate area for investigation, I would argue, is to examine just how close these first American statesmen and politicians came to the creation of a society the laws of which meet an objective test of justice. If it can be said that the nation's first principles were just, it then remains for us to evaluate subsequent changes to that system measured against the original standard. We are then able to explore the areas where the political system structurally interfered with justice and the effects this has had on the development of American society.

To set up this analysis, one must be able to identify an objective standard of justice by which to evaluate the late eighteenth century republican efforts. Those moral and political philosophers of Jefferson's era and before accepted a similar challenge with regard to political economy in Europe; the advance of European civilization in the New World provided a new and distinct arena for investigation. Men of ideas such as Hobbes, Locke, Turgot, Smith and Rousseau contributed to the American

effort by developing their own distinct analyses for examination and debate. Their ventures first into political philosophy and then the newer discipline of political economy provided a basis from which American thinkers would postulate even more "radical" arrangements that took into consideration their own unique experiences of self-government and substantial personal freedom.

The merits of each new pronouncement by the political economists were repeatedly attacked and defended, and although frequently emotional rather than based on objective, scientifically-derived findings, the openness of the debates eventually brought important issues before the American public as it moved closer to revolution. As has always been the case, limited knowledge of the natural world and long-held prejudices hampered the objectivity of some, while the preservation of self-interest affected the thinking of others; and, as history proves, ideas that challenge the political or social status quo are seldom popular with those in power. Men of radical ideas in both the New and Old Worlds lived under threat that the police powers of the State might be invoked should their writings or activities threaten those in power -- tolerance being a virtue too infrequently practiced, then and now. Similar pressures are yet with us in many countries today; however, the overt threats of persecution for free expression of one's ideas have (for the time being) abated in our own and a number of other societies. We are in a much better position today to search for truth

without being fearful of what we find.

How, then, do we identify an objective set of principles by which to measure a society as just? This task has not yet been accomplished, if success is to be measured by universal acceptance. Yet, the goal of a just society is clearly dependent upon how well people living within a political framework reconcile seemingly opposing concepts, such as LIBERTY and RESPONSIBILITY. Where does an individual's personal liberty begin and end? What responsibilities do we have to one another as members of the same society and species?

On these questions, I realize that I can speak only for myself. To do otherwise would require a penetration into philosophical, social and political questions that are beyond the scope of this paper. Nevertheless, an appreciation for the conclusions I reach in Parts II and III requires that I provide a clear explanation of what I mean when discussing JUSTICE, LIBERTY and other concepts critical to my theme. What follows in this section, therefore, are ideas I have come to accept as truths because they meet the test of reason and are supported by historical evidence. Combining the teachings of two great American thinkers -- one a political philosopher, the other a political economist -- I offer a particular definition of the just society.

I turn first to the scholar Mortimer Adler, who has devoted

his life's work to the exploration of THE GREAT IDEAS.[1] In COMMON SENSE OF POLITICS, Adler traces the historical evolution of government and its impact on human civilization. If we are to be concerned with the maximization (through justice) of liberty and equality for all, then, says Adler, "it is only within the framework of the DE JURE state and government that liberty and equality can be maximized for all." [2] Moreover, "the DE JURE state and government must itself be rectified of all of the injustices that it has so far historically exhibited and must become perfectly or completely just in order to maximize liberty and equality for all." [3] Here is an indictment against the state and government as it has existed "historically." A government that sanctions injustice is not, therefore, legitimate and must be reformed or replaced.

Within a society governed by DE JURE government, the individual's ability to act without restraint does not exist. "Unlimited freedom -- freedom unrestrained by justice -- cannot be maximized for all." [4] If we are to have justice, then we must recognize the distinction between the concepts of LIBERTY and LICENSE.

Liberty is freedom exercised under the restraints of justice so that its exercise results in injury to no one. In contrast license is freedom exempt from the restraints of justice and, therefore, injurious to others in infringing their freedom as well as violating other rights. [5]

The "other rights" Adler is referring to are what the

democratic-republican generally calls our NATURAL or HUMAN RIGHTS. As human beings we share a "common humanity" and have the "same species-specific powers or properties." [6] Thus, although our abilities and attributes may differ by degree we are of the same kind; and, therefore, are possessed of the same rights. Where the individual exercises licenses that produce undesirable moral or ethical societal effects, justice requires that the individual be prevented from exercising such licenses. This is the responsibility of legitimate government. Where the state sanctions license the positive law permitting the act to take place is inconsistent with just principles and, if justice is to be maintained, that sanction must not only be eliminated but government must take action against the act. With these building blocks provided by Adler, we move on to the issues of what are more frequently today called ECONOMIC RIGHTS.

To my satisfaction, the most convincing and reasoned approach to the discussion of economic rights comes from the American political economist Henry George, whose treatment of justice embodies a critical synthesis of both moral-sense philosophy and the classical political economy of Physiocrats (such as Turgot and Quesnay) and, of course, Adam Smith. George's two major works, PROGRESS AND POVERTY (1879) and THE SCIENCE OF POLITICAL ECONOMY (1897) continued the tradition of approaching the study of political economy as a natural science. George built his analysis on the work of his predecessors -- correcting where he

uncovered inconsistencies in logic or fact.

More than simply restate that which he found supported by historical evidence or observation, Henry George asked himself what it is about human behavior that is consistent and therefore predictable; his observation, that man seeks to satisfy desires with the least amount of effort, established a first principle. History revealed to him that in attempting to so satisfy desires, the tendency of man is to monopolize what nature freely provided (i.e., what was accessible to all). Thus, George's sense of justice required that positive law be consistent with the principle that the earth (in its natural state) is the birthright of all mankind, equally. Property rights in the earth are therefore unnatural, a result of license sanctioned and enforced by the State. Justice, he concluded, requires that the economic value of nature be collected for the benefit of the entire citizenry. Failing to do so, the consequences (even for a democratic-republic such as our own) are constantly upon us:

... absolute political equality does not in itself prevent the tendency to inequality involved in the private ownership of land; and it is further evident that political equality, coexisting with an increasing tendency to the unequal distribution of wealth, must ultimately beget either the despotism of organized tyranny or the worse despotism of anarchy.[7]

Though deeply concerned over the course of man's future, George remained optimistic that structural changes could prevent a collapse of the democratic-republican experience. He would have agreed with Mortimer Adler that "more progress must be made and

that more revolution may be needed to effect the changes that are requisite."[8]

Thus, the criteria I rely on against which the degree of justice existing in both the eighteenth century republican vision and experience can be measured comes to us out of a reasoned examination of historical processes, institutions and events. Adler and George show that:

1. We are all equal in our humanness; and, therefore, possess rights associated with a truly human existence;

2. The earth is essential as the source of goods necessary for such an existence; therefore, each individual has an equal right to access the earth and all that nature freely provides;

3. Liberty is the exercise of one's rights, by definition the actions involved in no way infringing upon the liberty of others;

4. License is the resort to action which restricts the liberty of others; and, therefore, requires some type of corrective action on the part of the State in order to preserve justice;

5. There are two primary categories of license, the first of which is sanctioned by positive law and creates unnatural property (primarily, private appropriation of the value of nature but also monopolistic sanctions granted in production); the second of which violates moral and ethical patterns of individual behavior and must be terminated; and

6. Positive (i.e., manmade) law meets the test of justice the extent to which it is consistent with the principles of protecting the individual's natural rights as described above and prevents the unbridled exercise of license.

NOTES/REFERENCES - PART I

- [1] Mortimer Adler and Robert M. Hutchins co-edited THE GREAT IDEAS series (published by Encyclopedia Britannica) during the 1960's and 1970's. He is currently Director of the Institute for Philosophical Research and the author of numerous books on philosophy.
- [2] Mortimer J. Adler. COMMON SENSE OF POLITICS [New York: Holt, Rinehart and Winston, 1971], pp.122-123.
- [3] Ibid., p.123. Note: Adler goes on to describe the ideal state as a "socialist, democratic republic."
- [4] Ibid., p.125.
- [5] Ibid., pp.125-126.
- [6] Ibid., p.128.
- [7] Henry George. PROGRESS AND POVERTY [New York: Robert Schelkenbach Foundation, 1975 edition, originally published 1879], p.530.
- [8] Adler, p.171.

PART II
THE BREAK WITH ENGLAND
A CONSERVATIVE REVOLUTION WITH RADICAL OVERTONES

Discontent among the American colonials with the status quo of their government and position within the British Empire came about gradually. Eventually, challenges to the authority of King and Parliament found their way into an expanding political literature. A wider protest against institutions of colonial society followed. When the colonials finally began to vocalize their grievances they found a rich heritage of dissent supporting their cries against the injustice of Parliamentary acts or declarations by the Crown. That supreme defender of the glorious revolution, John Locke, provided the ammunition with his attachment of a high moral obligation to the exercise of power:

As usurpation is the exercise of power which another hath a right to, so tyranny is the exercise of power beyond right, which nobody can have a right to; and this is making use of the power anyone has in his hands, not for the good of those who are under it, but for his own private, separate advantage.[1]

Although primarily a defense of the actions taken against an authoritative monarchy, Locke would be quoted repeatedly in the 1760's and after as a defender of "natural rights" and on "the social and governmental contract"[2] by colonials embittered against Parliamentary acts they correctly perceived as bringing an end to the longstanding policies of benign neglect that had

permitted the expansion of the colonials' opportunity to self-govern. The impact was felt the greatest in the older colonies, which had more or less been under de facto self-government for more than a century[3] while the attentions of King and Parliament were held elsewhere.

The English empire was far from being secure. Though internally corrupt and increasingly unable to defend her vast empire, Spain still claimed sovereignty over much of the New World and was never very far from war with England. The Dutch, possessed with Europe's largest merchant fleet, maintained their position as Europe's great financiers and traders. France, however, had emerged as England's most powerful competitor in the quest for New World territory and markets. As the colonies became more important as producers of foodstuffs, furs and other raw materials (as well as being a captive market for manufactures) each of the European powers was forced to defend its territorial claims by force.

War in Europe had repeatedly spilled over into North America, and did so again in the early 1750's. Disunity during the initial stages of the war brought disaster after disaster to the colonial armies in their efforts against the French and their Indian allies. These defeats became a real threat to the British alliance with the Iroquois, the league of tribes dominating much of the colonial frontier and an effective buffer between the English and French. Fearful of losing these Indian allies, the

Lords of Trade and Plantations called for a congress at Albany to persuade the Iroquois that England would emerge victorious in the war and the Iroquois would share in that victory. Seven of the thirteen colonies sent representatives, including Pennsylvania which was represented by Benjamin Franklin. This congress was important to the future of America for several reasons. The seeds of self-government and ultimate unity among the colonies were planted by Franklin, on whom the Iroquois success in forging a strong nation had not gone unnoticed:

There is a writer of our day ... who has written an intriguing work entitled THE IMPORTANCE OF GAINING AND PRESERVING THE FRIENDSHIP OF THE INDIANS. I do not know Mr. Kennedy [the writer] personally or what qualifications he has, but this is of little importance, for what he has to say makes good sense. He comments in detail on the strength of the League which has for centuries bound ... the Iroquois together in a common tie which no crisis, however grave, since its foundation has managed to disrupt. Further, this League does not infringe upon the rights of their individual tribes.

Franklin had studied the Iroquois confederation closely. Now, at this congress, he would propose "that all of British America be federated under a single legislature and a president general to be appointed by the Crown." As if the Iroquois success were not enough to convince those at the congress of the wisdom of combined effort, Franklin appealed to a less noble instinct in his fellow whites: "It would be a strange thing, would it not, if Six Nations of ignorant savages should be capable of forming a scheme for such a union, and be able to execute it in such a manner as that it has subsisted for ages and appears

indissoluble, and yet that a like union should be impracticable for ten or a dozen English colonies?"[4] Franklin's proposal was either ignored or rejected by all the colonial legislative bodies. Few in the colonies were yet ready to contemplate a form of government that might compete with the colonial legislative bodies. While it might be true that the Iroquois had managed to form a confederation lasting hundreds of years, with general peace maintained among its member tribes, the colonials had more pressing problems to think about. With French victories threatening its North American holdings and Indian raiding parties reclaiming the frontier, the British military was about to take control of the war.

With the presence of the British military in colonial America there came an end to the era of benign neglect. Such a large British presence meant large expenditures. At the end of the war Parliament would now look to its distant subjects as the logical source for revenue to reduce the national debt. A not unimportant characteristic of this Parliament was its control by the conservative elements in English society, men who were not only staunch defenders of the growing empire and its mercantilist foundation, but who were instinctively committed to the defense of their position of privilege. England's aristocracy awakened from its complacency with the colonials' cry of "no taxation without representation," realizing full well that "nothing was more likely to overthrow the privileged class [of England] than

the application of this RARE LEVELLING PRINCIPLE in Great Britain."[5] In no event were England's landed and merchant classes willing to share either power or privilege with their colonial counterparts.

What is also important to understand is that by the mid-eighteenth century much of the wealth and position in colonial America was, like that in England, inherited. Many of the colonials at the center of early resistance to the Navigation Acts and the arrival of more and more crown officials were themselves of the landed and the merchant classes, were equally conservative and staunchly defended the status quo in colonial America. They were certainly the most Anglophile of the colonials and the prime beneficiaries of privilege. Unwittingly, they became a threat to their English counterparts when they began to demand an equal voice in a government now attempting to reach into what the colonials viewed as their private domain. From the perspective of conservative colonials, their liberty was severely threatened by the imposition of unwarranted and unjust usurpations of power. Representation in Parliament became the trigger issue, for "virtual representation worked far greater injustice in the colonies than in England" inasmuch as "even the richest man in America would be debarred from voting for the members of Parliament who would represent him." [6] So long as Parliament had ruled under the doctrine of benign neglect, there had been no reason for the colonials to assert their rights as

English subjects; the colonial experience with self-government had fostered a feeling of equality with England

... but in the existence in every colony of a miniature house of commons which was exercising full powers over legislation, membership, and finance, and claiming legislative equality with the highest legislative body of the realm. Such a claim affected the very constitution of the British empire itself, for it asserted that the empire was not a single state made up of a mother country and her dependencies, but rather a group of states equal in status, with coordinate legislatures and a common king.[7]

Until the 1760's colonials had enjoyed a de facto liberty that was in many ways less interfered with than what English law demanded. For those not at all inclined to submit to any authority there was always the beckoning wilderness.

Benjamin Franklin was certainly one of the earliest of the colonial leaders to publicly express dissatisfaction with the status quo, even under the doctrine of benign neglect. He was among a small number of the colonials who had been greatly influenced by the teachings of the Enlightenment and by the eighteenth century French PHILOSOPHES, who "popularized not only a faith in humanity and an ideal of a free and equal society, but also specific economic and political doctrines." [8] While most of what was then the American establishment desired nothing more than to protect its privileged status, a determined few ventured to challenge not only the grip on American society by England but the doctrine of privilege embedded in colonial society as well.

The overturning of unjust political regimes and institutions

had taken concrete form in England with Cromwell and again in 1688. These upheavals had their origins in the Enlightenment, which produced a renewed quest for truth and understanding.

Reason, once the explicator of authority, became the test of authority. In the Middle Ages faith had preceded reason; men used their reason to explain doctrine which they first accepted on faith. In the eighteenth century, however, men reversed the order: the followers of Enlightened philosophy believed only that which met the test of reason.[9]

In the eighteenth century Locke, Turgot, Quesnay and Smith -- men of ideas, teachers, philosophers -- formulated a new science, political economy, built on axioms arrived at through reason and substantiated by scientific investigation. In North America these investigations were examined and absorbed by men such as Franklin, Adams, Jefferson, Madison, Hamilton and Paine; their own contributions would come from direct experience in a society distinct in many ways from its European heritage. Slowly, they would test by experimentation republican theories of government.

What exactly did they learn from the men of the Enlightenment about "liberty?" About "justice?" Liberty had two distinct meanings. First, it was argued, there is the liberty to engage in business or trade without interference by the state; then there is also the liberty to participate in government -- to vote and hold elected or appointed office. In the colonies as well as in England the franchise was restricted to the landed. Those who enjoyed and benefited from this license were sure they were deserving of their privilege, and as sure that the propertyless

were not. Thus, while the colonial leaders could forge a united resistance to oppose the injustice of measures invoked by a distant King and Parliament (and such a man as Patrick Henry could be widely applauded for his cry of "Give me liberty, or give me death!") only a very few would step out beyond the limits of unenlightened self-interest in a quest for liberty, and justice, for all.

Another aspect of the revolutionary struggle was the strange position of Britain's military force having to assume the dual role of being both defender of British interests (i.e., colonial property) and carrying the burden of fighting the rebels. Many colonials, remaining loyal to the empire, relied on the presence of the army for security of person and property. Thus the war presented the interesting dichotomy of two opposing military forces (each directed by essentially conservative political leaderships) attempting to prevent the destruction of the colonies' stock of physical wealth while fighting over who would govern the owners and control a vast territory. Neither group was prepared for the degree of change that was soon to occur; they (and their descendants) would continue to hold their conservative aspirations for a very long time. In America this ongoing conservatism would establish an ongoing opposition to the democratization of the republic.

What the conservative colonials failed to realize until too late, however, was that the majority of their countrymen

possessed a vision of an independence very different from their own. "The American Revolution was more than simply a struggle to free the colonies from English control; it was more than a civil war between Whigs and Tories. It became as well a movement to obtain certain democratic rights for the American people: emancipation of slaves, humane penal codes, greater freedom of worship, termination of aristocracy in landholding, expanded suffrage, and broader educational opportunities." [10] Once committed to the revolution, most Americans expected victory to produce greater equality of opportunity. By 1776 the momentum had reached the pinnacle for radical change; "everywhere there were discussions of the ideal nature of government; everywhere principles of politics were examined, institutions weighed, and practices considered." [11] More than most others of his class Jefferson anticipated this and struggled to incorporate an egalitarian spirit into what he viewed as a just system of law. [12] While limiting political participation to his own race and gender, Jefferson's proposals to guarantee each white, adult male sufficient land on which to support himself and his family suggests that he was more aware than most of the relationship between justice and equal access to the earth.

In our own time Americans generally think of the U.S. Constitution as our guide in the pursuit of justice. Those who both forged and criticized the Constitution during the late eighteenth century were more "conscious rather of its defects

than its merits." [13] Along these lines, I find Jefferson's advice to his fellow republicans prophetic:

The time for fixing every essential right on a legal basis is while our rulers are honest and ourselves united. From the conclusion of this war [the Revolution] we shall be going down hill. It will not then be necessary to resort every movement to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves, but in the sole faculty of making money ... The shackles, therefore, which shall not be knocked off at the conclusion of this war, will remain on us long, will be made heavier and heavier. [14]

On the one hand, he recognized the necessity for a uniform legal structure to nourish and preserve the union; yet (particularly in private correspondence) his warnings were on this order:

The real friends of the constitution in its federal form, if they wish it to be immortal, should be attentive by amendments to make it keep pace with the advance of the age in science and experience. Instead of this, the European governments have resisted reformation, until the people, seeing no other resource, undertake it themselves by force, their only weapon, and work it out through blood, desolation, and long-continued anarchy. [15]

While supporting the constitutional initiative, Jefferson's writing implies an already developed pessimism. He seemed to sense that the window of opportunity for radical change created by the Revolution had by the late 1780's been closed. The conservative elements in America controlled for the most part the cultivated land, physical wealth, trade and financial reserves; they were not about to allow the winning of independence to simultaneously accomplish the destruction of their privilege and position. [16] Others were more optimistic; and, as Jackson Turner

Main concluded in his study of the period:

The American of the 1780's had reason, as he viewed his society, for some cautious optimism. Classes remained, to be sure, and he might note with alarm the concentration of wealth and the growing number of poor, but the Revolution had made great changes, and westward the land was bright.[17]

Westward the land was bright, and Americans would soon leave what most acknowledged as a CORRUPTED eastern seaboard for the unsettled, virgin lands of the west. Already by the beginning of the nineteenth century, though still thinly populated and newly independent, Americans looked not to the Constitution nor their leaders to secure liberty; rather they looked "westward." From the very beginning of our nation, Americans seemed to instinctively realize that as great as the changes were over the Old World they were not sufficient to protect the republic over the long haul.

We know that the experience of living in America has for countless millions fallen far short of the promise of the Revolution. Why this has been so has been debated endlessly during our life as a nation. We Americans have amended our Constitution, restructured and reorganized our political institutions and several times overhauled our economic system. Still, problems of inequality of opportunity remain; still, the concentration of ownership of land and of wealth grows[18]; still, justice remains an elusive goal of only some, while others work to maintain their privilege. I assert that Franklin and

Paine, particularly (and Jefferson probably) knew, then, what justice required; their writings reveal an awareness and acceptance of measures that would bring equal access to nature to all Americans and thereby bring a more permanent degree of justice to the new nation.

Among the writings of Franklin, Paine and others whom I will highlight, can be found a clear presentation of a reform directed to the heart of privilege. More than any of the necessary reforms none was more crucial and more difficult to secure than bringing an end to the system of land tenure that permitted the private appropriation of the value of nature and its concentration into the hands of the privileged few. Part III discusses the evolution of this reform and its introduction into republican political thought.

NOTES/REFERENCES - PART II

- [1] John Locke. TWO TREATISES OF GOVERNMENT [New York: Hafner Publishing Company, 1947], pp.222-223 (originally published in England in 1690).
- [2] Bernard Bailyn. THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION [Cambridge, Massachusetts: Harvard University Press, 1967], p.27.
- [3] John C. Miller. ORIGINS OF THE AMERICAN REVOLUTION [Boston: Little, Brown and Company, 1943], pp.29-39.
- [4] Allan W. Eckert. WILDERNESS EMPIRE [Boston: Little, Brown and Company, 1969], p.296.
- [5] Miller, p.212.
- [6] Ibid., pp.213-214.
- [7] Charles M. Andrews. THE COLONIAL BACKGROUND OF THE AMERICAN REVOLUTION [New Haven: Yale University Press, 1924], p.41.
- [8] Kingsley Martin. THE RISE OF FRENCH LIBERAL THOUGHT [New York: New York University Press, 1954 ed.], p.18 (first published in 1929).
- [9] David D. VanTassel and Robert W. McAhren. EUROPEAN ORIGINS OF AMERICAN THOUGHT [Chicago: Rand McNally & Company, 1969], Introduction, xi.
- [10] Oscar T. Barck, Jr. and Hugh T. Lefler. COLONIAL AMERICA [New York: The Macmillan Company], p.640.
- [11] Bailyn, p.231.
- [12] Jefferson's activities and positions on the issues support this conclusion. His efforts to end slavery, dissolve the laws of primogeniture and entail, his efforts to secure popular education and an end to the ties between church and state place him at the vanguard of the radical reform republicans.
- [13] Homer Carey Hockett. THE CONSTITUTIONAL HISTORY OF THE UNITED STATES [New York: Macmillan Co., 1939], vol.1, p.256.
- [14] Thomas Jefferson. NOTES ON THE STATE OF VIRGINIA [1781], p.161. Cited in Fawn M. Brodie. THOMAS

JEFFERSON [New York: W.W. Norton & Company, Inc., 1974], p.156.

- [15] Letter to Robert J. Garnett from Monticello, February 14, 1824. Cited in THE POLITICAL WRITINGS OF THOMAS JEFFERSON, edited by Edward Dumbauld [Indianapolis, Indiana: Bobbs-Merrill Company, Inc., 1955], p.125.
- [16] Jackson Turner Main in THE SOCIAL STRUCTURE OF REVOLUTIONARY AMERICA [Princeton University Press, 1965] has shown that the upper class in America at this time was composed almost exclusively of owners of large amounts of landed property. He concludes (optimistically) that "By European standards there was ... no upper class at all, since there was no hereditary aristocracy." [p.275] Nevertheless, the transplantation of inheritance and other other land-related laws from England had created a hereditary, if untitled, aristocracy. As population increased and the frontier gave ground to permanent settlement, post-revolutionary America began to experience a gradual concentration of wealth in the hands of a minority.
- [17] Ibid., p.287.
- [18] A report issued in August of this year by the Joint Economic Committee of Congress indicates that the top 0.5% of American families holds 26.9% of the nation's household wealth. According to a TOWN & COUNTRY report, "The Land: Who Owns America?" [May 1983], "more and more land is passing into the hands of fewer and fewer people" and that "3 percent of the population own 55 percent of the total land, and a full 95 percent of the 1.3 billion acres of privately owned land in this country."

PART III
THE WEALTH OF NATIONS BELONGS TO ITS PRODUCERS
THE VALUE OF NATURE, THE SOURCE OF WEALTH, BELONGS TO ALL

The period following our Revolution was characterized by a constantly growing importance of trade and of markets. As was observed by Drew McCoy in THE ELUSIVE REPUBLIC, "the commercialization of society in itself marked the birth of a distinctly modern order that represented a dramatic and dislocating break with the past." [1] No one individual was more responsible for analyzing and exploring this break than was the Scottish philosopher Adam Smith. Smith is universally recognized as the father of what in 1776 was a new scientific endeavor -- political economy. THE WEALTH OF NATIONS established a scientific framework for the investigation of the nature of man and his world that lasted until the arrival of the specialists into the world of academia. For more than a century, however, political economy remained intact and Smith stood in the late eighteenth century as the recognized master over this new discipline. There is no arena in the relations between men, or between men and the State, that he did not touch on.

Smith is today repeatedly brought forward as the great defender of "laissez-faire capitalism" by those who wish to extricate business from interference by the "Liberal State." Both Smith's treatment of the market and the concept of laissez-faire

have, however, been gravely misrepresented. THE WEALTH OF NATIONS is an historical investigation that presents an insightful analysis of the advance of human civilization. As would any scientist, Smith strived to show cause and effect relationships in political economy. The term "laissez-faire" is an "emasculated and perverted"[2] shortening of the Physiocratic "Laissez-faire, laissez aller" (translated as "Clear the ways and let things alone!"[3]). To clear the ways of privilege and monopolistic sanctions was key to Smith's anti-mercantilist analysis. How many entrepreneurs today are eager to risk a market that is free of privilege and subject to competitive pressures?

Because of his unique position among men of ideas, Smith's influence on his American counterparts was substantial. In many instances Smith could be referred to as the authority supporting conclusions Americans had come to based on their own investigations; he provided a standard against which they could test new ideas and predict results. In short, Smith's work made possible the use of reason and logic to formulate both private decisions or government policy. The issues of direct concern to this paper center on Smith's presentation on the development of the institution of property in land and on his concept of justice.

Chapter VIII (Of The Wages Of Labour) begins with a clear statement of history, followed by a conclusion on Smith's part

that must have stirred both conservatives and radicals alike (though in very different ways):

In that original state of things, which precedes both the appropriation of land and the accumulation of stock, the whole produce of labour belongs to the labourer. He has neither landlord nor master to share with him.

Had this state continued, the wages of labour would have augmented with all those improvements in its productive powers, to which the division of labour gives occasion. All things would have gradually become cheaper. They would have been produced by a smaller quantity of labour; and as the commodities produced by equal quantities of labour would naturally in this state of things be exchanged for one another, they would have been purchased likewise with the produce of a smaller quantity.[4]

What could be more just than that the wealth produced by labor is and should be the private property of labor? That history had not so unfolded was uncharacteristically glossed over by Smith; his treatment of this issue suggests a reluctance to follow the facts through to a logical conclusion (perhaps Smith recognized he was treading into an area of social and political structure that had unsettling ramifications:

But this original state of things, in which the labourer enjoyed the whole produce of his own labour, could not last beyond the first introduction of the appropriation of land and the accumulation of stock. It was at an end, therefore, long before the most considerable improvements were made in the productive powers of labour, and it would be to no purpose to trace further what might have been its effects upon the recompence or wages of labour.

As soon as land becomes private property, the landlord demands a share of almost all the produce which the labourer can either raise, or collect from it. His rent makes the first deduction from the produce of the labour which is employed upon land.[5]

This "first deduction" of "rent" stems from one fact only: that the State has sanctioned the appropriation of land as private property in a manner that denies the principle of the value of nature belonging to all and not to any individual, a subject which Smith himself comments on in Chapter I of Book V:

Among nations of hunters, as there is scarce any property ... so there is seldom any established magistrate or any regular administration of justice. Men who have no property can injure one another only in their persons or reputations... It is otherwise with the injuries to property. The benefit of the person who does the injury is often equal to the loss of him who suffers it... But avarice and ambition in the rich, in the poor the hatred of labour and the love of present ease and enjoyment, are the passions which prompt to invade property, passions much more steady in their operation, and much more universal in their influence... It is only under the shelter of the civil magistrate [i.e., the State] that the owner of that valuable property, which [and here where Smith fails in the consistency of his logic by ignoring the history of how property was in many instances acquired] IS ACQUIRED BY THE LABOUR OF MANY YEARS, OR PERHAPS OF MANY SUCCESSIVE GENERATIONS, can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, THOUGH HE NEVER PROVOKED, he can never appease, and from whose injustice he can be protected only by the powerful arm of the civil magistrate continually held up to chastise it.[6]

Smith begins by offering a natural rights definition of property (labor applied to land yields production); then goes on to defend redistribution of property from producers to nonproducers (i.e., to those who simply hold titles to land) without regard to the legitimacy of the actions themselves or the political structure that sanctions such actions. What of the great landed estates that loyalty to monarch had produced through

edict (in the New World as well as Old), or the enclosure of the English commons, or the division of Ireland by Cromwell among his generals -- whose descendants took from the Irish peasant the bulk of what was produced in order to live in splendor as absentee landlords? Smith fails to support his indictment of the landless poor in their "hatred of labour," for when the poor have anywhere gained access to land they have shown industry. I am forced to conclude that Smith let his position in English society interfere with his intellectual honesty. Locke had been less accommodating, less forgetful of political history and more generous in his declaration of human rights. From CIVIL GOVERNMENT come the following passages:

God hath given the world to men in common ... Yet every man has a property in his own person. The labor of his body and the work of his hands are properly his...

With this restriction on the amount of land one can hold and under what circumstances:

As much land as a man tills, plants, improves, cultivates, and can use the produce of, so much is his property...[7]

Very early in the European migration to North America Locke's concept of production as the basis for holding titles to land was incorporated by William Penn into the plan for settlement of Pennsylvania. In 1681 Penn proclaimed "Every man shall be bound to plant, or man, his land within three years after survey, or else other applicants may be settled thereon." [8] Only those who

actually produced would be entitled to retain ownership. Penn later proposed a radical scheme for using the rental value of land to provide for public expenditures, suggesting

If all men were so far tenants to the public that the superfluities of gain and expense were applied to the exigencies thereof, it would put an end to taxes, leave not a beggar, and make the greatest bank for national trade in Europe.[9]

This was Penn's version of what would become in the late nineteenth century the proposal for "the single tax," carried into the political arena by Henry George and those who agreed with him that

Free trade means free production. Now fully to free production it is necessary not only to remove all taxes on production, but also to remove all other restrictions on production. True free trade, in short, requires that the active factor of production, Labor, shall have free access to the passive factor of production, Land. To secure this all monopoly of land must be broken up, and the equal right of all to the use of the natural elements must be secured by the treatment of the land as the common property in usufruct of the whole people.[10]

A major eighteenth century source from which Henry George had found strength for his positions on the land question was in the Physiocratic writings. Ten years before Smith, Turgot traced the advent of land rent as a claim on production and its impact on the distribution of wealth:

But the land filled up, and was more and more cleared. The best lands at length came to be all occupied. There remained for the last comers only the sterile soils rejected by the first. But in the end all land found its master, and those who could not have properties had at first no other resource than that of exchanging the labour of their arms, in the employments

of the "stipendiary" class, for the superfluous portion of the crops of the cultivating Proprietor.[11]

By what logic or sense of justice were the few possessed of greater rights to nature than the many? In America, the discussion of this question spread among those familiar with Locke, the Physiocrats and Smith. Benjamin Franklin described himself as "a master"[12] of "Physiocratie;" and, in a letter to Alexander Small in 1787 Franklin wrote

I have not lost any of the principles of political economy you once knew we possessed of, but to get the bad customs of the country changed, and new ones, though better, introduced, it is necessary first to remove the prejudices of the people, enlighten their ignorance, and convince them their interests will be promoted by the proposed change; and this is not the work of a day. Our legislators are all landholders; and they are not yet persuaded that all taxes are finally paid by the land... therefore we have been forced into the mode of indirect taxes, i.e., duties on importation of goods.[13]

In AGRARIAN JUSTICE (1795), Tom Paine also attacked the injustice perpetuated by the system of privilege upon which European society was based. "Man did not make the earth, and, though he had a natural right to occupy it," wrote Paine, "he had no right to locate as his property in perpetuity any part of it; neither did the Creator of the earth open a land office, from whence title deeds should issue... it is the value of the improvement only, and not the earth itself that is individual property." [14] As had Penn and would George, Paine declared that "Every proprietor of cultivated land owes to the community a ground rent, for I know of no better term to express the idea by, for

the land which he holds; and it is from this ground rent that the fund proposed in this plan is to issue." [15] As real wealth, "improvements" were in Paine's mind true private property, while "ground rents" would compensate others in society for the license of titleholding granted to those holding land. In this proposal by Paine is the missing element to republican justice. Jefferson, though not an adherent to any school of political economy, supported a measure that would have permitted the federal government to secure necessary revenues by the levy of a land tax against the states. [16] This proposal was never discussed at the Constitutional Convention, even though the precedent had been established under Article VIII of the Articles of Confederation, which reads:

All charges of war, and all other expenses that shall be incurred for the common defence or general welfare, and allowed by the united states in congress assembled, shall be defrayed out of a common treasury, which shall be supplied by the several states in proportion to THE VALUE OF ALL LAND WITHIN EACH STATE...

Jefferson's own notes indicate that the substance of this article was put forth by New Jersey delegate Dr. John Witherspoon, recording that he "was of opinion that the value of lands and houses was the best estimate of the wealth of a nation, and that it was practicable to obtain such a valuation." [17]

Witherspoon can be forgiven for including houses (which are part of production and therefore the private property of the individual) in his scheme, inasmuch as the emptiness of the

continent and low population acted to retard the rise of land values. Benjamin Franklin would be proven all too correct in predicting that the large landowning interests (at the time almost everyone possessed of substantial wealth in America) would work tirelessly to resist having to contribute to the general welfare in proportion to the value of the license granted in the form of titles to nature. This principle of justice became lost in the quest by Americans to conquer the vast continent and grab what they could for themselves. Alaska, our country's last frontier, is unique in that its government has adopted measures to retain the rental value of its oil bearing lands for the general welfare. Nationally, only a small portion of the rental value of land is collected by government to offset its expenses and thereby reduce the burden of taxation on actual production. In fact, large tracts of the "public domain" are leased to private users at annual rents far below what competitive bidding would produce in the private sector. Federal range lands are leased long-term to "ranchers" at a fraction of true rental value; these same individuals are then free to turn around and sublet the Federal lands at great personal profit.[18]

Our system of land tenure has its roots in the same body of property law that produced a still-existing landed class in England. None of the enlightened efforts by our founding fathers were able to change that. Justice, in our republic, will remain an elusive goal until we remedy this grave structural defect.

Labor and capital must be freed to produce. Access to nature must be maximized. And the economic value of nature must be collected in full to provide for the public and private goods that contribute to a human existence characterized by dignity. As is often the case, the most objective observations are made by outsiders. Of America and its laws, Alexis De Tocqueville wrote:

In America there are properly speaking, no farming tenants; every man owns the ground he tills. It must be admitted that democratic laws tend greatly to increase the number of landowners and to diminish that of farming tenants. Yet what takes place in the United States is much less attributable to the institutions of the country than to the country itself. In America land is cheap and anyone may easily become a landowner; its returns are small and its produce cannot well be divided between a landowner and a farmer.[19]

We became more productive; that is, more adept at producing more from less. Thus, today the landowner commands a very large portion of production as rent for the use of land. As the concentration of ownership continues to increase, we are faced with the challenge of ever improving productivity in order to maintain the standard of wellbeing that has characterized our society and given credibility to its democratic-republican nature. The real reform needed -- the socialization of the value of nature -- still suffers from a combination of the power of the privileged and a wanting of the educational effort called for by Franklin. We may have missed the one window of opportunity any society has really been given.

NOTES/REFERENCES - PART III

- [1] Drew R. McCoy. THE ELUSIVE REPUBLIC [New York: W.W. Norton & Company, 1980], p.17.
- [2] This comes from Henry George, who further suggested that "The English motto which I take to come closest to the spirit of the French phrase is, 'A fair field and no favor!'" See THE SCIENCE OF POLITICAL ECONOMY [New York: Robert Schalkenbach Foundation, 1968 ed.], p.153 (originally published 1897).
- [3] Ibid.
- [4] Adam Smith. THE WEALTH OF NATIONS [New York: Random House, Inc. edition, 1937], p.64 (originally published 1776).
- [5] Ibid., p.65.
- [6] Ibid., p.670.
- [7] John Locke. TWO TREATISES OF GOVERNMENT [New York: Hafner Publishing Company edition, 1947], Second Treatise, Sections 27 (p.134) and 32 (p.136).
- [8] Alfred N. Chandler. LAND TITLE ORIGINS [New York: Robert Schalkenbach Foundation, 1945], p.402. Cited from "Certain Conditions and Concessions agreed upon by William Penn and Adventurers and Purchasers," July 11, 1681.
- [9] William Penn. FRUITS OF SOLITUDE (Part II: 222-year 1693). Cited in THE SINGLE TAX YEARBOOK, edited by Joseph D. Miller [New York: Single Tax Review Publishing Company, 1917], p.314.
- [10] Henry George. PROTECTION OR FREE TRADE [New York: Henry George & Co., 1886], p.309. (Note: The term "usufruct" is defined as the right to utilize and enjoy the profits and advantages of something belonging to another so long as the property is not damaged or altered in any way.)
- [11] Anne Robert Jacques Turgot. "Reflections on the Formation and Distribution of Wealth." (1766) MASTERWORKS OF ECONOMICS [New York: McGraw Hill Book Company, 1973] vol.1, pp.38-39.
- [12] Letter to Pierre Samuel DuPont, from London, July 28, 1768. Cited in SINGLE TAX YEARBOOK, p.321.
- [13] From Bigelow's FRANKLIN (IX:414). Cited in SINGLE TAX

YEARBOOK, p.322.

- [14] Thomas Paine. AGRARIAN JUSTICE, 1795. Cited in SINGLE TAX YEARBOOK, pp.329-330.
- [15] Ibid.
- [16] Letter to Fitzhugh, 1797 (WORKS, Ford's edition, 7:136).
- [17] "The Confederation." GREAT DEBATES IN AMERICAN HISTORY, edited by Marion M. Miller, Litt.D. [New York: Current Literature Publishing Company, 1913], vol.1, p.242.
- [18] An enlightening analysis of just how concentrated is the control over nature is presented by James Ridgeway in WHO OWNS THE EARTH [New York: Macmillan Publishing Co., 1980]. Of the privately held land in the United States, approximately 95% is held by only 5% of our citizenry (which includes ownership of stocks in corporate entities that own land).
- [19] Alexis de Tocqueville. DEMOCRACY IN AMERICA [New York: Vintage Books, 1954 edition, originally published in 1835 and 1840], p.196.