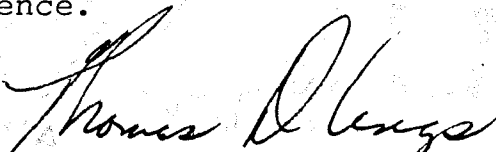
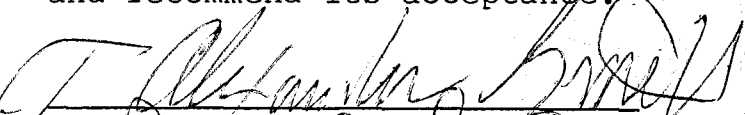
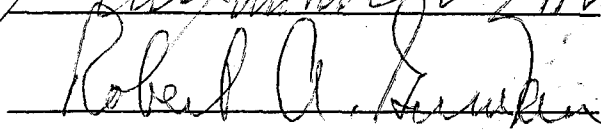


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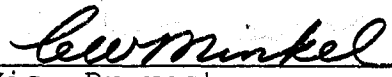
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THE POLITICAL THOUGHT OF LYSANDER SPOONER

A Thesis

Presented for the

Master of Arts

Degree

The University of Tennessee, Knoxville

Larry M. Hall

March 1986

ACKNOWLEDGMENTS

My research on the writings of Lysander Spooner has benefitted greatly from the assistance of a number of scholars. I would particularly like to thank Thomas D. Unga, who served as my thesis director, and T. Alexander Smith and Robert Gorman, who served on my committee. Their encouragement and critical analysis of my research were extremely important elements in achieving my final project. I am also grateful to Mary Jendrek for her skilled assistance in preparing the manuscript. Obviously, I alone take full responsibility for any remaining errors or shortcomings in my research.

ABSTRACT

Lysander Spooner represents a largely unexplored portion of American political thought. Though he produced a vast amount of published materials during his writing career, Spooner has received very little scholarly attention.

This research integrates and examines the whole body of Spooner's thought. It explores the historical significance of his publications while investigating in greater detail his views concerning justice and natural law, the Constitution, consent and accountability, trial by jury, majority rule, the natural economy, and money and banking.

Finding Spooner to be neither a pure liberal nor a pure anarchist, this research concludes by arguing that he raises very important questions pertinent to both systems of thought. He highlights and criticizes specific political institutions. Moreover, he presents several alternative mechanisms to replace those which he rejects. In almost all cases, he is a dissident voice in nineteenth century political thought, bringing a unique approach to each theoretical concern.

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INTRODUCTION

The writings of Lysander Spooner represent a largely unexplored portion of American political and social thought. What classification Spooner has received has normally categorized him as an extremely independent nineteenth century "individualistic anarchist," based on his radically individualistic and anti-statist arguments. Neither of these two generally American values have found as much popularity in twentieth century political reality, particularly not manifested in the radical extremes in which Spooner presents his arguments.

Spooner's writings span across approximately the middle fifty years of the nineteenth century, situated against several controversial American episodes. This New England pamphleteer engaged himself in a wide array of social causes and practical occupations in this historical setting. His fragmented ideas, often buried in scarcely circulated pamphlets, encompass a wide spectrum of intellectual territory that extends from the social sciences to theology.

In the structure of American political thought, Spooner is clearly a radical voice--a dissident critic against the heavy tide of an advancing complex State and Society. However, dissent serves a valuable function in the process of ideas, guaranteeing that theoretical fallacies or faults are never cloaked by a philosophical fuzziness that often permeates the scholarly mainstream. If only for this reason

alone, it is unfortunate that Spooner has received so little attention.

However, Spooner represents more than merely dissent or criticism. He goes beyond merely challenging to contributing alternative social structures more akin to his understanding of justice and a just society. His conclusions may often represent a utopian naivete, but his ends, the search for peace and justice in the social order, surely cannot be criticized. Furthermore, the reader should explore his arguments with the understanding that, first, Spooner's work, because of severe financial or time constraints, is often incompletely developed and, second, he is always a pamphleteer/advocate before he is a philosopher.

Two other less abstract justifications exist for examining Spooner's system of thought. First of all, though he produced a massive bulk of literature, very little critical analysis of Spooner's writings exists. Secondly, the fragmented and extremely diverse nature of the thinker's arguments sorely requires systematic integration. Spooner's publications are generally more aimed at the advocacy of positions concerning the events that surrounded him than they are efforts to produce long and coherent treatises. Moreover, without exception, financial burden hindered his research and publication throughout this life and, therefore, left many arguments eternally incomplete.

This research rests heavily on these two concerns. The

reader will find that each of Chapters 2 through 6, which explore Spooner's ideas in detail, is divided into two sections. For the sake of simplicity, each chapter will first present an integrated exposition of the ideas at hand and, second, offer a critical analysis of these respective ideas.

This research consists of seven chapters. Chapter 1 briefly surveys the life and writings of Spooner. While the primary effort is to provide a biographical structure of the thinker's writings, hopefully the reader will also develop an understanding of the evolution of Spooner's system of thought.

Chapters 2 through 6 will examine the respective portions of Spooner's thought in greater detail. Chapter 2 will look at his ethical foundations for a political order, the natural science of justice. Chapter 3 will explore his views concerning the contractual relationship of Man and State, the Constitution. Chapter 4 will investigate a crucial element in the maintenance of Spooner's political system, the trial by jury. Chapter 5 will examine the economic and social results Spooner foresees from his concepts of natural law. Finally, Chapter 6 will inspect the most developed segment of the writer's system, his views on free banking and monetary policy.

The final chapter will briefly probe the underlying themes that best summarize Spooner's thought. Further, it

will attempt to locate his place in American political thought. Finally, it will search for the contemporary relevance of Lysander Spooner's arguments.

The boundaries of this research are established by the parameters Spooner himself installs by the limits of his writings. The purpose of this investigation is more to integrate and analyze Spooner's system of thought than it is to examine the more subsidiary questions that may emerge from what he addresses. Considering the bulk of Spooner's publications, across diverse social disciplines, any expansion of effort beyond this point would require numerous treatises.

CHAPTER 1

THE LIFE AND WORKS OF LYSANDER SPOONER

Lysander Spooner was born January 19, 1808, the second of nine children of Asa and Dolly Spooner.¹ Very little information exists concerning the two parents. Though his father was a staunch advocate of temperance and several of his family members strongly reformist-oriented, Spooner's early environment was apparently not influenced by the religious orthodoxy prominent in New England in the early nineteenth century.²

Spooner remained in his parents' Athol, Massachusetts, household until age twenty-five. During the last nine years of his residence, he was responsible for payment of boarding fees through a formal agreement with his father. During these years, he received enough education to enable him to teach school and tutor individual children in the small farm community.

In 1833, he left home for nearby Worcester where he found employment in a local store and the Registrar of Deeds

¹For a more extensive biographical examination of Spooner, examine: Charles Shively, "Biography," in The Collected Works of Lysander Spooner, ed. Charles Shively (Weston, Massachusetts: M and S Press, 1971), Vol. I, pp. 15-62; James Martin, Men Against the State (Dekalb, Illinois: Adrian Allen Associates, 1953), pp. 168-200; and Benjamin Tucker, "Our Nestor Taken From Us," Liberty 28 May 1887, pp. 4-5.

²Shively, p. 15.

Office. Spooner also began legal studies at the law offices of John Davis and Charles Allen, two well-respected attorneys in Worcester. Davis later became a multi-term governor and was twice elected to the United States Senate. Allen was a state senator and later was appointed Chief Justice of the state supreme court.

These legal studies had a lasting effect on Spooner's development as a writer. The young man developed an extremely formal deductive and legalistic method of argumentation, with strict adherence to natural law. This rigorously logical method remained with Spooner throughout his scholarly career.

These years with Davis and Allen also marked Spooner's first writing efforts. Strangely, his first publication during his Worcester residence concerned not law but theology. In 1834, he published a pair of essays concerning religious beliefs, The Deist's Immortality and An Essay on Man's Accountability For His Belief.³ Benjamin Tucker, an anarchist friend and colleague of Spooner in later years, describes these early theological essays as evidence of "decided mental independence and a striking bent for

³Lysander Spooner, The Deist's Immortality and An Essay on Man's Accountability for His Belief, in The Collected Works of Lysander Spooner, ed. Charles Shively (1834; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I. Unless otherwise noted, all Spooner publications are taken from Shively's Collected Works, volumes I through VI.

original thought."⁴ Spooner remained an "old-fashioned deist" his entire life, rejecting the general flow of anarchist thought toward atheism.⁵

Spooner's deism integrates the strands of rationalist religious thought in early America. His purpose in The Deist's Immortality is to prove the existence of an afterlife within the deist tradition and without the limitation of a salvation process. Assuming the reality of a Deity, Spooner concludes that without a future life, Man's existence becomes aimless. Purposeless reality, he argues, would not be worthy of a Deity.

Secondly, Man is "fitted for an eternal intellectual and moral advancement."⁶ Man, according to Spooner, has an insatiable desire for greater knowledge. By advancing his intellectual and moral culture, Man's nature is "capable of being eternally carried nearer and nearer to perfection solely by the power of causes."⁷ These "causes" are due to Man's thirst for greater knowledge.

Thirdly, Spooner reasons, there are no limits to Man's advancement. Despite empirical evidence to the contrary,

⁴Tucker, p. 4.

⁵Ibid. "He died as he lived," Tucker states, "an old-fashioned deist believing in a future life."

⁶Spooner, The Deist's Immortality, p. 3.

⁷Ibid.

There is, in every rational being, a moral sense, or reverence for right. This seminal principle of an exalted character never in this world, becomes extinct; it survives through vice, degradation, and crime: it sometimes seems almost to have been conquered, but it never dies; and often, even in this world, like a phoenix from his ashes, it lifts itself from the degradation of sensual pollution under which it was buried, and assumes a beauty and a power before unknown.⁸

Man's shortcomings, Spooner argues, are created by circumstances in his present secular life. However, in the afterlife, two factors reduce the likelihood of Man's failure: first of all, the temptations abounding in the present world are diminished, and secondly, the process of experiencing the consequences of evil leads Man to avoid his former temptations.

Obviously, experiencing evil alone cannot guarantee perfect moral behavior after death. Spooner contends that the afterlife is a process of stages; with each new stage, new experiences teach Man new virtues. As he advances through these "successive existences," "a new and wider horizon of God's works" is revealed.⁹

In On Man's Accountability for His Belief,¹⁰ Spooner grapples with the concept of Christian justice concerning salvation. In his view, Christianity's historical evidence

⁸ Ibid., p. 4.

⁹ Ibid., p. 6.

¹⁰ This essay and The Deist's Immortality were published in the same pamphlet in 1834, but are wholly separate essays.

concerning the method of salvation is "improbable almost beyond a parallel."¹¹

The Mind, argues Spooner, is constructed so as to be convinced by evidence. Though he recognizes that much of Man's belief structure emerges from tradition or custom not necessarily rationally discovered, Spooner does not accept these modes as construing true evidence.

However, Man cannot be held accountable for evidences beyond his control. When one's mind, Spooner contends, is "completely satisfied" of the rightness of a specific belief (for whatever reasons), God can hold no obligation beyond the present ability of that mind.¹² In other words, even though rationally conceived truth may not have been fully ascertained, the person, at that point of time, cannot be held to any greater degree of accountability. To require further evidence beyond that which satisfies the Mind would mean that Man would never be able to formulate any secure conclusions concerning his beliefs.

However, the nature of the Mind, Spooner explains, determines that it remains satisfied in its beliefs only until contrary knowledge creates doubt. Until new knowledge stimulates the Mind, Man has no means of satisfying himself at any higher level of truth. In Spooner's view, for God to

¹¹ Spooner, On Man's Accountability, p. 7.

¹² Ibid.

hold Man responsible for truths beyond human attainment would be absurd.

Spooner closely links reason, religion, and morality, and is extremely harsh on those who reject rationalist methods in understanding religion. He is particularly disturbed by thinkers who equate religion and salvation with the "humble mind."

If it be humiliating to believe one's self that wicked animal, which the Bible represents man to be, it is because it is contrary to nature and reason to be willing to consider ourselves wretches worthy of all detestation, especially when our knowledge of the moral character of our intentions gives the lie direct to any such supposition.¹³

Wrongful acts, Spooner argues, are not due to an evil human nature, but are caused by a love of pleasure that appears to accompany vice. Man's "character is more or less positively good."¹⁴ Throughout many of Spooner's early writings is the implication that Man's transgressions are linked to secular temptations or unnatural actions. In this essay, he charges that the Bible is "an humiliation calculated to destroy that self-respect, which is one of the strongest safeguards of virtuous principles."¹⁵

Two years later, in 1836, Spooner published a blistering criticism of almost the entire Christian doctrine

¹³Ibid., p. 9.

¹⁴Ibid., p. 10.

¹⁵Ibid., p. 11.

in The Deist's Reply to the Alleged Supernatural Evidences of Christianity.¹⁶ The work initially ran as a serial in the midwestern free thought newsletter Cleveland Liberalist. According to the title page of the pamphlet, Spooner's efforts were aimed primarily at the Boston clergy. The Deist's Reply contains heavy Biblical documentation and reaches predictable conclusions. Relying on reason, Spooner rejects all supernatural activities as lies or exaggerations and casts Jesus as a power-hungry fraud.

Both the 1834 and 1836 pamphlets appear to have had a good circulation among free thinkers. Orestes Brownson reviewed the first work in The Unitarian,¹⁷ and the later work apparently garnered an even larger reading audience.

These early theological essays are important in understanding Spooner's later political and economic writings. A very basic methodological flaw exists across almost all of his writings. While he utilizes a rigorously developed system of deductive logic to formulate many of his theoretical conclusions, Spooner gives little attention to defining the underlying assumptions that serve as his

¹⁶ Lysander Spooner, The Deist's Reply to the Alleged Supernatural Evidences of Christianity (1836; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I.

¹⁷ Charles Shively, "Introduction" to The Deist's Immortality and An Essay on Man's Accountability For His Belief, in ed. Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. I, p. 3.

argumentative foundations. While it is perhaps unfair to require proper philosophical techniques from a writer whose intent was almost always advocacy of a position rather than methodological expertise, a comprehension of Spooner's assumed views concerning the nature and ability of Man, the role of rationalism, and his cosmological foundations are necessary components in understanding his system of thought. These initial essays in theology best develop these components.

Spooner did not concentrate all his early writing efforts on theology. In 1835, he was led by practical matters to publish his first secular work. Massachusetts law required three years of legal studies of college graduates before admission to the bar. However, five years of legal study was required of non-college graduates. Encouraged by his legal mentors, Spooner challenged the rule and opened practice after only three years of preparation. The arguments defending his position, entitled "To the Members of the Legislature of Massachusetts,"¹⁸ appeared in the local newspaper in August 1835.

Spooner's attack of the quasi-licensing process of lawyers is both a sound and modern argument. He contends that the establishment of stricter guidelines for a set of

¹⁸Lysander Spooner, "To the Members of the Legislature of Massachusetts," Worcester Republican (1835; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. II.

individuals based merely on the obtainment of a college degree (which in 1835 generally served as an extremely unsteady gauge for merit) excludes the group "most likely to excel," the "well-educated poor."¹⁹ Instead of becoming lawyers, these individuals are driven into other occupations. The existing lack of legal talent, he argues, is not due to a lack of potential talent, but to rules that "operate to admit many who are unfit for the profession, and to exclude many who are especially fitted to excel in it."²⁰

Spooner completely rejects the role of the State in determining occupational qualifications. The quality and substance of the legal role, he contends, is entirely a matter between attorney and client. It is free and voluntary exchange that best benefits the general profession, not a process of subsidizing the less competent by limiting competition. In Spooner's view, the lawyer who is "unable to sustain himself against the free competition of his neighbor without the aid of a protective system, has mistaken his calling."²¹

With the aid of Governor Davis and Senator Allen, the rule was repealed during the 1836 session of the Massachusetts legislature. Unfortunately, Spooner's law

¹⁹ Ibid., p. 1.

²⁰ Ibid.

²¹ Ibid., p. 2.

practice did not adequately support him. The publication of his ideas during his legal training likely branded Spooner a radical, an atheist, or both.²² In a short interval of time, the young writer had ridiculed State, religion, and his profession. These early writings, however, were only a mild sample of his later thought. Spooner would continue to challenge mainstream American culture for the remainder of his life.

His legal practice having failed, Spooner left Massachusetts in 1836 and took a bank clerking position in New York City. However, he remained at that job only long enough to accumulate funds sufficient to finance a land speculation venture in the expanding Ohio region.

Along with Hezekiah Hosmer (later Chief Justice of the Montana Territory), Spooner purchased eighty acres along the upper navigable limits of the Maumee River. River trade was an essential factor in Western commercial growth. Furthermore, serious discussion of the building of canals across land to link several rivers had mentioned inclusion of the Maumee River. Being the navigable headwaters, Gilead, as it was known, seemed to be the logical location for a land and water commerce link.

Unfortunately for Spooner, the Ohio Board of Public Works planned a dam three miles above Gilead, leaving the

²²Shively, "Biography," p. 18.

settlement out of the canal channels and on non-navigable waters. In response to the Ohio plan, Spooner unsuccessfully sought an injunction to block the dam in Federal Court.²³ He lost what little finances he had in the Gilead venture.

Dissatisfied with the results of his speculative debacle in particular and the financial panic of 1837 in general, Spooner returned east and published his first work on money and banking. He remained convinced throughout his life that the monetary upheavals and depressed economic periods could be avoided by instituting his laissez-faire paper currency system.

There are two general purposes in Spooner's 1843 publication of Constitutional Law Relative to Credit, Currency, and Banking.²⁴ First of all, he introduces his free market banking system based on land-backed paper currency. Secondly, a large portion of the pamphlet seeks to demonstrate the constitutionality of the system.

Spooner relies on both the abstract principles of natural law, or justice, and the provisions of the Constitution to defend his economic views. Arguing for

²³ Spooner vs. M'Connell, et al. 22 F. Case 939-955 (1838). The complainant's argument before the United States Supreme Court is reprinted in Shively, Vol. II.

²⁴ Lysander Spooner, Constitutional Law, Relative to Credit, Currency, and Banking (1843; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. V.

currency reform on the basis of constitutional and natural legal principles does not constitute two distinctive foundations in Spooner's thought. He views the Constitution as merely a written manifestation of natural law, agreed upon by the people. The Constitution is only an extension of natural law; it does not contradict nature's rules, but demonstrates their discovery as determined by the people of the country. However, as his thought evolves, a distinction between constitutional law and natural law emerges. In later works, Spooner relies less and less on the Constitution and argues primarily from abstract natural law principles which he views as distinct from constitutional or legislative interpretations.

Spooner applies a more abstract theoretical approach in Poverty, Its Illegal Causes and Legal Cure,²⁵ published in 1846. He hoped to publish three additional commentaries on the subject of poverty, but these works never appeared. This initial effort received only a small circulation. The publishing of treatises in parts was common with Spooner. In poverty throughout his life, his finances often forced him to postpone parts of intended works. However, most of these anticipated later sections were never written, and

²⁵ Lysander Spooner, Poverty, Its Illegal Causes and Legal Cure (1846; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. V.

none were published, as new interests shifted Spooner's attention elsewhere.

Poverty is Spooner's most thorough early effort of presenting a treatise on political economy. While extending his banking ideas, he integrates his theory of natural law with his views on economics and sociology. He formulates seven "propositions" of a natural economy, which, he argues, "are obviously conducive, if not indispensably necessary, to the greatest aggregate increase, and the most equal distribution of wealth that can be accomplished consistently with the natural right of each man."²⁶

Ironically, Poverty appeared during one of the most impoverished periods of Spooner's career. His financial difficulties during the mid-1840's were again created by his risky and rebellious nature concerning government affairs. In an effort to rebound from the Gilead incident and find financial success, Spooner, like numerous other entrepreneurs, responded to extremely high government postal rates by initiating a mail carrying service in New York City. However, unlike other entrepreneurs, Spooner blatantly advertised his American Letter Mail Company openly, even going so far as to personally write the Postmaster General in 1844 to inform the Postmaster of the

²⁶Ibid., p. 6.

illegal service and dare legal action to stop Spooner's monopoly challenge.²⁷

To complement his crusade against the monopolistic practices of the United States, Spooner published The Unconstitutionality of the Laws of Congress Prohibiting Private Mails²⁸ in 1844. This effort is very similar to his earlier challenge of Massachusetts bar restrictions. Spooner seeks reform through legal channels by presenting a strongly phrased, legalistic and persuasive argument.

While the pamphlet intends to present legal arguments to persuade judicial reform, it also demonstrates Spooner's early views on the nature of government. The power the Constitution grants government to establish post offices, he reasons, does not interfere with the establishment of a similar service by others. The individual action would be forbidden only if it were "incompatible, or in conflict, or collision" with the granted power.²⁹ Free market competition, Spooner concludes, does not constitute incompatibility.

Spooner does not deny the existence of a granted power. However, he argues, the grant of a power to the government

²⁷ Shively, "Biography," p. 30.

²⁸ Lysander Spooner, The Unconstitutionality of the Laws of Congress Prohibiting Private Mail (1844; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I.

²⁹ Ibid., p. 5.

does not forfeit that power in any persons, it only transfers a responsibility at the people's leisure. The crux of Spooner's contention is that the powers granted Congress are "additional to, not destructive of, the pre-existing rights of the States, and the natural rights of the people."³⁰

In the contract between the people and government, he argues, the people are always the principals and government is always the agent. Spooner does concede that in one circumstance the exercise of one's natural rights could be constitutionally forbidden: "A clear authority [must] be shown for it in the Constitution."³¹ However, if any interpretative doubt exists, the judgment must be decided "in favor of the largest liberty, the natural rights of

³⁰ Ibid., p. 7. Spooner rejects the argument that enumeration strips away similar individual powers.

If Congress could forbid individuals doing a thing simply because it was similar to what the government had power to do, they might forbid his borrowing money, because 'to borrow money' is one of the powers granted to Congress. They might also, on the same grounds, forbid parties to settle their controversies by referring them to men chosen by themselves, because government has established courts, and given them authority to settle controversies. . . . There is just as much ground, in the Constitution, for prohibitions upon the settlement of controversies, without the aid of the government courts, as there is for the prohibitions upon the transmission of letters without the aid of the government mail. (p. 8).

³¹ Ibid.

individuals."³² However, in later publications, Spooner eventually rejects any Constitutional provision that violates natural law.

Spooner completes his argument dismissing the pro-monopoly contention by utilizing legal logic concerning the language of the Constitution. First of all, the Constitutional framers, when establishing the power of Congress to form post offices had included only the word "power," whereas the Articles of Confederation had stated "sole and exclusive right and power."³³ This deletion indicates to Spooner a conscious intent to avoid monopoly power. Secondly, if the framers had meant "exclusive," the Constitution would have required an essential service such as the post office.

Thirdly, Spooner argues that if the framers intended exclusive postal power to the government, they would have also been obligated to formulate specific rules guaranteeing the security of individual rights. To entrust government with a complete monopoly power over the major means of "transmission of intelligence," Spooner reasons, could seriously abridge the enjoyment of such natural rights as free speech, free press, or any freedom of communication.³⁴

³² Ibid.

³³ Ibid., p. 11.

³⁴ Ibid., p. 16.

While the framers did include the first amendment, they did not formulate safeguards against a postal monopoly. In Spooner's view, this exclusion demonstrates that the framers never intended to create an exclusive monopoly.³⁵

The strengths of Spooner's legal arguments had no effect on the outcome of his struggle with the United States Post Office. Unlike his earlier challenge of state bar admission restrictions, Spooner's persuasive contentions were of no use in this conflict. Avoiding direct legal confrontations with Spooner, the government resorted to "extralegal measures" and eventually drove the lucrative American Letter Mail Company out of business.³⁶

Driven into poverty, Spooner turned again to writing and became engulfed in the abolitionist movement. Having been raised among a family of ardent abolitionists and having spent the majority of his life in New England, the hotbed of anti-slavery thought, he became a major spokesman and a key historical figure in the abolitionist movement.

³⁵ Ibid., p. 13. Neither is the exclusive monopoly the logical outcome of a "prerogative of sovereignty." This understanding of the polity, Spooner contends, "is a notion borrowed wholly from arbitrary governments." Only expressly granted powers may be claimed by the government; "these prerogatives are limited by the terms of the grants."

³⁶ Shively, "Biography," p. 31. As examples of "extralegal" activities, Shively mentions threats [concerning the loss of government contracts] to transport companies who carried Spooner's mail and continued arrests of American Letter Mail Company agents even while the appellate actions of one agent was pending.

Spooner established himself as a radical, even among radicals. Like so many of his other areas of concern, he fits no category in abolitionist thought. He in no way linked himself to William Lloyd Garrison's group of slavery fighters.³⁷ In fact, Spooner challenges slavery within the Constitutional framework and utilizes legal means within the document rather than rejecting it.

The 1845 publication of The Unconstitutionality of Slavery³⁸ did indirectly link Spooner to another set of abolitionists, the group led by Gerrit Smith and Elizur Wright, who supported the use of political action to eliminate slavery. While his constitutional arguments for ending slavery obviously found favor among political activists, Spooner maintained his independence from any specific group. He held nothing but disdain for the political process. Proper rules did not require political processes. They emerged from natural law and were almost unanimously accepted. In Spooner's view, the Constitution was the manifestation of natural principles, which could not be superseded by nor required a political process. Though

³⁷For a brief overview of the different abolitionist positions, see Lewis Perry, Radical Abolitionism, Anarchy and the Government of God in Antislavery Thought (Ithaca: Cornell University Press, 1973), pp. 194-208.

³⁸Lysander Spooner, The Unconstitutionality of Slavery (1860 third edition; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV.

his treatise became what Benjamin Tucker called the "textbook of the Liberty Party,"³⁹ Spooner did not support the abolitionist political effort, considering it a compromise of the absolute ends of justice by pragmatic or even unjust means.

So long as the Liberty Party set up men, believing the Constitution supports slavery, will yet swear to support the Constitution they are an essentially pro-slavery party--and an anti-slavery man might with substantially the same consistency, vote for Calhoun.⁴⁰

Spooner never entertained the use of politics as conducive to the achievement of any sort of positive results. In fact, when he does utilize it in later slavery writings, he does so to break down institutions, or to prevent political victory for those of which he thoroughly disliked.⁴¹ His instrument for ending slavery is the

³⁹Tucker, p. 5.

⁴⁰Letter from Spooner to George Bradburn, August 25, 1847, reprinted in Perry, pp. 200-201.

⁴¹Lysander Spooner, To the Non-Slaveholders of the South (1858; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV, p.1. Spooner's only intent in utilizing political methods is clearly to destroy, not support, existing government institutions. He calls for all Southern non-slaveholders to unite with the slaves and break the slaveholders by rejecting "the authority of all the corrupt and tyrannical political institutions, which the slaveholders have established for the security of their crimes." In Address of the Free Constitutionlists to the People of the United States (1860; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV, pp. 40, 41, Spooner, first of all, argues that an issue of the magnitude of slavery has "no room or basis under the Constitution" to

law--constitutional law as the manifestation of natural legal principles of unbending and immutable form. While the pragmatic political activists could accept Spooner's premises as necessary for the advancement of their own views, Spooner found no utility in a political process that did not recognize certain unalterable natural rules.

The combination of Spooner's rigorously legalistic method and his view of the Constitution as a written unchanging contract leads him to oppose slavery by challenging any supposition that grants to the document anything more than what is specifically written. The Unconstitutionality of Slavery is a thoroughly written legal treatise, full of technical definitions and deductive legal arguments. Spooner's efforts are to determine what should legally exist (based on the interpretation he finds) under the literal language of the Constitution. In Spooner's view, intent, beyond what the document actually states, has no legal application.

be settled by political factions finding political solutions. Secondly, he condemns the Republican Party as

most thoroughly senseless, baseless, aimless, inconsistent, and insincere. It has no constitutional principles to stand upon, and it lives up to no moral ones.

Therefore, Spooner pleads for political activism to prevent any Republican victories (see also, Spooner, Address, pp. 53-54).

The intentions of the framers of the Constitution . . . have nothing to do with fixing the legal meaning of the Constitution. . . . The instrument, when it came from their hands, was a mere proposal, having no legal force or authority. It finally derived all its validity and obligation, from its adoption by the people at large. . . . Their intentions are to be gathered entirely from the words, which they adopted to express them. And their intentions must be presumed to be just what, and only⁴² what the words of the instrument legally express.

In his 1860 publication Address of the Free Constitutionalists to the People of the United States,⁴³ the two crucial legal interpretations on which Spooner relies concerning specific constitutional language are developed. The first issue concerns citizenship. Spooner maintains that no distinction could be made between free states and slave states under a federal constitution. Being the supreme law of the land, the Constitution must determine the legal status of its citizens. To leave this function to the states allows subordinate laws to overrule the supreme law. Citizenship, he argues, is one of the aspects of a republican form of government that must be determined by a central supreme law. An essential factor in the federal government's ability to protect its citizens is obviously the power to determine, separate of the states, the characteristics that determine what constitutes citizenship.

⁴² Spooner, The Unconstitutionality of Slavery, p. 114.

⁴³ Spooner, Address to the Free Constitutionalists, Vol. IV.

Spooner's interpretation of the Constitution, however, assumes a foundation built on natural law which, in his view, includes equality of all persons before the law. He never recognizes that the slave might be considered anything but a person. As a person, the slave is entitled to the citizenship afforded all other persons or states. If the Constitution makes men free, then all men, as citizens, are legally free. Unfortunately, the Taney Court's conclusion in Dred Scott v. Stanford⁴⁴ does not recognize the slave as a citizen but as property. Spooner rejects the Court's assumption:

It is a principle of natural law in regard to property, that a calf belongs to the owner of the cow that bore it But the principle of natural law . . . does not make the child of a slave belong to the owner of the slave Neither man nor children are naturally subjects of property. . . . The law of nature will not transmit any right of property acquired in violation of her own authority.⁴⁵

The second crucial issue determining the strength of Spooner's argument concerns the word "free" as it appeared in Article 1, Section 2 of the Constitution. Southern sympathizers interpreted "free" as characterizing a free person, as distinguished from a slave, which was apparently the general interpretation of the word. Spooner argues forcefully that common law, even at the time of the

⁴⁴Dred Scott v. Stanford, 19 Howard 393 (1857).

⁴⁵Spooner, The Unconstitutionality of Slavery, p. 129.

Constitution's ratification, had consistently interpreted "free" in another sense, as a "native or naturalized person, as distinguished from an alien."⁴⁶ This interpretation was accepted, according to Spooner, in all states at the time of ratification. Thus, it was the latter interpretation of the word as it appeared in the Constitution which the people chose and not the view of the slave owners.

It is the slavery issue that causes Spooner originally to move away from the acceptance of government and the Constitution as a legitimate contractual agreement. In 1850, he published A Defence for Fugitive Slaves,⁴⁷ challenging the Fugitive Slave Acts of 1793 and 1850. A large portion of the pamphlet is devoted to legal issues, as Spooner contests several judicial and procedural constitutional discrepancies.⁴⁸ However, the final section moves away from legal argument and explores the right of resistance.

⁴⁶ Spooner, Address to the Free Constitutionalists, p. 15.

⁴⁷ Lysander Spooner, A Defence for Fugitive Slaves (1850; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV.

⁴⁸ Spooner argues that the Fugitive Slave Acts of 1793 and 1850 are unconstitutional. First of all, the yet to be proven fugitive is not allowed a trial by jury as a suit at common law. Secondly, Spooner contends that the tribunals utilized to carry on proceedings were unconstitutional: judges did not receive a fixed salary, but one based on the number of cases heard; furthermore, the law stipulated double fees for deciding against the fugitive. Thirdly, the law established state magistrates to handle a question of

Disobedience of an unconstitutional law, Spooner contends, is a legitimate action and necessary act by oppressed persons. Once the government or one of its officers "steps beyond the law," it may be resisted "like any other trespasser."⁴⁹ To argue that one must obey unjust laws until repealed by "proper" government avenues, he reasons, only assumes the law will never be repealed. Furthermore, to fail to recognize a difference between just and unjust legislation eliminates the distinction between "constitutional" and "unconstitutional" law. According to Spooner, this omission "would be equivalent to abolishing the Constitution, and giving to the government unlimited power."⁵⁰ Resisting unconstitutional laws is not an act revolution, but merely the "maintenance of the Constitution of itself, by keeping the government within the Constitution."⁵¹

As historical events leading to the Civil War unfolded,

federal jurisdiction. Fourthly, these state courts were granted full and final jurisdiction over a large part of the proceedings. Fifthly, fugitives could be delivered up merely by deposition of a written affidavit, which Spooner argues is clearly an ex parte proceeding, where the accused is given no opportunity to defend himself or meet his accusers. Finally, no evidence from the accused could be admitted. For a discussion of these arguments, see Spooner, A Defence for Fugitive Slaves, pp. 5-26.

⁴⁹ Ibid., p. 27.

⁵⁰ Ibid., p. 29.

⁵¹ Ibid.

Spooner gradually took on a more radical and rebellious writing style. After the war, while his foundation remained the law, he eventually rejected the Constitution as an instrument of tyranny. His sole argumentative pillar became the natural laws of justice, as his toleration of government violations of individual liberties diminished. In his early works, he implies that transgression of liberty by government is more a matter of institutional temptations leading men astray. However, as Spooner's writings evolve, they come to view both government and individuals in a more criminal light.⁵² Paralleling this change is an expanding call for violence against a criminal state.

The first clear allusion to this transformation is found in Spooner's later abolitionist pamphlets. In a pragmatic effort to eliminate slavery, he published broadsides detailing his plans to end Southern slaveholding. These broadsides included two essays: A Plan for the Abolition of Slavery and To the Non-Slaveholders of the South.⁵³

For the first time, Spooner refers to the abolition of slavery as a legal duty.

⁵²Carl Watner, "The Criminal Metaphor in the Libertarian Tradition," Journal of Libertarian Studies, 5, No. 3 (1981), 313-325.

⁵³Lysander Spooner, A Plan for the Abolition of Slavery and To the Non-Slaveholders of the South (1858; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV.

When a human being is set upon by a robber, ravisher, murderer, or tyrant of any kind, it is the duty of the bystanders to go to his or her rescue, by force, if need be. . . . This duty being rationally inherent in human relations and necessities, government and laws are of no authority in opposition to it.⁵⁴

Spooner calls for the adoption of associations throughout the United States, the initiation of advocacy newsletters, and the boycott of all non-abolitionist political candidates to achieve the elimination of slavery. He also advocates military action which would combine voluntary "military companies," slaves, and Southern sympathizers of abolition in guerilla war efforts against Southern slaveholders.⁵⁵

Spooner defends his plan despite its surely violent results.

If it be objected that this scheme proposes war, we confess the fact. It does propose war--private war indeed--but, nevertheless war, if that should

⁵⁴ Spooner, A Plan for the Abolition of Slavery, p. 1. For the same argument, see Address of the Free Constitutionalists, p. 25. Spooner there argues it is a "strictly legal" duty for men to make an effort to free the slaves.

⁵⁵ Spooner, To The Non-Slaveholders of the South, p. 1. He outlines a five part plan to end slavery. First, he advocates war "openly or secretly as circumstances may dictate." Second, he calls for open flogging of slaveowners in retaliation of like actions. Third, he suggests southern slaves should be patient in the instigation of a general insurrection, waiting until Northerners are in a position to assist. Fourth, the Southern non-slaveowners should "cultivate the friendship and confidence of the slaves." Finally, sympathizers to the cause should do anything within their abilities to undermine any government activity that supports or encourages slavery.

prove necessary. And our answer to the objection is, that in revolutions of this nature, it is necessary that private individuals should take the first steps If the American governments, state or national, would abolish slavery, we would leave the work in their hands. But as they do not, and apparently will not, we propose to force them to ~~do~~ it, or to do it ourselves in defiance of them.⁵⁶

Spooner's final two efforts concerning the slavery issue, Address to the Free Constitutionalists and Letter to Charles Sumner⁵⁷ demonstrate the extent of disillusionment he felt concerning the path of the abolitionist movement. Garrison and Wendell Phillips both published responses to Spooner's arguments on slavery, generally reaching the same conclusions: While Spooner's argument may be legally appealing, slavery exists and will continue to exist no matter what should prevail.

Garrison cannot accept Spooner's view concerning the people's intent. The people (obviously, the South) intended, he argues, to legitimatize slavery; to contend otherwise "is to utter a bold word, and to give the lie to a myriad of facts which can no more be rationally disputed,

⁵⁶ Spooner, A Plan for the Abolition of Slavery, p. 1. After publication of these broadsides, Spooner met with John Brown through their mutual friend Gerrit Smith. Brown requested Spooner withhold circulation of these violent writings in lieu of Brown's plans at Harper's Ferry. After Brown's failure, Spooner proposed the capture of Virginia Governor Henry Wise to exchange for Brown. The venture died due to lack of funding, however.

⁵⁷ Lysander Spooner, Letter to Charles Sumner (1864; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. IV.

than the landing of the Pilgrim Fathers, or the existence of the Republic."⁵⁸ Neither Garrison nor Phillips find much utility in Spooner's approach. Phillips, in particular, cannot accept Spooner's legally persuasive argument.

"Slavery is not abolished," he argues, "although we have persuaded ourselves that it has no right to exist."⁵⁹

Garrison's criticism concludes:

Fact is to be preferred to logic; intention is mightier than legal interpretation. Of what avail are words, words, words, however carefully selected or forcibly applied, against the known will, purpose, and action of the people, en masse, for seventy years.⁶⁰

Despite the criticisms, Spooner's argument served a very important function of challenging Southern views which maintained that the Constitution supported the cause of slavery. Most of the more influential abolitionists were not prepared to challenge the Southerner's Constitutional contentions. Spooner provided an independent approach that before was undeveloped by abolition advocates. He rejects slavery legally by utilizing the Constitution; other abolitionists were prepared to reject the Constitution. His solution is wholly absolute and legally abstract; it allows

⁵⁸ William Lloyd Garrison, "Slavery Unconstitutional," The Liberator 15 (22 Aug. 1845): 134.

⁵⁹ Wendell Phillips, Review of Lysander Spooner's Essay on the Unconstitutionality of Slavery (1847; rpt. New York: Arno Press, 1969), p. 3.

⁶⁰ Garrison, p. 134.

no room for compromise. Other anti-slavery groups took much more realistic or pragmatic approaches. These divergent views of thought saw reform in entirely different lights, requiring wholly different strategies. Spooner advocated abolition based on highly abstract, but unenforceable, standards of justice. He was never able to accept a reality that condoned slavery in any fashion. He grew less tolerant of divergent abolitionist viewpoints as the Civil War approached.⁶¹ Furthermore, seeing his Constitutional arguments virtually ignored by the government, Spooner's faith in the document itself dwindled.

If we wish to enjoy any liberty ourselves or do anything for the liberation of others, it is time for us to emancipate ourselves from our intellectual and moral bondage to the frauds and crimes of dead slaveholders and their accomplices, and either read and execute our Constitution as it is, or tear it in pieces. . . . [If] we are to search outside of the instrument, for the private motives of every robber, kidnapper, hypocrite, scoundrel, and tyrant, who lived at the time it was adopted, and accept those motives, in place of those written in the instrument itself, as the only lawful principles of the government . . . the sooner they are all given to the flames, the better it will be for the liberties of mankind.⁶²

The war served as the final catalyst in pressing Spooner's logical foundations to their ultimate conclusions. After the struggle, he leaned more and more towards an

⁶¹ Address to the Free Constitutionalists and Letter to Charles Sumner are extremely good examples of this diminishing tolerance.

⁶² Spooner, Address of the Free Constitutionalists, p. 17.

anarchist, no-state system of thought. He continued to rely on rule of law (natural law) as the basis of a social order. However, where he once viewed his legal arguments based on ethical and constitutional justification as one and the same, after the war he relied almost solely on ethical foundations, the natural principles of justice.

Not all of Spooner's scholarly attention focused on abolitionism during the period preceding the Civil War. In fact, one of his most influential political works appeared in 1852, An Essay on the Trial by Jury,⁶³ which became a central tenet of late nineteenth century anarchist thought.

In 1850, Spooner published a prelude to Trial by Jury, entitled Illegality of the Trial of John W. Webster.⁶⁴ Webster, a chemistry professor at Harvard, had been convicted of murdering another man and walling him into his laboratory.

Spooner argues that Webster's trial was not heard by a legal jury. The court had refused to seat three persons on the jury because of their opposition to capital punishment. In Spooner's view, trial by jury cannot separate trial and punishment, nor should it be distinct. The guilt or

⁶³ Lysander Spooner, An Essay on the Trial by Jury (1852; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. II.

⁶⁴ Lysander Spooner, Illegality of the Trial of John W. Webster (1850; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. II.

innocence of the accused person will always be found "with a view to his punishment, if he be found guilty."⁶⁵ If the "punishment prescribed by statute," he contends, "deters the minds or consciences" of the jury to the point that they cannot convict the defendant, "the statute must fail of execution, rather than the jury be packed to avoid that obstacle."⁶⁶ To allow the court to refuse seats to men opposed to capital punishment in a case that requires the death penalty upon conviction allows the state "to set up a standard of sensibility . . . beyond which a juror may not go."⁶⁷

Spooner expanded his views on jury trials in Trial by Jury. He was very pleased with this work, reporting to close friend George Bradburn in August 1851 that the essay "will be the most effective thing I shall have ever written."⁶⁸ If judged by its initial circulation, the essay would be considered uninfluential. However, it is a crucial piece of Spooner's political theory, as it painstakingly develops his views concerning trial by jury, or "country."

⁶⁵Ibid., p. 6.

⁶⁶Ibid., p. 3.

⁶⁷Ibid., p. 8.

⁶⁸Spooner, letter to George Bradburn, August 31, 1851. Reprinted in Charles Shively, "Introduction" to Trial by Jury, in ed. Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. II, p. 3.

Most importantly, it provides Spooner the opportunity to develop a political institution that combines the functions of freedom and authority with the least amount of restraint on individual liberty.

Though this publication is one of Spooner's longest works (224 pages), he planned a future volume to extend his historical examination of trial by jury. The work was apparently never written. Nevertheless, this single essay is a major piece of research. Spooner combines his formalistic methods of logic with an extensive examination of historical evidence. Relying on numerous law treatises and historical references, he examines Anglo law prior to the Magna Carta to ascertain the initial interpretation of trial by jury. The work is often extremely technical, as he traces the evolution of single key technical terms and concepts. His conclusions match those in Illegality of the Trial of John W. Webster: Present-day juries are illegal as they no longer represent the purpose of trial by jury. Trial by jury, Spooner concludes, originally represented trial by the people, or country, and were not subjected to legal stipulations or standards created by government interference. In other words, juries were the full and final judge concerning the interpretation of the justice of any law.

Spooner found no more financial success in the 1850's than he had amassed the previous decade. In 1855, at the

height of one of his most impoverished periods, he published The Law of Intellectual Property.⁶⁹ His purposes are to demonstrate the value of innovation or invention to society and, more importantly, to construct an ethical justification for rewarding innovators based on the right of property. Spooner argues that ideas are tangible objects that are discernible and definable pieces of property. Granting tangibility, he is able to defend ownership of ideas as a property right.

Intellectual Property is Spooner's second longest work at 240 pages (The Unconstitutionality of Slavery encompasses 294 pages). He initially planned to expand this work into a second volume, but only one part of the additional work ever appeared.

The treatise was never commercially published and had very little circulation.⁷⁰ Tucker refers to the work as "the only positively silly work which ever came from Mr. Spooner's pen."⁷¹ However, this volume is important in understanding Spooner's body of thought, as it is one of the

⁶⁹Lysander Spooner, The Law of Intellectual Property (1855; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. III.

⁷⁰Shively, "Introduction" to The Law of Intellectual Property, in ed. Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. III, p. 3.

⁷¹Tucker, p. 5.

few publications where his views on right of property are clearly developed.

Furthermore, while most nineteenth century anarchists looked less favorably on property rights, Spooner formulates an almost anarchist society that maintains a right of property similar to Lockean liberalism. The concept of intellectual property is an excellent example of this divergence among most anarchists and Spooner. For example, Josiah Warren, considered the first important American individualist anarchist, argued that talent without cost equated to natural wealth and constituted no legitimate right of gain. Spooner, however, does not fall into the traps of the labor theory that haunted many nineteenth century anarchists and is able to formulate a more coherent understanding of the right of property. On the other hand, his radical views did not fit into the mainstream of nineteenth century liberalism. Thus, as was often true, Spooner is left with no audience.

While his views concerning intellectual property never found popularity, Spooner did not abandon his efforts to persuade society to justly reward innovation. Very late in his life, in 1884, his writings returned to this theme. A Letter to Scientists and Inventors⁷² is generally a summary

⁷²Lysander Spooner, A Letter to Scientists and Inventors, on the Science of Justice, and Their Right to Perpetual Property in Their Discoveries and Inventions

of his 1855 work. Spooner envisions a very different and improved world if only mankind would reward innovation.

Under the stimulus of this principle

of property, mankind will soon become a very different, an almost wholly different, race of beings from what they are now. They will learn--what so few of them seem now to understand--not only that they have brains, but also what their brains were designed for, and are capable of. When these lessons shall have been learned, the knowledge that will be accumulated in consequence will become the great wealth of the world.⁷³

Receiving little support from his writing efforts, Spooner turned to business endeavors in the 1850's and early 1860's. Inventing a new elastic bottom for beds and chairs, he sought financial assistance from Elias Howe, inventor of the sewing machine. Though Howe initially promised support, his own patent problems in America depleted his capital resources, leaving Spooner's project undeveloped. Spooner later invented a new type of paint, but again Howe was unable to deliver capital assistance.

In 1863, Spooner shifted his attention from inventor to entrepreneur in an effort to create a practical and novel application of his written ideas concerning banking. In an attempt to make money from his ideas on currency, he founded

(1884; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. III.

⁷³Ibid., p. 21.

the Spooner Copyright Company.⁷⁴ Anyone who wished to utilize his banking model would be required to pay the association a fee for the use of his "invention." However, the company apparently never received any customers.⁷⁵

The inability to locate ready capital markets, plus the expanding state involvement in currency during the war, led Spooner to revitalize his money and banking ideas. In 1861, he published A New System of Paper Currency,⁷⁶ which outlines the components of the system's advantages, while detailing the framework of the bank itself.

As with other fields of study, Spooner's arguments place him outside other systems of thought concerning banking in nineteenth century America. His model almost completely avoids government by formulating an extremely laissez-faire banking system. He also separates himself from the mutualist anarchist programs of Frenchman Pierre Proudhon and Americans Tucker and William Green. These mutualist systems relied on centralized cooperatives that

⁷⁴The Articles of Association of the Spooner Copyright Company are reprinted in ed. Shively, The Collected Works of Lysander Spooner (1863; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. III.

⁷⁵Shively, "Introduction" to the reprint of Articles of Association in ed. Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. III, p. 4.

⁷⁶Lysander Spooner, A New System of Paper Currency (1861; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. V.

rendered non-interest banking notes. Spooner, however, recognizes the necessity of interest on time preferred exchanges. A free banking system, he maintains, would produce a very low rate of interest not by strictly enforced centralized decisions, but by a natural process of spontaneous order that would drive interest rates down and make capital relatively inexpensive.

Spooner published a number of pamphlets concerning his monetary and economic views during the Civil War years. In 1862, Our Mechanical Industry, As Affected by Our Present Currency System⁷⁷ appeared. This pamphlet, like several others that followed, challenges the monopolistic structure of the banking industry and the reliance on overly scarce metal currency as the prime causes of excessive interest rates and a depressed economy.

Reacting to even greater government intrusion in the monetary system, Spooner more clearly develops his arguments in Considerations for Bankers and Holders of United States Bonds⁷⁸ in 1864. The United States government had issued paper currency to help finance the war effort and had legally established it as sole tender for public debts.

⁷⁷ Lyssander Spooner, Our Mechanical Industry, as Affected by Our Present Currency System: An Argument for the Author's "New System of Paper Currency" (1862; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. V.

⁷⁸ Lyssander Spooner, Consideration for Bankers and Holders of the United States Bonds (1864; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. V.

Furthermore, in an effort to establish a national banking system, an amended National Banking Act placed a heavy tax on circulating private notes. These efforts either drove the private banks out of business or forced them to become a part of a government manipulated system. Relying on legal arguments and adhering strictly to a laissez-faire foundation, Spooner challenges both the justice and soundness of the government's intrusion into the economy.

The wide array of government intervention in the affairs of individuals during the war created a catalyst for Spooner's post-war transformation from constitutionalist to quasi-anarchist. Though Spooner apparently never considers himself an anarchist, his writings become extremely anti-statist, to the point of being well received by Tucker and other prominent anarchists in both America and Europe.

This modification in thought is quite evident in Spooner's No Treason⁷⁹ series which appeared during Reconstruction. He is obviously displeased with the Civil War, not so much that it was fought, but because of why it occurred. In his view, the war's central purpose was the

⁷⁹Lysander Spooner, No Treason No. 1 (1867; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I; No Treason No. II. The Constitution (1867; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I; No Treason No. VI. The Constitution of No Authority (1870; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI. For reasons Spooner does not reveal, numbers three through five were never published. However, they apparently were written.

maintenance of the Union, not the emancipation of slaves. To retain the Union by force, he argues, essentially preserves slavery.

For Spooner, the Civil War was nothing more than an effort to keep state maintained monopolists in positions of power. He is clearly among the first thinkers to suggest an economic interpretation concerning the causes of the war.⁸⁰ He contends that Southerners had been commercially subjected to Northern merchants to protect their slave interests for years prior to the outbreak of war. When the South defied this economic subjugation, the Northern monopolists funded the war efforts, not because of a concern for justice, but for greater future financial returns. Emancipation from chattel slavery was merely a necessary means to this insidious end.

The disillusionment in Spooner's discussion of the war effort is very evident:

a war carried on, upon one side, for chattel slavery, and on the other for political slavery; upon neither for liberty, justice or truth. And these crimes have been committed, and this war waged, by men, and descendants of men, who, less than a hundred years ago, said that all men were equal, and could owe neither service to individuals, nor allegiance to governments, except with their own consent.

⁸⁰ Shively, "Introduction" to No Treason No. I in ed. Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. I, pp. 5-6.

⁸¹ Spooner, No Treason No. II, p. 15.

The final pamphlet in the No Treason series, subtitled "The Constitution of No Authority", ended any doubt concerning Spooner's view of the Constitution or the existing government: It is of "no inherent authority or obligation."⁸² In the appendix, Spooner concludes:

Nevertheless, the writer thinks it proper to say that, in his opinion, the Constitution is no such instrument as it has generally been assumed to be; but that by false interpretations and naked usurpations, the government has been made in practice a very widely, and almost wholly, different thing from what the Constitution itself purports to authorize. He has heretofore written much, and could write much more, to prove that such is the truth. But whether the Constitution really be one thing, or another, this much is certain--that it has either authorized such a government as we have had, or has been powerless to prevent it. In either case, it is unfit to exist.⁸³

After the war, Spooner devoted the remainder of his life to writing. He lived out his days in Boston in a small boarding house near the Boston Athenaeum, where he ventured religiously, according to Tucker, six days a week to do research.

Unlike his earlier publications, Spooner's post-war writings found emerging vehicles of publication. Tucker's anarchist newspapers (The Radical Review in 1877 and 1878, and Liberty, which ran from 1881 until 1908) gave Spooner an apparatus for gaining publication and created a following

⁸²Ibid., p. 3.

⁸³Spooner, No Treason No. VI, p. 59.

for his writings. Furthermore, though Spooner maintained his independent style, Tucker's efforts did bring him into contact with prominent, like-minded writers. These influences consequently surely assisted Spooner's movement towards anarchism.

These later writings can be separated into two categories. Economic writings dominated his efforts in the 1870's, as economic malaise haunted the national economy. Spooner advanced his views on money and banking, while also formulating more general works on economic theory.

In 1873, responding to a disastrous fire in Boston's business district, Spooner resurrected his banking program in A New Banking System: The Needful Capital for Rebuilding the Burnt District.⁸⁴ Four years later he published Our Financiers: Their Ignorance, Usurpations and Frauds⁸⁵ at the height of a serious depression. Again, both these works placed Spooner outside the defined debate that raged on currency. He rejects both the Greenback position of government-aided easy credit through economic manipulation and the tight money views of gold standard advocates. In Spooner's view, both positions bend to political demands and

⁸⁴Lyander Spooner, A New Banking System: The Needful Capital for Rebuilding the Burnt District (1873; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI.

⁸⁵Lyander Spooner, Our Financiers: Their Ignorance, Usurpations and Frauds (1877; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI.

guarantee a structure that benefits some at the expense of others. However, Spooner's extreme laissez-faire position found no support in these debates and were ignored by mainstream economic circles.

The Law of Prices,⁸⁶ published in 1877, and Gold and Silver as Standards of Value,⁸⁷ released in 1878, represent Spooner's first efforts at expanding his views on the currency problem into a more general treatise on monetary theory.

In The Law of Prices, Spooner argues that the money stock is a key variable in determining the extent of the division of labor and, in turn, the productive wealth of a society. Allowing capital to be monopolized through the control of the money shrinks the money supply, creates artificially high interest rates, and thus limits productive capabilities. Spooner does he fit into the mold of classical economics. In fact, he turns the classical argument on its head by arguing that the economy is limited by the supply of money, rather than the other way around.⁸⁸

⁸⁶Lysander Spooner, The Law of Prices: A Demonstration of the Necessity for an Indefinite Increase of Money (1877; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI.

⁸⁷Lysander Spooner, Gold and Silver as Standards of Value: The Flagrant Cheat in Regard to Them (1878; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI. Both The Law of Prices and Gold and Silver originally appeared in Tucker's The Radical Review, a short-lived anarchist publication.

⁸⁸Shively, "Introduction" to The Law of Prices in ed.

Gold and Silver concentrates on smashing the aura surrounding the utilization of metals as standards of value. The value of these metals, he argues, rests, as with any good, in its use as a good. The government, however, has given metals an extra value through monopolization of the currency, which grants a special privilege to the owners of these metals relative to owners of other forms of value.

Spooner's final effort in economic theory, Universal Wealth Shown to be Easily Attainable,⁸⁹ appeared in 1879. Generally a summary of Spooner's economic thought, the publication apparently received very little circulation. As a whole, his economic program received little mainstream attention and does not appear to have been overly influential even among anarchists.⁹⁰

Spooner's other later works were more successful. He remained busy writing until his death in 1887, retaining his rigorous writing style and his radical nature.

His most radical effort, Revolution: A Reply to

Shively, The Collected Works of Lysander Spooner (Weston, Massachusetts: M and S Press, 1971), Vol. VI, p. 3.

⁸⁹Lysander Spooner, Universal Wealth Shown to Be Easily Attainable (1879; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. VI.

⁹⁰Gold and Silver, however, was later republished in a Costa Rican anarchist publication in 1927. James Martin, p. 195, FN. 42.

Dunraven,⁹¹ was published in 1880 and became Spooner's most widely distributed work. In the pamphlet, he rejects the Social Darwinist arguments of Windham Thomas Wyndham Quin, Fourth Earl of Dunraven, concerning the Irish-English problems. In a letter to the New York Herald, Dunraven had defended the English aristocracy, arguing that the fitness of their natures had naturally placed them in positions of power.

Spooner could not have disagreed more. The aristocracy had their positions not because of merit, he contends, but through collusion with the State. In the case of Great Britain, he abandons peaceful means in eliminating Irish oppression.

Wipe out, then, these feudal robbers--the whole race of kings, and queens, and nobles, and all their accomplices in every grade of life, and take possession of all the spoils which they and their predecessors have wrung from you and your ancestors. Put an end to their Parliaments and Courts. Blot out forever their statute books. . . .Free England and Ireland, and thus all the rest of the empire, of the tyrants and robbers that are plundering, enslaving and crushing, and starving you.⁹²

Through the assistance of an Irish publisher in New York, about 100,000 copies of Revolution were printed. This same publisher apparently desired a whole series of

⁹¹ Lysander Spooner, Revolution: The Only Remedy for the Oppressed Classes of Ireland, England, and Other Parts of the British Empire. A Reply to Dunraven (1880; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I.

⁹² Ibid., p. 11.

pamphlets on Ireland from Spooner. Though at least a second pamphlet was written, according to Tucker, "something [unknown] interfered to prevent the execution of the plan."⁹³

Along with Spooner's other publications, several individual editorial articles of his appeared in Liberty concerning different historical events of the period. For example, he wrote a series of editorials concerning James Garfield's assassination and the subsequent trial of Charles Guiteau.⁹⁴ Spooner is particularly upset with the plight of Guiteau, who he feels is obviously insane and undeserving of his ultimate fate.

Is it worth while for fifty millions of people to prove themselves a nation of fools by hanging a fool for a homicide? . . . Our government . . . is carried on mainly by two classes of men, knaves and dupes. It would scarcely bear exaggeration to call them felons and fools. If we must hang either of these classes, is it not⁹⁵ cruel and indecent to begin with the fools?

Spooner's sarcastic method in these numerous editorials clearly demonstrates the disdain he felt for government in

⁹³Tucker, p. 5.

⁹⁴"Distressing Problems," Liberty, 29 Oct. 1881, p. 3; "Guiteau's Malice," Liberty, 10 Dec. 1881, p. 2; "Guiteau's Devilish Depravity," Liberty, 24 Dec. 1881, p. 2; "Guiteau's Wit," Liberty, 24 Dec. 1881, p. 3; "The Guiteau Experts," Liberty, 7 Jan. 1882, pp. 2-3; "The Forms of Law," Liberty, 22 July 1882, pp. 3-4. (The identity of Spooner was left unknown until after the author's death.)

⁹⁵"Distressing Problems," Liberty, 29 Oct. 1881, p. 3.

his later years. In "War Upon Superstitious Women," he argues that while he personally has no use for religion, the government's attack on the Mormon faith and its marital customs, practiced by "sincere and superstitious women," is clearly a violation of individual freedom.⁹⁶ Concerning the government's interpretation of the free exercise clause of the first amendment, Spooner quips,

They guess it must have been something that Mr. Madison or Mr. Jefferson once talked about in Virginia. They are quite sure it cannot mean any liberty to disobey a law of Congress.⁹⁷

Spooner's most extensive set of editorials in Liberty concerned the Haymarket Affair of 1886, where seven anarchists were tried and convicted of murder in an atmosphere not wholly conducive to justice. The New York Herald had garnered Spooner's wrath by rejecting the methods of the Chicago bombing incident, arguing that "bad laws" should be eliminated through proper governmental channels. He challenges the Herald to utilize their influence to change legislation. He doubts their ability to create change and chastises them for belittling the serious problem of oppressive legislation by merely assuming an ineffective mechanism like voting can be, in fact, effective.

⁹⁶"War Upon Superstitious Women," Liberty, 22 July 1882, p. 2.

⁹⁷Ibid.

Several other minor Spooner articles also appeared in Liberty.⁹⁸ Almost all of these articles were left unsigned or signified by the code letter "O." It was not until after Spooner's death that Tucker released the identity of the author of these radical works.

Furthermore, each of Spooner's final three major works concentrating on political theory initially appeared in Liberty. Natural Law; or the Science of Justice⁹⁹ appeared in part in March 1882 and was later published as a separate pamphlet. Very well received by anarchists in both America and Europe, this work was intended to be only a small portion of a much larger treatise concerning law.¹⁰⁰

⁹⁸Others include: Lysander Spooner, "Against Woman Suffrage," Liberty, 10 June 1882, p. 4; O, "Coming to its Senses," Liberty, 22 May 1886, p. 5; O, "Greatly Mistaken," Liberty, 19 June 1886, pp. 4-5; O, "Confession of an Atrocious Crime Against the Anarchists Tried at Chicago," Liberty, 18 Sept. 1886, pp. 4-5; "Justice Gray," Liberty, 7 Jan. 1882, p. 2; "Andover Theological Seminary," Liberty, 13 May 1882, pp. 2-3; "Ben Butler's Piety," Liberty, 17 May 1883, pp. 3-4; "The Troubles of Law Making in Massachusetts," Liberty, 6 Oct. 1883, p. 3; "The Death of Chinese Gordon," Liberty, 28 Feb. 1885, pp. 4-5.

⁹⁹Lysander Spooner, Natural Law; or the Science of Justice: A Treatise on Natural Law, Natural Justice, Natural Rights, Natural Liberty, and Natural Society; Showing That All Legislation Whatsoever Is An Absurdity, A Usurpation, and A Crime (1882; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I. A portion of the publication initially appeared as "Legislation: Its Origins and Purpose," Liberty, 18 March 1882, p. 4.

¹⁰⁰Natural Law, however, did provide an outline for an extended series of articles in a Swiss anarchist publication, Le Revolte. James Martin, p. 200, FN. 130.

However, further additions were never published. Still, this short twenty page pamphlet brings together important segments of Spooner's views on the science of justice, which had served as the foundation of his system throughout his career.

Also, in 1882, in A Letter to Thomas F. Bayard,¹⁰¹ Spooner enters an ongoing debate between Christian Evolutionist Lyman Abbot, editor of the long-running Christian Union, and Delaware Senator Thomas F. Bayard. Bayard had taken exception to Abbot's attack on the integrity of politicians. Spooner's letter is aimed at Bayard, as he rejects the legitimacy of government and its institutions, particularly the legislature. When Bayard did not reply to his first letter, Spooner utilized Liberty to write the Senator a second time, in response to a Bayard speech praising the Constitution as the supreme law of the land. "Justice alone," Spooner contends, "is the Supreme Law of this land, and of all other lands."¹⁰²

Spooner's final published work is fittingly also the most complete expose of his thought. In 1886, he published

¹⁰¹ Lyxander Spooner, A Letter to Thomas F. Bayard: Challenging His Right--And That of All the Other So-called Senators and Representatives in Congress--To Exercise Any Legislative Power Whatever Over the People of the United States (1882; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I. The letter first appeared in Liberty, 27 May 1882, pp. 2-3.

¹⁰² Lyxander Spooner, "A Second Letter to Thomas F. Bayard," Liberty, 17 May 1884, p. 6.

A Letter to Grover Cleveland, subtitled "On his False Inaugural Address, the Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance and Servitude of the People."¹⁰³ As the subtitle demonstrates, this work integrates Spooner's system of thought as well as a tightly spaced 110 page treatise can, linking his views on law, political science, and economics into one major work.

Letter to Grover Cleveland likely had a wide audience among anarchists. It appeared as a featured series in Liberty from June 20, 1885 until May 22, 1886. The source of Spooner's criticisms of American government was Cleveland's 1885 inaugural address. Though Spooner finds the speech "as honest, sensible, and consistent a one" ever given at a presidential inauguration, it still is "false, absurd, self-contradictory and ridiculous" because the American government "is an utterly and palpably false, absurd, and criminal one."¹⁰⁴ In a few short pages, Spooner challenges government on almost all fronts--its actions, its oppression, and its justification all crumble under Spooner's methods of logic.

¹⁰³ Lyssander Spooner, A Letter to Grover Cleveland, On His False Inaugural Address, The Usurpations and Crimes of Lawmakers and Judges, and the Consequent Poverty, Ignorance, and Servitude of the People (1886; rpt. Weston, Massachusetts: M and S Press, 1971), Vol. I.

¹⁰⁴ Ibid., p. 4.

According to Tucker, Spooner was ill throughout the last year of his life. He fell into fever approximately two weeks prior to his death of May 14, 1887. He died in his "little room at 109 Myrtle Street, surrounded by trunks and chests bursting with the books, manuscripts, and pamphlets which he had gathered about him in his active pamphleteer's warfare over a half a century long."¹⁰⁵ In a manner fitting his nature, Spooner refused medical treatment until three days prior to his death and took no medicine even after seeing a physician.

Spooner was apparently regarded as an outcast by his relatives. Though one of nine children, very few historical records of any relationships between them and Spooner exist. Tucker, noting that Spooner's legal heirs had "no comprehension" of the late pamphleteer's work, purchased the full estate.¹⁰⁶ Besides previously published materials, Spooner's belongings included "treatises on finance, marriage, property, government, and religion," plus unpublished segments of Natural Law, Revolution, No Treason, and two additional letters to Grover Cleveland.¹⁰⁷

With financial support, Tucker hoped to publish these additional works, and he advertised Spooner's writings in

¹⁰⁵Tucker, p. 5.

¹⁰⁶Ibid.

¹⁰⁷Ibid.

Liberty for an extended period after Spooner's death. To further garner the needed funds to print these unpublished manuscripts, Tucker initiated the "Spooner Publication Fund."

Evidently, these efforts were largely unsuccessful. The Fund ran in Liberty until August of 1887 but raised only forty dollars. None of Spooner's additional manuscripts ever appeared. Unfortunately, in 1908, these unpublished works, along with other important anarchist materials, were lost when Tucker's printing offices were destroyed by fire.

The writings of Lysander Spooner represent a very independent link in the chain of American political thought. His system of thought refuses to be categorized. He is clearly, as one author states, a "dissident among dissidents."¹⁰⁸ He apparently had few connections with other influential and similar thinkers until late in his life. Spooner's system of thought represents the evolution of a keenly logical and formal mind as it independently challenges the presumptions of American political theory. However, facing the theoretical flaws and real applications of liberalism, Spooner is gradually led to an almost anarchist position. Initially, a constitutional lawyer and expert, he eventually rejects the document as an instrument of tyranny.

¹⁰⁸ Martin, p. 168.

Though his method was almost always extremely formal and logical, Spooner was always pamphleteer first, philosopher second. The application of his thought was dictated by the historical events that affected him and American society--religion, slavery, economic malaise, and expanding government intervention. Coupled with his continual struggle to finance his writings, these historical particulars produce a largely piecework system of thought. However, pieced together, Spooner's views perhaps represent the most highly developed and workable system of individualist anarchism that emerges in nineteenth century America.

The remaining chapters will focus on integrating and analyzing Spooner's writings in greater detail. Chapter 2 explores the theoretical pillar of his thought, the science of justice as demonstrated in the laws of nature.

CHAPTER 2

NATURAL LAW AND THE SCIENCE OF JUSTICE

Natural law serves as the foundation of Spooner's political thought. A natural imperative, according to him, regulates all the activities of man. Justice exists when these natural laws are obeyed; when man rejects these rules, injustice must occur.

The science of justice, or the "science of mine and thine," is the process, according to Spooner, of determining the nature of social activity and, in turn, the individual rights of men.¹ It is

the science of all human rights; of all a man's rights of person and property; of all his rights to life, liberty, and the pursuit of happiness. It is the science which alone can tell any man what he can, and cannot do; what he can, and cannot, have; what he can, and cannot, say, without² infringing the rights of any other person.

If Man abides by the just principles discovered in nature, one can expect a peaceful relationship. In other words, this code of justice determines the parameters of human action by defining the natural rules of social relationships.

Spooner contends that justice requires two conditions:

¹ Spooner, Natural Law, p. 5.

² Ibid.

First of all, every man must do "all that justice requires him to do"; secondly, Man must refrain from doing anything that justice forbids him to do."³ The former requirement demands that each man be obligated to prior acts in the social context. Spooner includes payment of debts, return of borrowed or stolen property, and reparation of injury to person or property as examples of this obligation of justice.

The latter requirement prevents transgressions by one person or persons against others. He includes "theft, robbery, arson, murder, or any other crime against the person or property of another" as examples of actions prevented by justice.⁴

Thus, individual rights emerge from these natural laws encompassed in the science of justice. As long as these standards are obeyed, Man remains at peace. If Man "lives honestly" with his fellow man, Spooner foresees a harmonious relationship. His determination of a rights structure hinges on the science of justice. Liberty, he argues, is simply freedom from all compulsion except where justice requires some amount of coercion, or, in other words, "freedom from all human restraint or coercion whatsoever, so

³Ibid.

⁴Ibid., p. 6.

long as we live honestly, hurt nobody, and give to every one his due."⁵

This maxim to live honestly obviously leaves generally undefined exactly what Spooner entails in this science of justice. He draws a clear distinction between moral and legal duty. Justice, as it may regulate men, applies only to the latter obligation. Spooner does not deny the existence of moral responsibility; however, beyond the duties created by natural law, each man "must be his own judge" concerning moral questions.⁶ Justice, as a legal imperative, would not obligate a person to feed a starving man. However, it would deny taking food from the man who had acquired the property through just means. Furthermore, not only would a man be unjust in stealing property in the second instance, but, according to Spooner, other persons would be compelled to prevent the transgression, "acting singly, or in concert."⁷

Spooner never clearly enunciates exactly what specific rules are encompassed in the principles of justice.⁸

⁵ Spooner, A Letter to Grover Cleveland, p. 27.

⁶ Spooner, Natural Law, p. 6.

⁷ Ibid.

⁸ While discussing natural right on numerous occasions, Spooner never presents a clear list of basic rights belonging to individuals. Man has irresponsible and sole dominion over himself. Moreover, he should "live honestly," therefore respecting this same dominion over self

This omission is likely due to his understanding of the nature of these principles. He argues that the rules of justice are objective, clearly known, standards. Thus, determining justice in any social situation is not a difficult task. "Honesty, justice, natural law," he reasons, "is usually a very plain and simple matter easily understood by common minds."⁹ Justice is a science like any other scientific endeavor; it is discovered or learned by man. Spooner views it as an unavoidably simple process. Justice consists of, he contends, "a few simple elementary principles, of the truth and justice of which every ordinary mind has an almost intuitive perception."¹⁰ Furthermore, men generally maintain "the same perceptions of what

in others. Therefore, an individual has right to his own life and liberty without external interference from other persons. This necessarily requires the absolute right to one's own property, which requires an absolute right of contract (see Chapter 5).

There are at least three reasons why Spooner's discussion of natural rights is incomplete. First of all, natural law (and natural right) is so inherently obvious and universal that the numerous rights do not need presentation. Secondly, his understanding of society recognizes an almost infinite number of "laws" regulating it. From these laws emerge an infinite number of natural rights, clearly too numerous to list in detail. Thirdly, Spooner's sketchy discussion of natural right may not have afforded him the opportunity to present a more operable standard of right. Further writings concerning natural law were never published and were destroyed in Tucker's fire.

⁹Ibid., p. 8.

¹⁰Ibid.

constitutes justice" once "they understand alike the facts from which their inferences are to be drawn."¹¹

In fact, argues Spooner, Man cannot avoid understanding these natural principles. They are normally learned at a very young age. Spooner explains that due to the complex nature of the social order, questions concerning "mine and thine" are continually raised. He contends that conflicts can be regulated by naturally discovered rules. However, whether Man abides by these rules of justice or not, they are easily understood and "answered alike", or agreed upon, from an early age onward.¹² Man's disobedience of natural laws concerning justice does not mean that he does not understand them.

Spooner rejects any definition of justice that does not establish it as a timeless, unchanging and universal principle. If justice is not a natural principle (i.e., objectively definable), it is not a principle at all, but a subjective determination by a person or persons. If no standard of justice exists, then justice itself cannot exist. Furthermore, he contends, if justice does not exist, neither does injustice. By eliminating natural principles, man is left without standards upon which to judge. If the world maintained no standards, he concludes, all the

¹¹ Ibid.

¹² Ibid., p. 9.

transgressions of history "have been no crimes at all, but only simple events" of which no person had justification to oppose.¹³ If justice is not an established, unchanging entity, efforts to discover or defend it are meaningless--the "mere gibberish of fools, or the frauds of imposters."¹⁴

However, on the other hand,

If justice be a natural principle, then it is necessarily an immutable one; and can no more be changed--by any power inferior to that which established it--than can the law of gravitation, the laws of light, the principles of mathematics, or any other¹⁵ natural law or principle whatsoever.

Like any natural science, this socially oriented science of justice, Spooner reasons, is both discoverable through the use of reason and applicable to social reality. However, these principles may or may not be applied by men in a social context. Men may establish unjust institutions or utilize unnatural means to affect social relationships. However, he explains, though these efforts are commonly resorted to, the principles of natural law cannot be subordinated to divergent rules of conduct without tyrannical results. The very nature of the complete science of justice creates social harmony. Any action contrary

¹³Ibid., p. 11.

¹⁴Ibid.

¹⁵Ibid.

to these principles necessarily produces conflict. The goal is thus one of finding these harmonious laws.

Justice is immutable; true law does not change merely because Man reforms social rules. In Spooner's view, law is always the same, no matter how the whims of Man, as represented in his rule-making institutions, may change. Man's duty to justice, furthermore, does not change with the reformation of Man's laws. One's duty is always to natural law; any legislation assuming authority contrary to the principles of justice is "simply and always an intrusion, an absurdity, an usurpation, and a crime."¹⁶

Natural rights are the manifestation of these natural laws. The science of justice determines Man's rights. According to Spooner, these rights are "inherent in him as a human being" and although other men may prevent Man from exercising his rights freely, they cannot be "eliminated from his nature as a human being."¹⁷

As harmonious principles, natural rights create no conflict between persons. Whereas man's interests are in a never-ending conflict, Spooner contends, his rights are non-conflictual. Any man has a "natural, inherent, inalienable right" to do anything justice does not

¹⁶Ibid., p. 13.

¹⁷Ibid., p. 12.

forbid.¹⁸ In other words, one's rights depend on the science of justice.

These rights are individual rights. Legally speaking, Spooner concludes, there are no public rights beyond the numerous individuals' rights. The concept of public rights is, to Spooner, a "false and absurd" one.¹⁹ In reality, it can by its nature only lead to the violation of individual rights by providing to certain persons more than justice permits at the expense of others.

To argue that no principle of justice exists is, for Spooner, the equivalent of asserting that Man is "utterly destitute of rights."²⁰ If one does not enter the world with natural rights, then no rights can exist. To accept a different conclusion, he argues, backs one's position concerning the role of government into a theoretical corner. If one accepts justice as a standard, then government's role is understandable--to secure justice and, in turn, protect individual rights. On the contrary, if one denies that a universal principle of justice exists, he must also deny the existence of injustice. He has eliminated any standard upon which to determine the legitimacy of any community action.

¹⁸ Spooner, A Letter to Grover Cleveland, p. 7.

¹⁹ Ibid., p. 8.

²⁰ Spooner, Natural Law, p. 13.

If "there be no such principle as justice," he concludes, "there can be no such acts as crimes."²¹

However, Spooner continues, government's normally professed legitimate function is the maintenance of a just and secure social order. However, without standards, any government action is no more than merely one act among many. By eliminating the standard, one eliminates the function. To conclude that natural justice does not exist, he contends, confesses that government need not exist!

Government's only legitimate purpose, according to Spooner, is to guarantee justice. Coercion may be utilized only to maintain the principles of natural law, which, in turn, protects the equal natural rights of each individual in the association. Government should "hold the scales impartially" in any conflict, "taking no cognizance of any man's 'interests', 'welfare', or 'prosperity', otherwise than by simply protecting him in his 'rights'."²² Beyond these protections, man must protect himself.²³ However, the difficulties that might arise in this self-protection process are minimized, he argues, when governments simply

²¹ Ibid.

²² Spooner, A Letter to Grover Cleveland, p. 15.

²³ Spooner maintains that if justice is secured, it would be unlikely that men would be unable to care for themselves materially. Moreover, he is completely confident that if hardship did arise, an individual could entrust his need "to the voluntary kindness of his fellow men to supply it." See Ibid., p. 8.

relegate themselves to securing individual rights. By abiding by natural law, society opens up to the fullest extent for Man that nature allows.

The legitimacy of authority, thus, rests not in the nature of government, but in the science of justice manifested either singularly or through some group or associational arrangement. To assume legitimate legal authority elsewhere is "a simple impertinence and sheer impudence."²⁴ Beyond the compulsion necessary to maintain justice, no use of force is legitimate. Furthermore, Spooner reasons, any governmental action beyond what the parameters of justice permit is no different from any person's unjust act, and may be avoided with necessary force.

Unfortunately, Spooner argues, governments have not been able to relegate themselves to merely securing justice. The strongest societal forces utilize the state as "a mere instrument for plundering the great body of the people."²⁵ The result of this process is that it extinguishes any concept of natural rights.

Spooner's arguments completely diminish a role for the legislative body. Spooner equates legislative action to political action, which by nature leads men to less than

²⁴ Spooner, A Letter to Grover Cleveland, p. 5.

²⁵ Ibid., p. 17.

just conclusions concerning social rules. Justice, being immutable, universal, and supreme, cannot be subjugated to lesser political authorities. Natural law simply exists and does not require political representative bodies to find its principles. Elected assemblies, as a diverse and conflictual body, are not the most likely institution for finding just law. Legislatures, according to Spooner, neither subtract nor add to the natural law and are generally, at best, useless.

If they command men to do justice, they add nothing to men's obligation to do it, or to any man's right to enforce it. . . .If they command or license any man to do injustice, they are criminal on their face. If they command any man to do anything which justice does not require him to do, they are simple, naked usurpations and tyrannies. If they forbid any man to do anything which justice would permit him to do, they are criminal invasions of his natural and rightful liberty.²⁶

Legislative decision-making, argues Spooner, is no more than one group of men assuming "absolute irresponsible dominion over all the other men," giving these men the means to "banish the principles of human rights, the principles of justice itself" to be substituted with rule by the most powerful interests.²⁷ Moreover, this political process produces broader and more detrimental social effects.

So long as society, or its institutions, offer a few great prizes, either of wealth or power, for

²⁶ Ibid., p. 4.

²⁷ Spooner, Natural Law, p. 20.

the acquisition of anyone, so long many of the more powerful minds will be engrossed in the pursuit of them. Unable to obtain them . . . consistently with the equal rights of all, they will propose to secure them by sacrificing the rights of a part, and sharing the spoils with their adherents, by means of partial and monopolizing legislation. Thus their contests with each other will be made to involve the interests, welfare, and rights of every other man. . . . [and] nearly every individual mind in the community becomes occupied . . . on one or the other, in these strifes. . . . Such contests not only necessarily suspend, to a great degree, all those labors and studies that really advance man as an intellectual and moral being, or promote the impartial welfare of the race, but they actually divert a vast mass of mind into pursuits--of monopoly and war--they have for their objects, injury and destruction to mankind at large. Much of the intellect of society, under such circumstances, is not merely wasted . . . it is exerted for purposes of positive detriment and injury.²⁸

Spooner develops an extremely clear theoretical separation concerning the discovery of laws, between finding the law and making the law. The laws of natural justice pre-exist their discovery. They are harmonious rules that regulate human action--not by usurping basic natural rights but by securing equal liberty for all individuals. These natural laws, according to Spooner, "existed before [lawmakers] were born, and will exist after they are dead."²⁹

Law, to Spooner, is "an intelligible principle of right, necessarily resulting from the nature of man; and not

²⁸ Spooner, Poverty: Its Illegal Causes and Legal Cure, p. 57.

²⁹ Spooner, A Letter to Grover Cleveland, p. 26.

an arbitrary rule, that can be established by mere will, numbers, or power."³⁰ It is permanent, unalterable, and universally applicable. It is a "rule, principle, obligation, or requirement of natural justice."³¹

Thus, force and law, Spooner argues, may possibly not rest on the same foundation. While society may be controlled by force, this does not necessarily mean that force rests on law. Law must be based on immutable standards; the legitimization of force then rests on whether it abides by the principles of the law. Spooner argues that definitions of law that do not rely on fixed standards are unsatisfactory because they are

uncertain, indefinite, mutable; and therefore incapable of being standards, by a reference to which the questions of law, or no law, can be determined. Law, as defined by them, is capricious, arbitrary, unstable; is based upon no fixed principle, results from no established fact; is susceptible to only a limited, partial, and arbitrary application; and possesses no intrinsic authority; does not, in itself, recognize any moral principle; does not necessarily confer upon, or even acknowledge in individuals, any moral or civil rights;³² or impose upon them any moral obligation.

"Law" established through factional political processes, contends Spooner, destroys the essential nature of law by extinguishing its fixed and universal status.

³⁰ Spooner, The Unconstitutionality of Slavery, p. 5.

³¹ Ibid., p. 6.

³² Ibid., p. 11.

Furthermore, its moral character concerning justice is alleviated by equating it with force. The ethical standard of the law is dismissed. If rules are left completely to the political process, the issue of justice provides no concern.

Furthermore, any legislative process that grants to one person or group more than nature grants must necessarily take from other individuals. "The very idea of a lawmaking government," Spooner contends, is that by its nature, it must be in "direct and inevitable conflict with our liberty."³³ Legislatures are by nature

mere arenas, into which the government actually invites the advocates and representatives of all the selfish schemes of avarice and ambition that unprincipled men can devise; that these schemes will there be free to 'compete' with each other in their corrupt offers for government favor and support; and that it is to be the proper and ordinary businesses of the lawmakers to listen to all these schemes; and adopt some of them, and sustain them with all the money and power of the government. . . . it being well known, all the while, that the lawmakers will, individually, favor or oppose these various schemes, according to their own irresponsible will, pleasure, and discretion that is, according as they can better serve their own personal interests and ambitions by doing the one or the other.³⁴

To argue that this process, minus the variable of justice, can produce a "general welfare" is absurd to Spooner. The benefits provided by government in this

³³ Spooner, A Letter to Grover Cleveland, p. 27.

³⁴ Ibid., p. 17.

political process emerge not in the securing of individual natural rights but must rely on a vast scheme of state granted privileges, with success depending on the amount of political pressure one can initiate. However, government cannot acknowledge all interests; while natural rights are non-conflictual, argues Spooner, interests are always in conflict.

Spooner's system of thought comes exceedingly close to eliminating this political process entirely.³⁵ An individual's rights are inalienable; they cannot be surrendered as rights. Spooner uncovers a crucial problem in liberal thought concerning the nature of individual rights and the function of the State. Being inalienable, rights cannot be even partially surrendered. However, he contends, once a lawmaking power is conceded, natural liberty may also be denied. More importantly, once any single natural right can be denied by the State, all of them can be denied for that same reasons. By their very nature, natural rights are individual rights that cannot be surrendered or transferred. The violation by legislators of any one right "is equivalent to the assertion of a right to violate all of them."³⁶

³⁵For an examination of what Spooner replaces the legislative process with, see Chapter 4 on trial by jury.

³⁶Spooner, A Letter to Grover Cleveland, p. 30.

The key to understanding Spooner's position involves the issue of discretion. While liberties in practice may appear to be divided between Man and State, one, and only one, of the two maintains discretionary power over what individual liberties exist. In Spooner's view, natural rights cannot be surrendered in the contract between individuals and government. Once individuals give up part of their natural rights, they surrender them all. Once a government is granted the power to make law that is the final determinant as to the individual's actions, "every vestige of man's natural and rightful liberty is denied him."³⁷ All natural rights, argues Spooner, "stand upon one and the same basis"; if government can arbitrarily deny any one of these rights, by the same means, it can deny any of them.³⁸

Even if an individual exercises general freedom, if the State can decide what freedom he may exercise, then he has no rights of his own. In this case, the individual's liberty, contends Spooner, emerges not from his internal nature, but from the whims of an external force manifested in a representative government.

Government cannot end all liberty; to do so would "defeat its own ends."³⁹ The State is likely to

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

maintain, according to Spooner, "enough liberty to enable [the people] to provide for their own subsistence" and for other services government deems necessary.⁴⁰ However, these acts are done for government's good (i.e., those controlling government) rather than for the protection of individual liberty. Thus, the system breaks down into a power process of political interests, as the natural law standards are ignored. What freedoms Man maintains are not due to reliance on any just standard of law, but on one's ability to successfully involve himself in the political process.

CRITICAL ANALYSIS OF CHAPTER 2

Spooner does not overly concern himself with a complete or fully coherent development of a theoretical foundation. Natural law, as it represents justice, is obviously the foundation. However, several questions must be asked of Spooner's development of natural law. The most basic question is--"What does it entail?" Stating that one must "live honestly" or "render to each man his due" goes nowhere in explaining what objective standards exist. What is "honesty"? Without a fully coherent set of objective definitions or standards, these words must remain in subjective obscurity.

⁴⁰ Ibid.

Spooner could have built his ethical foundation on a non-coercion or non-aggression axiom--that no person may violate another person's own self-dominion of person and property.⁴¹ Therefore, Man's natural rights are clearly unconditional and inalienable and are possessed independently of any of society's political rules. These rights, as demonstrated in non-aggression, become the foundation.

This standard produces a very atomistic and radically individualistic social order. The ethical requirement of duty or responsibility is nonexistent. However, while Spooner's conclusion very much appears identical to these conclusions, they are not based upon the same foundations.

Spooner's polity rests upon natural justice. Naturally determined, right does not emerge as an entitlement or a grant from an external political force. However, neither does it emerge from the nature of the specific right alone, but from the nature of the specific justice. Justice precedes and determines natural right.

Generally, Spooner argues that justice and non-coercion are one and the same. However, the different foundations become evident with the discussion of duties. For example,

⁴¹ Perhaps the best modern statement of the non-coercion principle emerges from Murray Rothbard, For a New Liberty: The New Libertarian Manifesto (New York: Collier Books, 1978), p. 23.

he clearly argues in his abolitionist writings that it is an individual's legal duty to assist in the freeing of slaves. Legal duties can only emerge from that which is naturally right. Spooner, therefore, at least in this one instance, argues that along with natural liberties, certain natural duties also exist.

This conclusion cannot rest upon a pure non-aggression principle. The implication of Spooner's conclusions is that individuals who have never been involved with slavery nor violated any slaves' legal rights may be legally and legitimately required to initiate activities against their own wills. Coercion is, thus, in this certain instance at least, a naturally just activity.

Therefore, in Spooner's view, natural right is the residual of justice. This foundation produces a very different prospective from the very individualistic and negatively oriented concept of freedom that emerges from the non-coercion principle. Spooner's system of justice sounds similar to the conclusions found in the French Declaration of 1793, which asserts that

resistance to oppression is the consequence of the other rights of man. There is oppression of the social body when any single member of it is oppressed: there is oppression of every member when the social body is oppressed.⁴²

⁴²Reprinted in David G. Ritchie, Natural Rights (New York: Macmillan and Co., 1895), p. 23.

While Spooner would not accept the reality of a "social body," he would apparently agree that when individual rights are violated, a duty to insurrection emerges for all members of society. Consistent with the results of Spooner's science of justice, this declaration is inconsistent with radical individual rights philosophy.

This understanding of natural right explains the logic of Spooner's argument concerning the transfer of natural rights. Natural rights are merely those powers emerging from the science of justice. Surrendering natural rights, then, can only create injustice. By natural law, they cannot be transferred to enhance justice.

Thus, while Spooner advocates an extremely laissez-faire social structure, his philosophical pillar may not necessarily always protect complete self-dominion of the individual. In his system of justice, Man would enjoy practically complete self-sovereignty. In Spooner's view, a harmonious structure that combines right and duty exists that provides social peace; this harmony, he believes, best results from great freedoms and few duties.

However, relying on an undefined concept of justice only increases the complexity of Spooner's system. The utilization of duty as an objective foundation makes it necessary for Spooner to formulate a clear presentation of what constitutes justice. The standard is no longer merely

non-intervention of fellow persons where no one is required by natural law to initiate any activity. Moreover, the distinction between legal and moral principles can no longer be drawn. If natural duties exist, then legal and moral principles may become hopelessly congested. Duty, by its nature, requires an involuntary action on the part of an individual. What separates involuntary acts that are morally required (not enforceable by law) and those that are naturally required (legitimately required by force)? Furthermore, how far does one apply this standard? For example, he clearly argues that slaves have a right of reparation for past violations of justice against them. Without explaining the definition or degree of the results of justice, he leaves the reader with no conceptualization of his standard.

Spooner's inadequacy does not rest in the establishment of justice as an ethical foundation, but in his failure to clearly demonstrate what the concept entails. Simply asserting that justice produces harmony, or that each man should live honestly only begins the discussion.

Without a clear limitation of what entails justice, Spooner's system contains an undefinable boundary as to what constitutes legitimate individual duty or freedom and, therefore, does not restrict the amount of coercion that may be asked of a person under natural law. In fact, this standard of justice is very similar to the conservative

concept of social order preceding individual liberty.

Although Spooner advocates extreme libertarian anti-statist positions concerning individual freedom, his conceptualization of justice may not provide that in all circumstances the principle of non-coercion will avail. Whereas Spooner would apparently equate almost complete self-dominion with justice, the structure he provides does not necessarily require such freedom. Since justice creates natural right, Man may have complete control of his natural rights, yet have little freedom.

Spooner responds to his lack of a clear presentation of what constitutes natural justice by arguing that these laws are easily understood and evidently obvious. In other words, men can examine a conflict between individuals and minus bias or factual disagreement, always concur in what constitutes right or justice.

Two arguments emerge concerning Spooner's conclusions. First of all, one can reject the entire argument on its face and simply conclude that no objective or, at least, common standard of justice exists. However, even if one accepts his statement, a more disturbing problem arises. Spooner obviously believes that bias and/or factual disagreement can be avoided. However, can an individual escape these variables in decision-making? The complexity of social situations may become an extremely distortive factor for fact-finders searching for truth. Likewise, it would appear

that interests can dominate or at least shade issues enough to create disagreement.⁴³

The combination of justice and a complex social order necessarily requires an intricate set of rules, at least more complicated than Spooner foresees. Even if one accepts the existence of an objective standard of justice, it would not appear that this standard would be so easily understood or readily applied. Spooner extends the process of discovering or finding the law to the point that it becomes an almost intuitive process. Other natural law theorists, while agreeing that certain immutable laws of human nature exist, are more likely to accept that these laws can be clouded by "prejudice or passions."⁴⁴ Spooner simply argues this cloudiness does not exist.⁴⁵

Yet, he argues, these rules of justice are not adhered to. Obviously, these principles that ought to be followed are of no usefulness if they are not or cannot be abided by.

⁴³ Spooner answers the criticism that disagreement can emerge by requiring theoretical unanimity as it is manifested in his trial by jury. See Chapter 4. However, there is no guarantee that requiring full agreement will lead persons to reach just and common conclusions. In fact, it is possible that nothing conclusive may be reached, and no rules of any sort produced.

⁴⁴ Sir William Blackstone, Commentaries on the Laws of England, 3rd ed. (New York: Banks and Brothers, 1893), p. 4.

⁴⁵ It may be at least partially unfair to criticize Spooner's extreme position. His exaggeration of the nature of justice may be more due to his attempt to advocate rather than to theorize.

Contending that justice should serve as the legal code, or that it is obligatory apart from any human-made sanction does not make justice the real standard. Without common acceptability or a reality that can and does maintain natural law, Spooner's structure represents, as Wendell Phillips declares, the system of "hairsplitters and cob-web spinners."⁴⁶

Spooner faces an "is-ought" dilemma--because Man is of such a nature, he ought to act in a certain manner.⁴⁷ Accepting that justice exists with an almost intuitive understanding, and that individuals are drawn to discover justice, the result should be a just society. Spooner obviously does not accept this conclusion as the empirical reality. By arguing that natural law is so easily comprehended by individuals possessing good human natures, he does not leave himself a theoretical escape to explain the reality of illegitimate forces he argues exist in the political process. Either objective justice does not exist, or it is not as easily discernible as he states. Therefore, Spooner's understanding of natural law must find refuge in a standard of justice not as easily comprehended as he contends.

⁴⁶Phillips, p. 93.

⁴⁷For a discussion of this problem, see Otto A. Bird, The Idea of Justice (New York: Frederick A. Praeger, 1967), p. 153.

This retreat obviously does not destroy Spooner's concept of justice. He simply becomes an explorer in a more elusive search for right. His failure is that he does not adequately define the components of a just society. Accepting that this flaw can be corrected, the remainder of Spooner's system remains intact.

Relaxing his rather naive arguments supporting a crystal clear system of justice, Spooner's other arguments become stronger, particularly concerning the nature and function of legislatures. Certain institutions can be more conducive to finding and protecting the natural laws that regulate social activity. While a general analysis of the legislative process will be postponed until Chapter 4, a more general discussion of the political process is relative to the formulation of natural right.

Spooner presents two basic criticisms concerning the utilization of political mechanisms in formulating (making) "law." The first concerns the structure and process of resolution that political battles produce. Since natural law is immutable, universal and therefore common to all persons, any structure that relies on bargaining, partial agreement, and compromise in forming rules naturally cannot be acceptable. If objective standards exist, such a structure cannot be just. The resulting rules, in Spooner's view, can be no better suited to justice than if no action

had occurred. In fact, he observes that the result is likely even worse.

A pluralistic, politically competitive institutional structure creates a "mindset" in persons not conducive to even the search for natural right. To maintain one's own existence in this battle of conflicting interests, Man's interests are likely to win out over reason. The structure guarantees that legislators and different interests emerge to secure or better their own positions. These activities necessarily go beyond naturally formulated rules.

Thus, Spooner's implication is apparently that what Man is permitted to do, he will do. A problem arises with this argument as it relates to formulating a better institutional structure. What does one do with Man's interests? Spooner blames the structure for at least partially allowing an individual's interests to dominate his sense of justice. However, what created this structure initially? Furthermore, what exists to spur Man to restructure his institutions? Spooner obviously anticipates that increased knowledge--enlightenment--triggers the increase in Man's understanding (if not a full transformation of his nature) that allows reform to occur. If, in fact, such a metamorphosis can occur, what is the likelihood of such strongly entrenched institutions being transformed? Persons benefitting from the system, at the expense of others' rights, have no incentive to reform the structure.

Presumably, however, they represent the most powerful force. Even those "losing" in the system must "play the game" to garner any hope of surviving in a political struggle. Spooner is naive to expect an enlightened modification to occur, when even he observes a seemingly endless history of contrary evidence.

Spooner refuses to accept that the diversity of a pluralistic structure and its political appeasement is a necessary component of an expanding civilization. Diversity is largely created by the existence of the State and politics. For example, whereas Madison argues that the causes of factions cannot be removed, Spooner contends they can be removed, or at least ignored in the rules process.⁴⁸ His hypothetical world takes the reader back to a natural state, where justice can precede will (interests). There the great diversity spurred by political competition can be generally avoided.

However, what utility does this conclusion have for the present or future? Spooner observes a political process built on appeasing interests, not discovering justice. Interests, manifested in force, surely cannot be ignored. Furthermore, it is highly questionable whether diversity could be avoided in Spooner's utopian structure. In a free

⁴⁸ Again, Spooner applies the principle of unanimity through his trial by jury. See Chapter 4. He simply disallows the existence of rules not commonly accepted.

market economy, for example, diversity of interests must appear at least as the effect of the division of labor. As labor divides, men evolve in different directions with different interests. The crucial question facing Spooner is whether this diversity affects the activities of Political Man. Spooner separates economic interests and political reason. Man can demonstrate very different economic interests yet commonly agree and abide by the natural law of justice.

However, if Spooner's first criticism fails from Man's inability to weigh reason and justice over self-interest, his second criticism looms even more ominous. He recognizes the danger of ignoring economic reality in a political process of bargaining interests. Production and the productive structure emerge from the outcomes of economic competition. Political competition only relates itself to the distributive structure. However, as Spooner recognizes, production must precede distribution. In other words, goods not produced cannot become a part of a political bargaining process.

Unfortunately, he concludes, an order that excessively determines the distribution of liberty and/or goods through political competition of interests "suspends" the productive capability of Man by diverting economic capabilities to political gain or survival. The emphasis is shifted from a productive conflict to merely an allocative conflict.

Spooner's underlying fears are clear--unless the ethical standards that protect natural right are maintained, liberalism must eventually turn in on itself, destroying the freedom and standard of living it had a large hand in initially creating.

Spooner's failures concerning the inability to find justice translate into foreboding doom for the liberal society. If justice does not exist and cannot be ascertained and maintained as rule, then force, revealed in a political process of self-interested actors, ignoring justice, must result. Spooner's idealistic liberalism becomes the criticism of existing liberalism. Ironically, as will hopefully become more evident in the following chapters, the ultimate survival of liberalism may depend on the ability of Man to transform himself to Spooner's structure.

CHAPTER 3

THE CONSTITUTION: CONSENT AND ACCOUNTABILITY

Spooner argues that by their nature men have "certain judicial powers, or rights."¹ Man's natural rights include the "right to judge of, and enforce his own rights and judge of, and redress his own wrongs."² However, retaliation for a transgression must also be in accordance to natural law, and, thus, each man is responsible for any error in judgment that goes beyond what justice allows.

Obviously, the transgressed and transgressor may not agree in the legal determination of the settlement concerning their conflict. Furthermore, simply because natural justice should be enforced does not mean that it will be enforced. In the state of nature, where no government exists, it is man's natural right and duty, according to Spooner, to judge his fellow man's actions and, if necessary, act upon them either singularly or in association. At all times, however, natural law, the principles of justice, remains the standard by which the action is to be judged.

Spooner does not reject government as a necessary instrument in securing order. He does reject that forming

¹ Spooner, A Letter to Grover Cleveland, p. 103.

² Ibid.

the government in the state of nature transforms the nature of the social order. An association of persons contracts a government to secure the natural rights that may not always be protected when individuals are required to act singularly. This association is preferable to individually determined justice, he concludes, "to avoid the errors that are liable to result from haste and passion."³

However, Spooner does not recognize a difference between man's natural state and his civil state as far as what legally can be considered legitimate. No metamorphosis occurs when men contract to form an association; the natural principles of justice still determine the standards concerning the rules among men. Men associate so they "may rest secure in the assurance of protection" of their natural rights.⁴ With or without government, the rules by which men socially interact remain the same; government is contracted because of inadequate means of securing rights in the state of nature. However, at no time do men give up any individual rights. They only grant to the government powers to act in place of the individuals in the association, consistent with natural justice.

This understanding of the association is obviously different from the general Lockean liberal tradition.

³Spooner, Natural Law, p. 7.

⁴Ibid.

Entrance into Locke's civil society requires resignation of certain executive powers to the political structure. It authorizes legislators to act supreme on behalf of the citizens in making laws. Moreover, it utilizes a mechanism, majority rule, that may or may not protect individual natural rights. Apparently, it exists for the duration, or at least until oppression reaches such intense levels as to produce successful revolution. Spooner's government is no more than "a mutual insurance company, voluntarily agreed upon by the parties to it, for the protection of their rights against wrong-doers."⁵ This sort of association, he reasons, would be best administered as a one year contractual agreement where taxes (dues) are decided upon in advance in a written contract. The contract would continue as long as the customers were satisfied. The purchase of government's services would essentially be no different than buying any good or service.

Before a man will join an association [of any kind] . . . and pay the premium for being insured, he will, if he be a man of sense, look at the articles of the association; see what the company promises to do; what it is likely to do; and what are the rates of insurance. If he be satisfied on all these points, he will become a member, pay his premium for a year, and then hold the company to its contract. If the conduct of the company prove unsatisfactory, he will let his policy expire at the end of the year for which he has paid; will decline to pay any further premiums, and either seek insurance elsewhere, or take his own risk

⁵ Spooner, An Essay on the Trial by Jury, p. 223.

without any insurance. And as men act in the insurance of their ships and dwellings, they would act in the insurance of their properties, liberties and lives, in the political association, or government.⁶

Government is simply one service provided among many in a free social structure. It has no greater claim to intrude in the determination of an individual's choices among goods or services than any other market entity. Without actual consent, no government has any greater right, he contends, "to assume a man's consent to be protected by them and to be taxed for that protection" than any other company competing to provide desired services.⁷

Furthermore, an individual may choose not to associate at all. A person, Spooner argues, may determine that he can defend his natural rights alone, or that he can rely on acquaintances if special crisis situations arise. Justice, he contends, requires that this individual be left alone--as long as he does not interfere with the natural rights of others. There are no qualities inherent in the nature of government that separates it from any other good or service. Entering a specific contract of association creates no obligations to remain in the association if the individual becomes dissatisfied with the agreement. Beyond the requirements of natural rights, a person has no obligation.

⁶Ibid.

⁷Ibid.

For example, Spooner rejects the post-Civil War argument that equated secession with the act of treason. Man is bound or obligated to abide by natural law (and may be punished for any violations thereof); he is not bound to remain in a union he no longer accepts. Thus, in Spooner's view, slaveowners were individually accountable for slavery, but not secession.

To contract with an association is a freely determined choice on the part of each individual, according to Spooner. Moreover, it remains the individual's choice; no natural rights are relinquished in the contracting of a government. Each individual always remains sovereign of his own individual rights.

To say, as the advocates of our government do, that a man must give up some of his natural rights, to a government, in order to have the rest of them protected--the government being all the while the sole and irresponsible judge as to what rights he does give up, and what he retains, and what are to be protected, is to say that he gives up all the rights the government chooses, at any time, to assume that he has given up; and that he retains none, and is to be protected in none, except such as the government shall, at all times, see fit to protect, and to permit him to retain. This is to suppose that he has retained no rights at all that he can, at any time, claim as his own, as against the government. It is to say that he has really given up every right, and reserved none.⁸

Spooner contends that persons contract a government to secure natural rights, not relinquish them. Ultimately,

⁸ Spooner, A Letter to Grover Cleveland, p. 13.

these rights only exist when individuals maintain their "own actual possession and exercise of them."⁹ This requires that the dominion over the right rest with the individual. For example, in his argument challenging the postal monopoly, he rejects the Postmaster's argument that, through enumeration, an exclusive right or power is transferred to the government from the people. Spooner maintains that this grant by the people in no way constitutes an exclusive right by which full dominion of the postal power is transferred to the government. Persons are still free to coin money or establish postal services, for instance, after the specific power is granted. The individual, he concludes, never vacates the final discretion or sovereignty over his natural rights.

According to Spooner, transferring dominion of a natural right effectively ends its existence. Rights emerge from natural law; when government abides by these laws, individual rights are secure. Moreover, individuals may associate to provide a more adequate security for their rights and/or a common judge of the principles of justice. However, once the fragile line concerning sovereignty of the right is passed from individual to government, these rights are essentially lost. Man's freedoms are no longer based on

⁹Ibid.

the standards of natural law, but on the whims of a government who can dictate the contractual agreement. Man's liberties are no longer determined by naturally based rules, but are instead established by some sort of governmental process.

Furthermore, Spooner argues, once the government is able to cross this fragile line and secure sovereignty over individual rights, it very likely becomes a greater danger to individual freedom than the prior state of nature where no association or government existed.

If A were to go to B, a merchant, and say to him, "Sir, I am a night-watchman, and I insist upon your employing me as such in protecting your property against burglars; and to enable me to do so more effectively, I insist upon your letting me tie your own hands and feet, so that you cannot interfere with me; and also upon your delivering up to me all your keys to your store, your safe, and all your valuables; and that you authorize me to act solely and fully according to my own will, pleasure and discretion in the matter; and I demand still further, that you shall give me an absolute guaranty that you will not hold me to any accountability whatever for anything that may happen to your goods while they are under my protection; and unless you comply with this proposal, I will now kill you on the spot"--if A were to say all this to B, B would naturally conclude that A himself was the most impudent and dangerous burglar that he (B) had to fear; and that if he (B) wished to secure his property against burglars, his best way would be to kill A in the first place, and then take his chances against all such other burglars as might come afterwards.¹⁰

Spooner's perception of the State or the nation

¹⁰Ibid., p. 14.

produces a radically different view of government. Government encompasses no inherent qualities that guarantees longevity or preferred status. It remains fixed as an institution only as long as the individuals comprised in the association demand it. It maintains no fixed geographical boundaries. According to Spooner, a state is "simply the boundaries, within which any single combination or concentration of will and power are efficient, or irresistible, for the time being."¹¹ It may or may not rest on the principles of justice. Its continuance as a nation depends on either rights or force. However, for a nation to rightfully exist depends on the voluntary consent of the individuals of the association.

Thus, a crucial question concerning the legitimacy of a government involves the issue of consent. Spooner does not reject voluntary associations. As long as man retains his natural rights, government serves a just and necessary function.

Initially, Spooner appears willing to accept the American Constitution as a legitimate contract between men. In his early writings, he develops several complex constitutional arguments in defense of his position.¹²

¹¹ Spooner, The Unconstitutionality of Slavery, p. 13.

¹² The best examples include the postal monopoly, the slavery issue, and his currency system.

However, Spooner either reforms his argument in later works or never intends the Constitution to be his final pillar of defense concerning his position. In 1856, he wrote Gerrit Smith, stating that "honest men who know its true character" could not support the Constitution.¹³ Despite this shortcoming, Spooner utilizes constitutional arguments "on those points wherein it is right, and then appeal(s) to those, who professed to be governed by it, to act up to their own standard."¹⁴

Spooner's constitutional arguments always maintain a natural law foundation. His defense of the Constitution is as a natural rights advocate, not as a contractarian. His radically literal interpretaion of the contract does not undermine natural principles, for defending "the word of the document" does not eliminate interpreting the word itself. Spooner always relied on natural law to determine interpretation. "All language," he maintains, "must be construed strictly in favor of natural right", or as "it ought to be taken."¹⁵

In his constitutionally founded argument against slavery, Spooner argues that no intention contrary to

¹³ Spooner to Gerrit Smith, March 12, 1856, reprinted in Shively, "Biography," p. 43.

¹⁴ Ibid.

¹⁵ Spooner, The Unconstitutionality of Slavery, pp. 17-18, 138.

natural right can be ascribed to the document, unless it is expressly given in legally competent terms. Competency requires explicit and unequivocal recognition of consent by the affected parties. Legitimate constitutional rules, thus, require one of two factors: the terms necessary to sanction the granted power must be consistent with natural law, or, if contrary to natural law, the power must be clearly defined or be an "inevitable implication" of a power that is consistent with natural right.¹⁶ Spooner's implication is that rules inconsistent with natural right might exist if clearly accepted by the participants in the contract. However, his natural law position gradually moves him away from the likelihood of constitutional language contrary to justice. "Justice is evidently the only principle," he concludes, "that everybody can be presumed to agree to, in the formation of government."¹⁷ Secondly, Spooner eventually concludes that the acceptance of rules contrary to justice is tantamount to a mentally incompetent act, which must be considered a null and void action by its nature.

An excellent example of the manner in which Spooner merges constitutional and natural law concerns his criticism of the Marshall Court's decision involving the power to

¹⁶ Ibid., p. 59.

¹⁷ Ibid., p. 143.

regulate commerce in Gibbons v. Ogden.¹⁸ He contends that "regulate" does not imply arbitrary control or prescriptive power over the rule-making process. Instead, he argues, "regulate" "implies the pre-existence of a rule, to which the thing regulated is made to conform."¹⁹

To regulate one's diet, for example, is not, on the one hand to starve one's self to emaciation, nor on the other, to gorge one's self with all sorts of indigestible and hurtful substances, in disregard of the natural laws of health. But it supposes the pre-existence of the natural laws of health, to which the diet is made to conform. A clock is not "regulated" when it is made to go, to stop, to go forwards . . . at the mere will or caprice of the person who may have it in hand. It is "regulated" only when it is made to conform to, to mark truly, the diurnal revolutions of the earth. These revolutions of the earth constitute the pre-existing rule, by which alone a clock can be regulated.²⁰

After the Civil War, Spooner rejects the Constitution as merely another mechanism utilized for oppression. No one, he argues, who sincerely supports the principles of justice could accept the existing government or its Constitution. Spooner divides the political order into three classifications: "Knaves," who understand justice but continue to use government for their own self-interests; "dupes," who are simply caught up on the allusions of democratic rule; and a third (unnamed) class, who are

¹⁸Gibbons v. Ogden, 9 Wheat 1; L. Ed. 23 (1824).

¹⁹Spooner, A Letter to Grover Cleveland, p. 91. (Emphasis added).

²⁰Ibid.

appreciative of the evils of government but not in a position to sacrifice to spur reform.²¹

The contractual theme, which dominates his early works, gives way to an extremely conflict-oriented interpretation of the emergence of the State. Spooner eventually concludes that "only those who have the will and the power to shoot down their fellow men are the real rulers in . . . civilized countries; for by no others will civilized men be robbed, or enslaved."²²

Government, Spooner argues, emerges and evolves as an instrument of force. "Wherever any people have advanced beyond the savage state," he concludes, "a greater or less number of them have associated and organized themselves as robbers."²³ These groups either seized accumulated property or forced continual property duties through the enslavement of the weaker factions in society.

Initially, Spooner maintains, this division between strong and weak was largely due to mere individual physical strength. Eventually, however, barbaric tribes discovered the strength of "acting in concert."²⁴ The weaker groups

²¹ Spooner, No Treason No. VI The Constitution of No Authority, pp. 11-12.

²² Ibid., p. 47.

²³ Spooner, Natural Law, p. 16.

²⁴ Spooner, No Treason No. VI The Constitution of No Authority, p. 47.

were faced with the choice of death or slavery. Forced labor gradually increased the total wealth of the society. As the standard of living increased, civilization advanced, as the society became more diffused and brute physical force became less evident. Wealth expanded, but only for the masters. With greater wealth for the masters, the means to plunder also increased. Thus, the strength of the oppressor expanded at a rate proportionally greater than the oppressed, though the overall rate of growth was created by the latter group.

Historically, the political rulers were not the actual ruling class. They were "nominal rulers," or "mere tools employed by the wealthy to rob, enslave, and (if need be) murder those who have less wealth."²⁵ The ultimate power eventually became an issue of money; "those who stand ready to furnish this money [were] the real rulers."²⁶ As wealth expanded, final power transferred from physical strength to economic strength.

To maintain their positions, these stronger factions formulated institutions to serve as security mechanisms to protect their social positions. These rulers (or ruling classes) extended their conquest and accumulation, according

²⁵ Ibid., pp. 47-48.

²⁶ Ibid., p. 47.

to Spooner, to the point that it became "necessary for them to act systematically, and cooperate with each other in holding their slaves in subjection."²⁷ Hence, the legal state emerged. Government was established to "make" laws to hold the territory, or conquest, together. Even after this evolutionary process had reached the level in which legislative and/or political concerns had emerged, Spooner recognizes no discernible difference as to the subjection of weaker factions. In both instances, the same principle had been implemented--to "hold them as property."²⁸

Over time, Spooner reasons, the "slaveholding" classes discovered that it is easier to manage slaves and also to make them more productive by extending to them

so much liberty as would throw upon [the slaves] the responsibility for their own subsistence, and yet compel them to sell their labor to the land-holding class . . . for just what the latter might choose to give them.²⁹

Thus, the slaveholders (utilizing government) granted certain "liberties" to the slaves. This process, however, did not increase the alternatives of the slave by any large degree. They were still forced to "sell their labor to the landholders in exchange for subsistence."³⁰

²⁷ Spooner, Natural Law, p. 17.

²⁸ Ibid., p. 18.

²⁹ Ibid.

³⁰ Ibid.

However, granting some economic freedoms to the oppressed classes posed a danger to landowners. The consequences of freely determined market choices could erode ruling class domination. To protect their possessions and secure position, these powerful groups turned to government mechanisms to maintain the upper hand. The result was a state-maintained robber class, who maintained land and capital monopolies on the creation of wealth. Loans or favors for monopolistic practices became "considered better investments than loans for purposes of honest industry"; the State became a more profitable mechanism than production itself.³¹ More importantly, not only did a few persons control the bulk of the wealth, but very little wealth emerged because of it being highly concentrated in only a few persons.

This re-interpretation radically restructures Spooner's view of government. No longer is government seen as an institution that occasionally oversteps its boundaries. He is led to conclude that government "is knowingly, deliberately, and willfully doing an incalculable amount of injustice" and is "a mere tool in the hands of a few ambitious, rapacious, and unprincipled men."³²

³¹ Spooner, No Treason No. VI The Constitution of No Authority, p. 49.

³² Spooner, A Letter to Grover Cleveland, pp. 5-6.

This rejection of government, in practice, does not necessarily mean its rejection in theory. In fact, Spooner does not dismiss the view that a legitimate government can exist. Legitimacy requires consent. However, his understanding of consent relies on a much stricter demonstrable standard than general Lockean social contract theory.

According to Spooner, consent requires "the separate, individual consent of every man who is required to contribute, either by taxation or personal service, to the support of the government."³³ Natural right requires individual consent; the equality of men under the laws of nature requires separate consent.

If, for example, A claims that his consent is necessary to the establishment or maintenance of government, he thereby necessarily admits that B's and every other man's rights are just as good as his own. On the other hand, if he denies that B's or any other particular man's consent is necessary, he thereby necessarily admits that neither his own, nor any other man's is necessary; and that government need not be founded on consent at all.

There is, therefore, no alternative but to say either that the separate, individual consent of every man, who is required to aid, in any way, in supporting the government, is necessary,³⁴ or that the consent of no one is necessary.

For Spooner, the implication of the Preamble to the Constitution is that the whole authority of the document

³³ Spooner, No Treason No. I, p. 11.

³⁴ Ibid.

rests on actual consent, which requires separate and individual consent. No one else is obligated to the document.

He examines in detail the numbers who actually did consent in the constitutional ratification process. Women, children, and blacks obviously had no voice. Property qualifications excluded another large portion of the population. Large numbers of qualified participants did not involve themselves in the process. Thus, Spooner concludes that the Constitution cannot be presented as having been consented to by all the people.

Moreover, those persons who originally accepted the document did not bind individuals born after its ratification. The original contract, according to Spooner, could only bind those individuals who expressly agreed to it. Furthermore, those who did consent did not bind themselves for posterity. The contract represents "merely an association during pleasure,"³⁵ and is purely a "contract between man and man."³⁶ Nothing resembling rights is transferred to the government; it gains nothing but the powers the association is willing to grant. The contract is

³⁴ Ibid.

³⁵ Spooner, No Treason No. II The Constitution, p. 5.

³⁶ Spooner, No Treason No. VI The Constitution of No Authority, p. 3.

wholly among separate individuals. As a contract, he concludes, the Constitution dies with its original signers; the privity among the numerous members ends.

As an association, accepting the contract or Constitution does not create a corporeal entity; the contract is between individual actors and does not create any collective corporation. According to Spooner, each person remains singularly free to choose or reject the contract. The association obviously then cannot be perpetual. The agreement process requires the "voluntary accession of new members."³⁷ The association cannot presume the consent of any newly arrived person. A legitimate association, in other words, requires a competent, open, and explicit agreement by each individual subject to the contract.

Spoooner also contends that any binding contracts "of the important class" must be written, signed, and delivered.³⁸ Signatures on contracts, he argues, is "a general principle of law and reason."³⁹ Once signed, the

³⁷ Ibid., p. 6.

³⁸ Ibid., p. 20. Spooner cites a 1677 English statute re-enacted in many states that declares "that no action shall be brought to enforce contracts of the more important class, unless they are put in writing, and signed by the parties to be held chargeable upon them." He does not define "important" though he obviously includes the Constitution in that class.

³⁹ Ibid., p. 18.

contract must be delivered or acknowledged by all parties involved. However, Spooner concludes, the Constitution was introduced by men now dead, was never signed or acknowledged by the individuals to which the agreement applies, and is agreed upon by practically no one.

Spooner rejects the argument that consent is implied for the contract by specific political actions. He is not comfortable with American mechanisms that arguably demonstrate individual consent. Voting, for example, is generally an act, he maintains, to minimize oppression, not demonstrate consent.

To take a man's property without his consent and then infer his consent because he attempts, by voting, to prevent that property from being used to his injury, is a very insufficient⁴⁰ proof of his consent to support the Constitution.

Voting cannot signify support for the government over time. By their nature, elections may only be held in certain intervals. Thus, actions taken between elections are not clearly placed before the parties of the contract.

Furthermore, voting cannot be equated to consent even in the present. "Under peril of weighty punishment," individuals are driven to vote to maximize their benefits (or minimize their costs) within the political structure.⁴¹ The composition of a structure that may or may not be

⁴⁰ Ibid., p. 9.

⁴¹ Ibid.

satisfactory to the voting individual undermines a demonstration of consent in that person's action.

Even assuming that voting can be equated with continual consent, all individuals cannot be said to have consented through elections. Not all persons actually vote. Some persons are not allowed to vote (particularly in Spooner's era). Very few vote consistently over time. Some vote for losing candidates. Choices are limited by specific structures, rules, or interests. Spooner concludes that voting, to be equated with a consent to the existing contract, must be a "perfectly voluntary" act and unanimously accepted.⁴² Obviously, voting is not perfectly voluntary; thus, it fails to serve as a pledge of support by persons or as a gauge of legitimacy.

For these same reasons, Spooner concludes that the payment of taxes cannot be viewed as a gauge of consent. Governments supported by compulsory taxation act no more legitimately, he argues, than a common individual criminal.

The fact is that the government, like a highwayman, says to a man: your money, or your life. And many, if not most, taxes are paid under the compulsion of that threat.

The government does not, indeed, waylay a man in a lonely place, spring upon him from the roadside, and, holding a pistol to his head, proceed to rifle his pockets. But the robbery is none the less a robbery on that account; and if far more dastardly and shameful.

⁴²Ibid., p. 7.

The highwayman takes solely upon himself the responsibility, danger, and crime of his own act. He does not pretend that he has any rightful claim to your money, or that he intends to use of for your own benefit . . . He has not acquired impudence enough to profess to be merely a "protector," and that he takes men's money against their will, merely to enable him to protect those infatuated travellers, who feel perfectly able to protect themselves, or do not appreciate his peculiar system of protection. . . . Furthermore, having taken your money, he leaves you, as you wish him to do, . . . In short, he does not, in addition to robbing you, attempt to make you either his dupe or his slave.⁴³

Taxation, Spooner concludes, essentially grants to illegitimate (one not consented to) government the control of a polity's productive capabilities. In fact, he argues, all political power "rests practically upon this matter of money."⁴⁴ To involuntarily pay taxes to a government "puts into its hand the sword" to be used against the supplier.⁴⁵ Moreover, these ill-received gains become the capital utilized to advance oppression even further.

If any man's money can be taken by a so-called government, without his own personal consent, all his other rights are taken with it; for with his money the government can, and will, hire soldiers to stand over him, compel him to submit to its arbitrary will, and kill him if he resists.⁴⁶

It is absurd, Spooner concludes, to argue that a tax in which a person does not voluntarily pay can be utilized as a

⁴³ Ibid., pp. 12-13.

⁴⁴ Ibid., p. 16.

⁴⁵ Ibid.

⁴⁶ Spooner, A Letter to Grover Cleveland, p. 10.

protective service. To be a protection, it must be voluntarily accepted; it is illogical for one to protect himself against his own will. If compulsion is necessary in the payment of dues or taxes to the association, then the service cannot be seen as voluntarily administered. Furthermore, it cannot be utilized as a gauge of consent, which requires the individual's voluntary acceptance.

Since neither the act of voting nor taxation can be traced directly to individual agents or principals, one is left with only a collective understanding of consent and, more importantly, liability. No one, according to Spooner, can be held specifically liable for a governmental action because individual accountability becomes corporeal accountability. Actions are passed and individuals suffer unjustly. However, as the political structure exists, no person or persons can be individually held accountable for these injuries. In essence, personal responsibility for injury due to governmental action disappears. No matter how a specific policy may injure specific persons, the nature of the American government protects both the persons who make up the association (citizens who support the oppressive policy) and the government who acts as the agent for the association (policy makers who enact the policy).

No government can claim to have the voluntary support of its association, Spooner contends, "until it be

distinctly shown who its voluntary supporters are."⁴⁷ Officials who initiate governmental actions (rules, laws, etc.) do not take individual responsibility for injurious consequences. Moreover, in many instances, he argues, these officials do not even make themselves known as to their support of the injurious action.

Voting, according to Spooner, represents the clearest example of this problem concerning accountability. Three men may vote to deprive a fourth man of basic individual rights. Likewise, they may elect an agent who does the same type of injurious act. However, if they (the three men) act in corporation to create injury, either directly or through an agent, no one can determine individual liability. If a body of men proceed to directly inflict injury through the political process on another person or persons, the accountability for that action that emerges from the rule-making decision cannot be determined. No one knows who voted for what choice. Therefore, he concludes, no body of men can authorize a government agent to inflict injury, "unless they do it in so open and authentic a manner as to make themselves personally responsible for his acts."⁴⁸

According to Spooner, if the agent violates the

⁴⁷ Spooner, No Treason No. VI The Constitution of No Authority, p. 9.

⁴⁸ Ibid., p. 28.

contract without the support of the association's members, he should be liable. However, if the agent acts contrary to natural law with the support (as founded by the society's rule-determining process) of the principals, difficult questions arise. In the American situation, no agent has any clear knowledge as to which of the principals supported him for his actions. All he knows is that one collective body may have supported one action, while another collection might have backed him on another decision. Who these groups entail cannot be discerned.

The American electoral system, argues Spooner, contributes to this problem of individual accountability. According to him, this problem is largely due to the utilization of the secret ballot.

The secret ballot makes a secret government; and a secret government is a secret band of robbers and murderers. Open despotism is better than this. The single despot stands out in the face of all men, and says: I am the State: My will is law: I am your master: I take the responsibility of my acts . . . If any one denies my right, let him try conclusions with me.

But a secret government is little less than a government of assassins. Under it, a man knows not who his tyrants are, until they have struck, and perhaps not then. He may guess, beforehand, as to some of his immediate neighbors. But he really knows nothing.⁴⁹

If one even accepts that voting can constitute consent, the secret ballot does not allow the association to know who

⁴⁹ Ibid., p. 29.

votes for what rule or agent. Consent requires the separate, individual acceptance of the contract. Furthermore, legitimacy requires an open declaration of each person as to their political or legal activities. Individuals must assume responsibility for their own decisions and actions. In other words, no contract that does not recognize each individual as a necessary entity in the formation and continuation of the agreement and the establishment of accountability for injurious actions cannot legitimately exist.

Accordingly, Spooner concludes, the payment of taxes cannot meet the necessary requisites of accountability. A taxpayer cannot know what agent he is supporting, or for what purposes his monies are expended. Again, government is a corporate body. All members of the association submit dues en masse, without any clear understanding of individual demands concerning specific services. Likewise, outputs by the government are manipulated by collective decision-making processes so as to leave shrouded what agents support what expenditures.

Thus, as with the determination of consent, neither voting nor paying taxes, according to Spooner, can represent a proper gauge in determining the legitimacy of the contract. He, in fact, rejects any contract that does not require and obligate separate individual parties. Any

association must consist of known persons who can prove, by legitimate and reasonable evidence, their membership. Associations existing under the cloak of unidentifiable consent which a collective entity creates are not justifiable.

In his later writings, Spooner further extends his argument concerning consent. He contends that the Constitution cannot be legally binding because it would require a mentally incompetent act for an individual to consider giving up all natural rights to form the government. Such a contract, he argues, must be considered void; one cannot enter into a binding contract which surrenders inalienable rights or gives up one's own self-dominion. Yet, he maintains, this process is the nature by which government acts.

[Our government] rests upon the false, ridiculous, and utterly groundless assumption, that fifty millions of people not only could voluntarily surrender, but actually have voluntarily surrendered, all their natural rights, as human beings, into the custody of some four hundred men, called lawmakers, judges, etc. who are to be held utterly irresponsible for the disposal they may make of them. . . . To suppose that any one of all these ten millions of male adults would voluntarily surrender a single one of all his natural, inherent, inalienable rights into the hands of irresponsible men, is an absurdity; because, first, he has no power to do so, any contract he may make for that purpose being absurd, and necessarily void; and, secondly, because he can have no rational motive for doing so. To suppose him to do so, is to suppose him to be an idiot, incapable of making any rational and obligatory contract. It is to suppose he would

voluntarily give away everything in life that was of value to himself, and get nothing in return.⁵⁰

Spooner rejects the American Constitution as an illegal and illegitimate document of association. The individual must always remain the sovereign of his individual rights. He may if desired entrust an association, through the instrument of government, with certain powers to allow a more just and broader enjoyment of liberty. That intent is the single purpose of the contractual agreement, though. Therefore, unless clearly demonstrated separate, individual consent exists for the contract, the purpose of the agreement is violated.

In addition, the agreement must establish a clear definition of legal liability to represent a legitimate contract. Otherwise, the accountability of either the principals or the agents concerning any political action of the association cannot be determined and the liability of specific injuries thereof cannot be assessed.

Finally, since the single naturally justifiable purpose of the association is to protect or secure individual natural rights, any contract espousing contrary ends is, by its nature, an illegal agreement which competent individuals would not accept. If such a contract exists, it is based either on force or upon the ignorance of the supporters.

⁵⁰ Spooner, A Letter to Grover Cleveland, pp. 12-13.

Spooner argues for the former case. Governments established on force violate the principles of natural justice and are illegitimate bodies. Unfortunately, existing governments operate on the premise of force. However, a free and naturally acceptable association must rest wholly and absolutely on the voluntary support of each and every individual.

No middle ground is possible on this subject. Either "taxation without consent is robbery," or it is not. If it is not, then any number of men, who choose, may at any time associate; call themselves a government; assume absolute authority over all weaker than themselves; plunder them at will; and kill them if they resist. If, on the other hand, "taxation without consent is robbery," it necessarily follows that every man who has not consented to be taxed, has the same natural right to defend his property against a taxgatherer, that he has to defend against a highwayman.⁵¹

CRITICAL ANALYSIS OF CHAPTER 3

In his No Treason series, Spooner expends a great amount of effort exploring the nature of consent. However, accepting the implications of Chapter 2 concerning the science of justice and its effect on the role of the individual, consent cannot be a required prerequisite for a legitimate state. If one formulates a system that includes

⁵¹ Spooner, No Treason No. II The Constitution, p. 13.

individual duties, consent cannot be a pillar of legitimacy, no matter how individualistic one foresees the conclusions of justice.

The self-dominion of the individual could be overruled by justice. For example, an individual could refuse to consent to a political structure that finds murder illegal. In this case, both the non-coercion principle and Spooner's science of justice would hold the person responsible for his actions.

This example, however, is clearly an act of aggression by one individual against another. In other words, the responsibility the individual is burdened with as a murderer is initiated by his own actions. However, what occurs when duties are introduced into a system of justice? What if a person, for example, refuses to consent to an association that would require him to come to the aid of other persons whose rights are being violated but of which he had no involvement? In Spooner's system, the requirement of justice would naturally obligate the individual to respond; moreover, justice would overrule any consideration of non-coercion or consent.

Therefore, it is not difficult for Spooner to argue that one can withdraw his consent from the association any time he desires. If the government/association of which one is involved violates justice, any person may exit the

agreement; if it enforces unjust laws, these rules hold no obligation. Thus, consent is not a necessary requisite.⁵² Individual obligation remains the same whether a person is in a state of nature or in a civil society. Obligation is based solely on natural law and cannot be restructured or reformed by Man.

Therefore, Spooner's discussion of consent is not intended to create an ethical foundation, but it is to serve as a critical attack of theorists who do argue consent is necessary and, most importantly, contend that it exists in America. Spooner enters an alternative structure to demonstrate its fallacies, or, as he explains in his use of constitutional arguments, he utilizes the document on "those points wherein it is right." For those willing to argue that consent created the contract, which created a legitimate arrangement, Spooner demonstrates the failures of presuming consent does (did) exist.⁵³

⁵²Of course, this conclusion does not solve Spooner's problem concerning what constitutes justice.

⁵³This argument is not concluding that consent is not important in Spooner's own system. His radically individualistic conclusions necessarily require a strong consensual factor among persons. It, however, represents to Spooner only a means by which legitimacy is exhibited; it may not always represent the underlying mechanism that determines legitimate activity. Buried in this argument is Spooner's belief that justice is a never-changing and commonly understood science. Understanding the rules of justice, man would abide by them. Therefore, in Spooner's thought is the implied view that justice and consent are not going to be incompatible.

Spooner raises several questions concerning the nature of consent that remain unanswered. A structure built on individual self-dominion requires individual consent. Consent cannot be a one-time action on the part of a few persons representing an undefined collective. It must be the active, individual, and separate consent of each person concerned with the political results. The obligation to a legal code cannot be reconciled with the idea of consent unless one acts of his own free choice. Spooner's conceptualization of "free" requires an unbridled individualistic conclusion. Otherwise, consent becomes passive acceptance or even resignation--if an individual obeys, it is presumed he consents. Yet this conclusion flips consent on its head. Governments, utilizing the threat or use of force, can pass legislation and assume all individuals "consent" when they do not respond by revolution.

Voting and payment of taxes are both layered in this structure. Arguing that participation in the inputs of an existing government constitutes consent ignores forces that may, in fact, compel involvement against an individual's own will. It assumes that these consensual components are not dictated by more underlying restrictive components. In other words, the "condition of the possibility of exercising

power is not the same thing as the condition of the right to possess it."⁵⁴

The separation between government's ability to acquire acceptance or submissal to its activities and an individual's explicit consent to its activities may be quite extensive.⁵⁵ This zone of oppression permitted to government between these components rests upon superior power in force and allows it to violate its legitimate parameters of activity without fear of reprisal. Further examined in Chapter 4, this problem is a serious one in the liberal American structure, which creates the evolution of a political structure that gradually expands the State and reduces individual self-dominion.

An even more serious condition is the lack of a political structure that holds individual actors strictly liable or accountable for their own acts. Obviously, if those persons instituting unjust laws are not to be held liable for their actions, the fear of reprisal for their injurious actions is practically non-existent.⁵⁶ The more

⁵⁴J.P. Plamenatz, Consent, Freedom and Political Obligation (London: Oxford University Press, 1938), p. 20.

⁵⁵Obviously, in this circumstance, when Spooner refers to "government," he means those individuals that utilize it to gain more than is permitted by natural right.

⁵⁶Spooner apparently is only discussing the intended consequences of legislation and the need for accountability in those instances. Holding lawmakers liable for unintended consequences of their actions would create extreme fear for any action at all.

powerful forces pass the laws and the weaker forces accept the agenda as it is created, but suffer a loss of justice all the while.

Spooner is again faced with a serious problem concerning the nature of force in politics. Can rules "against nature" be eliminated when the most powerful forces in society desire them? Spooner (and the individualistic) interpretation of accountability requires a purely atomistic structure, where each action must be traceable back to individuals who can be held liable for that activity. Obviously, accountability as Spooner defines it eliminates practically all government. Unless practically everyone were willing to accept a rule, the rule would not exist because of a fear of reprisal for injurious results created by the rule. An extremely narrow role would exist for government. However, this latter statement alone is not an argument against his conclusions.⁵⁷

The corporeal or collective configuration that permeates the existing political structures denies the existence of accountability. Unknown persons vote for candidates that create, collectively, laws and agencies affecting persons within the polity. Elected officials cannot determine who or what they represent, if, in fact,

⁵⁷ This subject will be more fully explored in Chapter 4.

they do serve as agents to their constituents rather than self-interested actors. Likewise, taxes are accumulated in throng, divided with no consideration of the taxpayers' intent for the funds, and redistributed by government officials who do not, cannot, and are not required to, know the intent of the taxes or where the funds originate. Hence, Spooner's rejection of the secret ballot takes on more value than one might originally presume if one argues that accountability is a necessary component of American government. Secrecy at the ballot box is the first step in guaranteeing that no standard of strict liability for unjust political activity can ever exist.

The implications of Spooner's argument are clear. To maintain justice, individual natural rights must be protected. The protection of these rights requires that those oppressing them be identifiable and punishable for their actions. However, if persons can hide behind a hazy institutional veil of collective liability without the fear of retribution, there is little likelihood of natural right being protected. In fact, such a system stimulates the usage of force rather than the implementation of justice in determining rules. Quite clearly, the system cannot claim to exhibit an accountable political structure.

Spooner's observation of history requires that he conclude that force, and not right, produced the rise of the State. Apparently independent of European influence, he

presents a well-developed argument that explains the rise of the State through conquest.

Spooner's argument on government as a mechanism of force is very similar to a later German writer, Franz Oppenheimer.⁵⁸ Since Oppenheimer's work is more thoroughly developed, it is helpful to explore the theory in light of both persons' contributions.

Oppenheimer divides the evolution of society into two processes, "economic means" and "political means." All persons, he argues, require social interaction. The economic interaction consists of voluntary exchange and cooperative behavior. The political means consist of domination and force.

The crucial point in both theorists' work involves the leap from non-State to State--the point in which voluntarism begins to be subsumed by political means. The general equality produced by the economic structure gives way as force creates inequality. This utilization of force begins a long process of centralization of warring groups, both externally and internally, through conquest. Oppenheimer's development follows very closely with Spooner's development: conquest, slavery, integration of society and territorial union between master and slave, the rise of taxation, and

⁵⁸Franz Oppenheimer, The State (1914; rpt. New York: Free Life Editions, 1975).

the assumption by the rulers of the common law power to arbitrate. This process establishes the rudiments of the State. While habits, usages, and institutions of government might change, both Oppenheimer and Spooner recognize that the political means of determining social interaction still remain. The nature of conquest may change, but it does not disappear.

As far as Spooner's interpretation of this conflict is concerned, at least two problems emerge. First of all, as civilization advances, it appears that the use of force is softening--that freedoms for all classes are expanding and conquest is less utilized. Spooner apparently would not accept this contention--simply because force is more subtle and more difficult to determine does not lessen its existence. In fact, what the constitutional state provides is an ability to hide or shade injustice. Furthermore, any freedoms that do exist are not dependent on natural right but on the whims of government and the classes/individuals that control it.

Secondly, the picture Spooner paints of the State in this evolution is one of an active and dominating nature. Those persons controlling government are apparently the same ones dictating the evolution of society. Yet, he concludes that change can occur and even expects change. Spooner's flaw, ironically, is that in developing his radically unfavorable analysis of the State, he reduces the role of

rational behavior as it relates to the determination of justice. Conquest is a large part of the evolution of government. However, the search for justice has also been a major part in this evolution. For example, the liberal order initially was built upon at least a partial restatement of Oppenheimer's economic means. The two processes Oppenheimer develops have co-existed in different proportions at different intervals of civilization. Spooner's fear is that the political process will subsume economic voluntarism. In fact, accepting Spooner's observations, if they cannot exist together and politics evolve to dominate voluntarism, then his own system fails as an impossible and impractical utopian scheme.

. However, is Spooner's "government" possible? One might argue that in reality it is not a government at all. Unfortunately, the possibility of a government as Spooner envisions depends on an almost wholly undeveloped system of justice and, more importantly, on individual consent to the system. Suppose an individual refuses to join an association and then violates a rule of that collective. If the crime is committed against an individual in the association, what occurs? What enforces or establishes justice for a conflict of two persons outside an association? Can one depend on Man's acceptance of justice to guide him, even without an impartial "common judge"?

Spooner never really separates the state of nature and

the civil state, relying on an unchanging natural law. Yet what determines these rules and their acceptance and enforcement? He rejects geographical homogeneity, the political process, and, in effect, the community. Unless the extremely positive assumptions he maintains concerning the nature of Man hold, it seems extremely unlikely any government could withstand his requirements. Yet, his observations of Man demonstrate anything but a positive and good nature.

The problem in Spooner's system is not so much that it would not work, but that it would not be implemented. He recognizes that some form of social organization and a mechanism of authority necessarily must exist. However, he creates an alternative institutional structure founded wholly on the protection of natural right. Without a clear understanding of justice, what enforces and discerns proper rules?

Spooner's greatest fear is the uncontrolled State. The utilization of governmental institutions provides persons the most organized avenue to aggression and attainment of privilege at the expense of other individuals. If allowed, he surmises, personal self-interests can dominate the liberal social order. His overriding assumption and argument is that natural justice exists and that individuals can find self-dominion and full enjoyment of natural rights. However, this requires that concepts such as consent and

accountability must be maintained. If they do not exist, liberalism cannot maintain its hope of freedom or justice.

Liberalism again relies on the feasibility of Spooner's arguments for its ultimate survival. If individual freedom is to be maintained, so must the consent and accountability factors. Otherwise, the structure is swallowed by a process of force. One of Spooner's major contributions to the prevention of this process, as will be seen in Chapter 4, is the modification of the institution of trial by jury.

CHAPTER 4

TRIAL BY JURY: THE MEANS TO PROTECTING INDIVIDUAL NATURAL RIGHTS

Spooner vehemently denies the need for legislatures in structuring the political order. Yet he never dismisses the necessity of law. Natural laws, when required to settle conflicts, are found principles. Clearly, Spooner considers these natural principles more likely to be enunciated by a judicial process rather than a legislative one. Either a legislature will "introduce labor and obscurity" by pronouncing already understood principles of justice or they will create positive denials of individual rights.¹ The implication is plainly that one institution, the court, is much better suited to find law than the legislative process.

Spooner builds a bridge between, first, Lockean liberalism, which relies on some mixture of majoritarian rule in discovering law, and, second, anarchism which in its purest form rejects law as an instrument of coercion by one part of society against another. Numbers correlate to justice only when all agree in the decision; otherwise, too great of an opportunity exists for the many to dominate the few. Less than whole or practically unanimous consent very likely is a rule based on personal interests, not natural

¹ Spooner, An Essay on the Trial by Jury, p. 130.

laws. Spooner's effort is to save the rule-based liberal structure by eliminating its most undesirable features.

Unlike Locke, Spooner has the luxury of observing liberal society in practice. He rejects majority rule as an unacceptable or illegitimate means of maintaining the social order. "The will of the majority," he argues, is the "last lurking place of tyranny at the present day."² Individual rights are derived from nature, not man's interests; therefore, any apparatus which is utilized that might disturb these equal freedoms should be avoided.

There is no particle of truth in the notion that the majority have a right to rule, or to exercise arbitrary power over, the minority, simply because the former are more numerous than the latter. Two men have no more natural right to rule one, than one has to rule two. . . . The relative numbers of the opposing parties have nothing to do with the question of right. And no more tyrannical principle was ever avowed, than that the will of the majority ought to have the force of law, without regard to its justice. . . . Such a doctrine is only another form of the doctrine that might makes right. When two men meet one upon the highway, or in the wilderness, have they a right to dispose of his life, liberty, or property at their pleasure, simply because they are the more numerous party? . . . Or, because they are more numerous than he, is he bound to presume that they are governed only by superior wisdom, and the principles of justice, and by no selfish passion that can lead them to do him a wrong?³

The flaws of majority rule, Spooner contends, prevent it from being a legitimate mechanism for determining social

²Ibid., p. 206.

³Ibid., p. 207.

rules. First of all, any rule that presumes to narrow men's freedom should not be determined on "any ground whatever short of certainly beyond a reasonable doubt."⁴ His argument presents a clear implication--no matter what governmental institution is utilized in establishing rules of order, these rules must be acceptable to all who are to be governed by the rules, at least to the point that a representative institution can indicate the whole society's demands.

Secondly, Spooner refuses to recognize a significant correlation between numbers of individuals and the likelihood that these persons will competently determine the nature of liberty in the association. In his view, greater numbers provide "at best only a slight probability that such party was on the side of justice."⁵

In fact, reliance on a majority principle likely creates the incentive for persons not to seek justice. A majoritarian structure creates "passions" in men, Spooner maintains, to "pervert their judgments, and very likely to corrupt their motives."⁶ When governments rely on numbers rather than justice to determine rules, they are "at once converted into one great gambling establishment; where

⁴Ibid., p. 208. (Emphasis added).

⁵Ibid.

⁶Ibid., pp. 208-209.

all the rights of men are the stakes."⁷ Dominant power, rather than reason, moves the polity's rules structure. Majority rule rewards men for relying on internal characteristics not conducive to finding justice. Rather than maintaining the association on only the simple and commonly conceived principles of justice, men are rewarded by scheming, in the power of numbers, to satisfy selfish interests, at the expense of weaker individuals.

Eventually, Spooner argues, this conflictual process drives men to associate in numbers in a competitive process that rewards the most powerful group or majority. As long as man "refuses to be a slave," he contends, this conflict will continue under politically motivated rule.⁸ Two bodies of men emerge--masters and slaves. In fact, he concludes, it is very improbable that any society ever wholly agreed to majority rule. Only the "most ignorant, superstitious, timid, dependent, servile, and corrupt portions of the people" would accept majority rule as a means of manipulating the political order.⁹ Even if majority rule was accepted and applied by a polity, it in no way demonstrates a legitimate government.

⁷ Ibid., p. 209.

⁸ Spooner, No Treason No. I, pp. 8-9.

⁹ Ibid., p. 8.

What do they prove? Nothing but the tyranny and corruption of the very governments that have reduced so large portions to their present ignorance, servility, degradation, and corruption . . . best illustrated in the simple fact that they do sustain the governments that have so oppressed, degraded, and corrupted them. . . . The mere fact, therefore, that a government chances to be sustained by a majority, of itself proves nothing that is necessary to be proved, in order to know whether such a government should be sustained, or not.

Discussing specifically the legal process, Spooner predicts the outcome of a political process void of standards of justice which highlights the power struggle inherent in majority rule.

This system of combination and conspiracy would go on, until at length whole states and a whole nation would become divided into two great litigating parties, each party composed of several smaller bodies, having their separate suits, but all confederating for the purpose of making up the necessary majority in each case. The individuals composing each of these two great bodies, would at length become so accustomed to acting together, and so well acquainted with each others' fidelity for success, that they would become organized as permanent associations; bound together by that kind of honor that prevails among thieves; and pledged by all their interests, sympathies, and animosities to mutual fidelity, and to unceasing hostility to their opponents; and exerting all their arts and all their resources of threats, injuries, promises, and bribes, to drive or seduce from the other party enough to enable their own to retain or acquire such a majority as would be necessary to gain their own suits, and defeat the suits of their opponents.

The administration of justice becomes no more than a

¹⁰ Ibid., pp. 8-9.

¹¹ Spooner, An Essay on the Trial by Jury, p. 211.

process of power politics that determines the allocation of "rights" based on a generally rule-less process. Natural right is replaced by utilization of force. Spooner argues that natural rights must remain above any conflictual process. To submit to majority rule without this clearly defined and determined preference of human rights over human will results, in Spooner's view, in "unconditional submission" which is "usually the last act of one who confesses himself subdued and enslaved."¹² While he recognizes that a voluntary association may grant to some portion of the population "the right to use some limited discretion" as a means to an end, the "ends themselves to be accomplished are always precisely defined" and do not extend power beyond what each person would voluntarily consent (i.e., natural law).¹³

A just government must have the means to protect weaker portions of the association. The stronger parties in a polity, Spooner reasons, "are free by virtue of their superior strength."¹⁴ The essential function of any government is to protect minority rights. Legally or institutionally, this protection requires "a veto upon the acts of the majority."¹⁵

¹² Ibid., p. 212.

¹³ Ibid., pp. 130-131.

¹⁴ Ibid., p. 215.

¹⁵ Ibid. (Emphasis added).

To rely solely on legislative processes protects only the stronger parties. Without some sort of legally mandated veto power for minority factions, these weaker groups have no means of preventing oppressive acts. Spooner is not satisfied with the checking barriers that are constitutionally built into the three branches of government. Hence, he introduces his trial by jury as an institution, separate of government and the stronger factions that seek to utilize its coercive functions, to protect, equally, individual rights.

Spooner refers to trial by jury as "the palladium of liberty."¹⁶ He views it as an institution that maintains a ruled order without the dangers of turning the rule-making process completely over to the government. Trial by country, as he referred to jury trial, represents perhaps the most direct means of personal control of government that still can be mandated through an established institution.

Spooner's divergent interpretation of trial by jury is based on a simple premise. Anglo-American criminal law establishes the duties of a jury: to judge the facts of the case, to interpret the law, and to establish the moral intent of the accused. However, tracing common law intent back prior to the Magna Carta in 1215, Spooner argues that

¹⁶ Spooner, Illegality of the Trial of John W. Webster, p. 12. This is not a phrase Spooner originates. Apparently, it evolved from early English common law.

originally another interpretation of trial by jury was utilized.¹⁷ In his view, there is another crucial function of a trial jury in a criminal case.

It is also their right, and their primary and paramount duty, to judge of the justice of the law, and to hold all laws invalid, that are, in their opinion, unjust or oppressive, and all persons guiltless in violating, or resisting the execution of, such laws.¹⁸

Trial by jury, Spooner contends, is intended as a "barrier against the tyranny and oppression of the government."¹⁹ However, if the government can dictate the process so as to prevent the jury from performing specific functions, it can maintain the power to alter the effects of all the other functions. The John Webster case, mentioned in Chapter 1, presents an excellent example of this danger. By refusing jury seats because of government-imposed rules, the government superseded "the people." In other words, if the law itself is above the judgment of the jury, government can determine the result of the case by establishing the parameters by which jurors are allowed to judge.

¹⁷This thesis will not explore Spooner's lengthy discussions concerning the history of trial by jury. This research is concerned with examining Spooner's institution as a feasible alternative to the contemporary political structure. Those persons interested in his historical analysis should examine: Spooner, An Essay on the Trial by Jury, pp. 20-205.

¹⁸Ibid., p. 5.

¹⁹Ibid.

The original jury trial, Spooner argues, was a "trial per pais," or trial by country. These proceedings were completely separated from government intrusion, as the jury maintained control of all judicial functions. He maintains that there was a conscious purpose in establishing juries in this manner.

The object of this trial 'by the country,' or by the people, in preference to a trial by the government, is to guard against every species of oppression by the government. In order to effect this end, it is indispensable that the people, or 'the country,' judge of and determine their own liberties against the government; instead of the government's judging of and determining its own powers over the people. How is it possible that juries can do anything to protect the liberties of the people against the government, if they are not allowed to determine what those liberties are?²⁰

To unequivocally grant any portion of the people's power to absolutely determine the parameters of an association's liberties is tantamount to giving government absolute exercise of power. However, if all portions of the judicial process remains with the jurors, representing the people, then they are free to "retain all the liberties they wish to enjoy."²¹ Government serves merely as the instrument utilized to express the level of freedom the whole association desires.

²⁰ Ibid., p. 6.

²¹ Ibid.

Spooner does not necessarily link this expressed will to the absolute standards of natural law. However, he argues, though the manifestation of trial by country by the people "may be theoretically imperfect, it nevertheless corresponds to their highest notions of freedom."²² The implication, however, is that this institution presents these commonly understood principles of natural law an avenue of social application.

Spooner outlines his conception of trial by jury in a clear manner. The jurors are to be chosen from the general body of the association, either by lot or "some process that precludes any previous knowledge, choice, selection of them, on the part of the government."²³ Whatever means utilized, the jury should represent a "fair epitome of the country."²⁴

These twelve jurors represent the country in the specific proceeding. Any decision requires the unanimous consent of all members. Since unanimity would be required, no conviction nor law could exist except by the full consent of a jury representing the country. Over time, government could maintain no powers except those expressly granted and maintained judicially by the people.

²²Ibid., p. 16.

²³Ibid., p. 6.

²⁴Ibid., p. 7.

For trial by jury to maintain this power, it must be the final judge in all the functions of a trial.

If the government may dictate to the jury what laws they are to enforce, it is no longer a 'trial by the country' but a trial by the government; because the jury then try the accused, not by any standard of their own--not by their own judgments of their rightful liberties--but by a standard dictated to them by the government. And the standard, thus dictated by the government, becomes the measure of the people's liberties.²⁵

Thus, Spooner's trial by jury serves two vital functions. First of all, it leaves to the people the final power to judge conflicts between individuals in the association. It is a trial by peers in the purest sense; all factors in the final determination of the verdict rest with the jury. At no point can government arbitrarily interfere with the judgment.

Secondly, and more importantly, trial by jury provides a check of the last resort against unjust or undesired legislation. Spooner finds nothing extraordinary in requiring all government enactments to "pass the ordeal" of "separate tribunals" before becoming law.²⁶ The Constitution, he argues, provides several inter-governmental checks; a free jury system would only require one more external check.

²⁵Ibid., pp. 8-9.

²⁶Ibid., p. 11.

This internal-external distinction concerning a barrier to government action is a crucial difference to Spooner. Trial by jury, he argues, is much more than merely the people "arrayed against themselves."²⁷ No guarantee exists that government, left to the internal checks that exist, will always represent the whole society. Further, as a government, it is merely an agent of the people. Thus, it is not entitled to act with any authority not accepted by the association. At all times, he contends, government should be required to "submit all their enactments to the judgment of a tribunal more fairly representing the whole people," should a conflict arise.²⁸ While these internal checks may lessen the efficiency of government tyranny, without some check outside its control, the State can maintain essentially absolute power. In other words, if a government can make laws absolutely binding on the people, the destruction of liberty, as the people wish it defined, knows no limits. Without real external checks, absolute authority as to the definition of the limits of state action lie with the government. The State is left free to determine the parameters of freedom by imposition of rules that may or may not be acceptable to the general public.

Obviously, Spooner is not willing to rely on checks and

²⁷ Ibid., p. 12.

²⁸ Ibid.

balances to protect individual liberty. Neither does he consider suffrage any more effective. First of all, it is only exercised occasionally. Actions between elections still to some degree ignore the constituency. "A man is none the less a slave," he reasons, "because he is allowed to choose a new master once in a term of years."²⁹ One has no guarantee that a new election of new representatives will produce any more desirable results.

If it can be said that the second body may be chosen for their integrity, the answer is, that the first were chosen for that very reason, and yet proved tyrants. The second will be exposed to the same temptations as the first, and will be just as likely to prove tyrannical.³⁰

Spooner relates the historical common law process with the practical search for nature's laws. While he does not directly equate the two sets of law, he does view trial by jury as a reliable mechanism for finding the objective principles of justice. The similarity of the two demonstrates "beautiful and impressive illustrations of the truth that men's minds," even in a relatively uncivilized age, "had clear and coincident ideas of the elementary principles, and the paramount obligations of justice."³¹

²⁹ Spooner, No Treason No. VI The Constitution of No Authority, p. 24.

³⁰ Spooner, An Essay on the Trial by Jury, p. 13.

³¹ Ibid., p. 85.

Spooner answers numerous objections he feels would likely be raised against trial by country. First of all, this institution vastly shrinks the role of the judge in a court proceeding. He recognizes only two important, though administrative, functions for the judge. First of all, he should serve as an expert on the law, "to assist and enlighten the jurors."³² Secondly, he should act as an administrative agent, handling any necessary appellate or routine judicial action.

A second more serious objection is that jurors do not have the expertise in the law, particularly concerning complex issues. Spooner, first of all, does not eliminate the judge. If legal clarity becomes a problem, jurors may at any time turn to the judge for assistance. Furthermore, granting the jury full final control of the trial, he argues, better guarantees a fair tribunal by almost completely eliminating the opportunity of corruption or bias caused by legislatures (through domination of the courts) or participants in the case (through corrupt practices concerning established judges). In other words, a proper trial is more concerned with fairness or justice rather than legal expertise.

However, this process grants a vast amount of power to juries who likely are ignorant in the ways of the law. The

³²Ibid., p. 123.

judge as advisor cannot guarantee jury comprehension of complex legal rules or intents. Trial by jury, Spooner argues, does not require a jury's decision to necessarily be an absolute judgment. The jury is a protective device for individual freedom; it "does not provide that the judgments of the peers shall be executed; but only that no other than their judgment shall ever be executed."³³ The jury's decision is absolute only in instances as it proclaims what cannot be done by government, not what can be done. The absolute power the jury maintains is a utilization of an "absolute veto" against government intrusions of individual rights. Government, according to Spooner, is not required to do all the jury recommends in any case. They may refuse to act to the extent of the jury's recommendation; however, it may go no further than the jury allows.

Thus, in criminal trials, Spooner concludes, new proceedings may be granted indefinitely until both the court and the jury agree, if the court is unwilling to carry out a jury sentence it considers too harsh. If agreement cannot be reached, however, juries must finally prevail, according to Spooner, as they are more representative of the will of the country.

One may argue that these juries will never be able to reach a unanimous decision. In Spooner's view, this is a

³³Ibid., p. 125.

highly unlikely problem. It is highly unusual, he contends, that a jury would disagree "on matters of natural law, or abstract justice."³⁴ Any conflict that could occur would almost always concern matters of fact, not justice. Furthermore, adherence to trial by jury would severely restructure the trial setting as it presently exists.

The disagreement of courts on matters of law, afford little or no evidence that juries would also disagree on matters of law--that is, of justice; because the disagreements of courts are generally on matters of legislation, and not on those principles of abstract justice³⁵, by which the minds of men are nearly unanimous.

If legislation, which, according to Spooner, is very likely contrary to justice, is discarded as a variable in the jury's decision-making process, he argues, jurors would have no difficulty in reaching a unanimous decision concerning the right and wrong of the case. It is these man-made laws, unjust and contradictory, that create divisions in men's opinions. If these impositions were removed from a jury's variables for making a decision, according to Spooner, there would be little difficulty in finding the justice in any conflict settlement. However, if some disagreement still remains, then no provision concerning justice is applicable. A just solution is left

³⁴ Ibid., p. 127.

³⁵ Ibid.

undone "from the want of its being made sufficiently intelligible."³⁶

There could be a problem, one might argue, concerning a jury's respect for legal precedent. Such an unstructured institution may not abide by established, even just principles. Rather than protecting individual rights, these juries, spurred by the moment, might produce injustice. The intent of trial by country, Spooner reasons, is to avoid the "positive injustice" which government may cause by intrusion.³⁷ He recognizes that the institution's success hinges on a fair jury. To defend trial by country, Spooner first turns to an historical argument. History, without this institution, has witnessed great injustice; he finds no reason to believe that injustice would be any greater with the institution.

More importantly, the effects of the unjust act are limited to only the case at hand. Spooner concludes that even in rare cases where unclear facts or issues arise,

The effects would be confined to the individual or individuals interested in the particular suits. No permanent law would be established thereby destructive³⁸ of the rights of the people in other like cases.

A single jury's mistake affects only the participants in

³⁶Ibid.

³⁷Ibid., p. 128.

³⁸Ibid., p. 129.

that case. The utilization of unjust legislation, however, forces all persons to suffer from unjust law.

Finally, and most importantly, a legitimate government, argues Spooner, must be formed and remain through voluntary consent. If certain principles exist in which not all parties in the specific association can agree, these positions cannot be an extension of the association. Anyone claiming a greater knowledge of justice, he explains, may either form a separate association or make his own views more intelligible and persuade reform in the existing government. No government can be allowed to go beyond what the members of the association, unanimously exemplified by the trial by country across time, are willing to concede.

A government of the whole, therefore, must necessarily confine itself to the administration of such principles of law as all the people, who contribute to the support of the government, can comprehend and see the justice of. And it can be confined within those limits only by allowing the jurors, who represent all the parties to the compact, to judge of the law, and the justice of the law, in all cases whatsoever. And if any justice be left undone, under these circumstances, it is a justice for which the nature of the association does not provide, which the association does not undertake to do, and which, as an association, it is under no obligation to do.³⁹

Permanency of the law would not be a problem, according to Spooner, in this type of rules structure. Justice is not an overly complex phenomenon; the uncertain complexity of

³⁹ Ibid., p. 131.

law is created by legislative activity beyond true law. By eliminating the mass of made law, he contends, the uncertainty concerning judicial interpretation is largely diminished. Avoiding statutory law thus requires Spooner to rely on the common law as the rule structure of the association.

Even common law, however, faces the problems of man-imposed interpretation. Spooner admits to the "necessity of a rule of interpretation" for courts in determining the application of rules to specific cases.⁴⁰ At that point, natural law serves an essential function. The language of societal laws, he argues, "shall be construed, as nearly as possible, consistently with natural law."⁴¹ Any interpretation of any rule must return to natural law, or justice. "No one," he contends, "can know what the written law is, until he knows what it ought to be."⁴² Natural law serves as the fundamental standard for the interpretation of any rule. Some standard must exist, he reasons. Otherwise, a legal document such as a constitution, "without altering the location of a single word," would produce "more different constitutions than figures can well estimate."⁴³

⁴⁰ Ibid., p. 135.

⁴¹ Ibid.

⁴² Ibid. (Emphasis added).

⁴³ Ibid., p. 136.

Spooner's definition of law requires that it can only be interpreted in "one definite and distinct sense."⁴⁴ By relying on easily understandable and commonly accepted standards of justice (manifested by the laws of nature), the uncertainties as to the law of an association are fully diminished. Complexity and/or disagreement among jurors is then relegated to only matters of fact.

Basing his interpretation on the early English common law juries, Spooner outlines his conception of how this institution should work. There are, he states, two essential principles of common law jury selection. First of all, all citizens are eligible and are normally legally mandated by the association's contract to serve as jurors. Secondly, jury selection is made entirely separate of any government involvement.

The resolution of conflict, Spooner argues, should not be halted because a party is unable to challenge "for the want of means to defray expenses."⁴⁵ Prior to a decision, neither party is responsible for paying the costs of the trial. According to Spooner, "each member should pay his just proportion of the expense necessary for protecting all" in the association.⁴⁶ However, the courts might

⁴⁴Ibid.

⁴⁵Ibid., p. 172.

⁴⁶Ibid.

also require the losing party in a conflict to cover the expenses entailed in the proceeding.

Obviously, the initiation of Spooner's trial by jury would greatly alter the American political process. Majority rule, as already discussed, would be severely limited. In his view, this is "the crowning merit of the trial by jury."⁴⁷ This procedure provides an effective veto power for any minority groups. It does not allow the minority to rule the majority; it does prevent the majority from interfering with the rights of minorities.

Thus, the natural evolution of such a political process with this built-in veto function is away from rules and toward more extensive freedom. Only the most widely accepted rules could exist. Spooner consciously intends this to be the effect. Legislation is generally not just law. The principles of justice become confusing or contradictory in legislative rules. In turn, courts become "secret tribunals," as the "reasons for their decrees are to be found only in great volumes of statutes and Supreme Court reports," of which the general public has "neither the money to buy, nor time to read; and would not understand, if they were to read them."⁴⁸ Thus, they are forced to hire the "expert--or so-called lawyer," who, in Spooner's view, takes

⁴⁷ Ibid., p. 206.

⁴⁸ Spooner, A Letter to Grover Cleveland, p. 106.

no heed to the questions of justice, but only to the statement of the law.⁴⁹ Most people cannot afford the risk of the lawsuit in a structure void of an understanding of natural justice, which, he concludes, leaves an individual's legal fate entirely in the dark.

Spooner's efforts demonstrate a large amount of confidence in trial by jury as a means of protecting against government interference. Minus this institution, one's alternatives against an oppressive state are severely limited. A technique applied by Spooner in his early writings is the right of resistance, or the disobedience of unjust laws. The right of persons, he argues, "to resist an unconstitutional law is absolute and unqualified, from the moment the law is enacted."⁵⁰ Once government steps outside the Constitution, its actions are no longer legal. To disobey the act is neither rejection of the Constitution nor revolution. It is merely another check on government usurpation. Spooner does not equate the right of resistance and right of revolution. The former right is merely a means by which individuals may check government intrusion without rejecting the association itself.

On the other hand, the right of revolution, by its nature, sets individuals outside the association. By

⁴⁹Ibid., p. 107.

⁵⁰Spooner, A Defence for Fugitive Slaves, p. 29.

breaking with the association, however, one returns to a state of nature; in effect, right of revolution cannot be a legally stipulated right.

The right of revolution, which tyrants, in mockery, accord to mankind, is no legal right under a government; it is only a natural right to overturn a government. . . . And the right is practically established only when and because the government no longer exists to call it in question. The right, therefore, can be exercised with impunity,⁵¹ only when it is exercised victoriously.

Unlike trial by jury, revolution provides no legal security for one's rights. Furthermore, Spooner reasons, it is of "no practical value, except for those who are stronger than the government."⁵² To protect legal liberties and avoid a state of constant upheaval, some form of legal resistance is necessary, according to Spooner, against the possibility of government oppression.

Obviously, Spooner's arguments supporting trial by jury were not implemented. His writings, in turn, gradually move into more violent stages. However, one must recognize that he first and foremost supports a legal solution to what he observes as tyranny. With an unhampered trial by jury not being implemented, he is driven to the less preferred of two alternatives--outright revolt.

Unfortunately, as Spooner recognizes, the violent

⁵¹ Spooner, An Essay on the Trial by Jury, p. 16.

⁵² Ibid.

alternative is not as effective in preventing government oppression as is trial by jury. Revolution produces a more complex set of questions for oppressed persons concerning the costs and benefits of rejecting the whole association. Because of these disincentives concerning rebellion, he argues, governments can maintain an advantage that would likely be avoided by legal means of resistance.

So long, therefore, as the oppressions of a government are kept within such limits as simply not to exasperate against it a power greater than its own, the right of revolution cannot be appealed to. . . . This affords a wide field for tyranny; and if a jury cannot here⁵³ intervene, the oppressed are utterly defenceless.

It is this "wide field," Spooner argues, that the liberal society cannot prevent without some external check or veto by the people against government action.

"Practically speaking," he contends, "no government knows any limits to its power, except the endurance of the people."⁵⁴ A government that requires its members to rely on extra-legal means to protect their freedom increases the likelihood that oppression will not be prevented.

Constitutional barriers within the structure cannot fully guarantee protection. Some mechanism, legally stipulated, yet beyond the manipulation of the government, must be built into the contractual agreement between government and the

⁵³ Ibid.

⁵⁴ Ibid., p. 19.

people. This guarantees that the ultimate final power rests in the initiation of any government act, with the people. In Spooner's view, this institution is trial by jury, or country.

CRITICAL ANALYSIS OF CHAPTER 4

Two important effects arise from the inception of Spooner's interpretation of trial by jury. First of all, it severely narrows the role of legislation in a political system. Only those rules that are commonly accepted across the association can withstand the pressures of unanimous consent. Any law that cannot be commonly accepted faces an eventual judicial veto.

Secondly, it keeps the rule-making process as close to "the people" as is institutionally feasible. By utilizing randomly chosen juries to judge on all points of law or conflict that emerge, Spooner's system requires that the internal structure of government always answer to an external check.

While he obviously believes that a judicial process is more conducive to finding justice than a legislative one, Spooner's central purpose is more one of requiring unanimity in political decision-making than it is in the formation of a novel judicial institution. However, he cannot accept a role for legislatures as they are presently structured.

Rather than rebuilding this internal branch, he goes further by formulating an external branch.

Spooner's fear of unbridled majority rule reappears in his discussion of trial by jury. Obviously, if majority rule is not adequately checked, the ultimate losers in a political process must be minorities. Spooner very effectively demonstrates the incompatibility of majority rule and individual rights. Furthermore, he correctly foresees the danger of an extension of the political process to include conflicting individuals/groups who battle legislatively without any recognition of natural right.

Most importantly, Spooner recognizes that a majoritarian process is not merely a static game in which some win and some lose and the social order continues otherwise unharmed. The political process "corrupts the motives" of individuals by restructuring Man's actions. Legislatures, catering to the most intense interests rather than justice, breed a war of interests. Either individuals join the struggle or they are swept away; no incentive exists for one man to seek justice when everyone else seeks self-interest.

Thus, Spooner's goal is to reshape institutions to protect against the utilization of government for factional self-interest. Here, Spooner is not far outside the mainstream of American thought. However, he is not willing to rely on existing internal barriers to guarantee the

protection of justice. He simply eliminates the conflict of interests from consideration by practically requiring total consent for any rule. Pluralism is checked by ignoring it.

While the formulation of numerous internal legal barriers within government may effectively check some oppressive activity, Spooner is correct in arguing that it cannot prevent all unjust legislation from passage.⁵⁵ More than merely full consent within government is required. Thus, he introduces an external veto function that serves as a highly effective mechanism in completely eliminating the dangers of minority oppression, either by subjecting government actions to judicial review or by the fear thereof.

Furthermore, this external check effectively eliminates the zone of oppression that exists between a just government and a government that stays within boundaries of oppression that are short of instigating rebellion. Maintaining superior force, governments can violate justice without excessive fear of retaliation. Oppression is of a small enough amount not to create enough benefit for enough persons to provoke revolutionary efforts. Persons simply accept, Spooner argues, some level of government overstepping its legitimate boundaries.

However, unless some means of checking the State exist,

⁵⁵ This is particularly true in light of Spooner's arguments demonstrating the lack of individual accountability for government enactments. See Chapter 3.

the process of "boundary-stretching" is not static. Certain groups/individuals, by building more privilege upon already attained privilege, can widen this zone over time.

Moreover, the likelihood that revolution, the still existing barrier afforded the oppressed, will be initiated decreases rather than increases. In other words, the costs of success may increase at a drastically faster rate than the benefits of success, as the chance of succeeding in a rebellion decreases as privileges increase. Thus, individuals may "accept" a government, while becoming more and more oppressed. The only effective way to prevent this expansion, Spooner recognizes, is to make the determination of consent a perpetual process by maintaining institutions that can constantly and externally challenge government actions. Revolution, as he demonstrates, is both a costly and ineffective mechanism for accomplishing this goal.

Granting these wide powers to the trial jury has the effect of making every legislative action a referendum requiring total consent of the public as represented by the jury. Spooner's intent is not to promote democratic institutions but to further individual rights. Therefore, the ultimate check is unanimity.

However, the most important function of trial by jury is to provide Spooner the necessary machine for translating natural justice into civil law. Since a social structure is "theoretically imperfect," common law and natural law are

not purely the same to Spooner. However, since natural law, he argues, is easily understood alike by almost all persons, his logical process of finding justice is by only permitting those laws that are unanimously or at least commonly accepted. Debates over rules that create great division obviously are not rules of justice. Spooner avoids the conflict faced by many natural rights theorists concerning the separation of positive law and natural law by eliminating positive law! Thus, one encounters a very freely-functioning social order governed only by Spooner's simple rules of justice--of which can be translated into civil law since they are commonly accepted.

The formulation of this institution presents some problems. The first glaring question concerns the duties Spooner assumes for persons in this arrangement. To function, trial by jury must force jury duty on persons who may not be willing participants. If one accepts this as a contractual stipulation to the association, the problem is alleviated. However, if Spooner wishes to require this as a duty of justice, then he faces the same contradiction as presented in Chapter 2. Either he relies on the assumption that persons will be willing to contract and carry out this function, or he violates the non-aggression axiom.

A similar problem arises concerning the administration of the courts. Not desiring to rest the administration of justice on whether one can fund his settlement, Spooner

argues that no one should be required to pay, at least prior to a settlement, for the court costs. Even if the losing party is required to pay the costs, nothing guarantees he will have the funds. In an effort to protect equal justice, Spooner necessarily requires coercive taxation. His system is faced with a public goods problem otherwise, if the payment for justice falls on individual taxpayers in the association.⁵⁶

A third more encompassing problem again concerns Spooner's assumptions. First of all, even if simple justice is easily understood, existing legislation may make a juror's decision an extremely complicated process. Moreover, what prevents the jury from utilizing the same conflictual, interest-oriented process he demonstrates exists in legislatures? Dealing with single conflicts and maintaining no observable bias, juries may be able to avoid the pitfalls of interest-seeking that legislatures face. However, noting the complexity of social relationships, it is less than obvious that jurors could always agree on a verdict.

If a unanimous verdict cannot be reached, Spooner's system is left with a void. Conflict requires settlement in

⁵⁶One might argue that a major problem concerning Spooner's arguments is his lack of an understanding for public goods, which would not be produced in the extremely voluntary structure he envisions. If taxation/coercion were purely voluntary, individuals therefore might not associate and pay for such goods as police protection or justice.

some manner; if the courts or the government cannot provide an equitable or at least an enforceable solution, where do the conflicting parties turn? Such an incident, he maintains, is unlikely to occur, and if it does happen, is limited to only one case. However, it appears that with the vast complexity of social interaction, these sorts of decisions could be much more common than Spooner is willing to accept. Moreover, these disagreements could produce numerous associations arising in similar geographical locations and hopelessly confuse the process of settling conflicts.

Therefore, Spooner's structure is best protected by simplifying the rule-making process so that legislatures also abide by a unanimity principle. Only laws commonly agreed upon by all legislatures could become law. This would decrease the opportunity for unjust and confusing legislation that could distort a court's efforts in finding justice. The jury, while maintaining the power to judge the justice of the law, would not be required to unravel complex pieces of legislation designed to appease numerous and diverse interests. Therefore, the only remaining danger of minority oppression in Spooner's system would be the chance of rules damaging a very small minority.

While the existence of a commonly perceived standard of justice benefits the effectiveness of Spooner's trial by jury, it is not thoroughly necessary, if the principle of

unanimity is applied to the internal branches of government. These features provide a veto protection of last resort for minority groups, eliminate Spooner's zone of oppression, and provide an effective check on factional government. One can foresee from this institutional structure a generally freely functioning society with very few rules, a very narrow role for government, practically no politically communal perspective, and no governmental response to "social" problems. It allows Spooner to translate his science of justice into an enforceable legal code. Government's role is relegated to the sole purpose of settling individual conflicts and protecting individual natural rights.

James Buchanan argues that the weakest segment of anarchist theory is its "bridge between negative criticism and constructive proposals for change," or, in other words, its failure to follow up criticism with alternative structures.⁵⁷ In as much as it is compatible with anarchist theory, Spooner's modification of trial by jury represents a constructive effort to alter the social order by developing an alternative structure that serves as a key component in his system of justice.

Spooner does not end with the creation of a political system, however. Perhaps his most developed arguments, as

⁵⁷James Buchanan, "A Contractarian Perspective on Anarchy," in Anarchism, eds. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1978), pp. 36-37.

will be demonstrated in Chapter 5 and Chapter 6, concerns the formulation of an economic system based on his understanding of justice.

NATURAL LAW AND THE ECONOMY

According to Spooner, the harmony of the economic order, like the political structure, depends on men adhering to the principles of natural law. If these principles are abided by, "existing poverty would be rapidly removed, and future poverty almost entirely prevented."¹ Furthermore, he argues, a greater and more equal accumulation of wealth would occur.

Two basic natural rights dominate Spooner's analysis of economic exchange among men. The first right is the right of property; the second, resulting from the first right, is the right of contract.

Spooner begins his discussion of property rights by developing the concept of wealth. Wealth "is anything, that is, or can be made, valuable to man, or available for his use."² It includes "every conceivable object, idea, and sensation" that contributes to or constitutes "the well-being of man."³

Wealth, Spooner argues, includes not only tangible

¹ Spooner, Poverty: Its Illegal Causes and Legal Cure, p. 5.

² Spooner, The Law of Intellectual Property, p. 10.

³ Ibid.

goods but also things "imperceptible by our physical organs."⁴ For example, he considers happiness as wealth. In fact, he vastly expands the realms of wealth.

We are in the habit of saying that the eye sees any material object. But, in reality, it is only the mind that sees it. The mind sees it through the eye. It uses the eye merely as an instrumentality for seeing it. . . . It is, therefore, only the mind, that takes cognizance of any thing material. And every thing, of which the mind does take cognizance is equally wealth, whether it be material or immaterial; whether it be tangible or perceptible, through the instrumentality of our physical organs, or not.⁵

⁴Though Tucker considers Spooner's discussion of intellectual property rights as "silly," his (Spooner's) presentation of his arguments is very interesting. This thesis, however, cannot devote the amount of time necessary to adequately present these arguments. For extended discussions of solely Spooner's views on property rights in ideas, see The Law of Intellectual Property, pp. 2-14; 18-21; 26-28; 29-30; 31-161. Also see A Letter to Scientists and Inventors. He argues that (1) ideas have a corporeal substance and can be possessed as property as creations of one's labor; (2) the right remains with the creator even after it is communicated or transmitted to others; (3) ideas are not of the "nature of wild animals" and are controllable and can be held in recorded dominion; (4) it would enhance, not defeat the advancement of civilization to protect property rights in ideas; (5) if right of property is not sound for intangible items, it cannot be defended for material items either, which results in communism, which Spooner regards unworkable and without a legitimate ethical foundation (right to property of one's labor); and (6) though the nature of ideas cannot provide exclusive possession once transmitted to the public-at-large, exclusive use can be protected and should remain perpetually with the original owner unless he voluntarily transfers this right of property to another individual.

⁵Ibid., p. 11.

Property, Spooner reasons, "is simply wealth, that is possessed--that has an owner."⁶ Wealth has no owner; it "lies exposed, unpossessed" for individuals to make their own.⁷ Very little of the earth's wealth is property. Only a small portion of the land, an even smaller part of the oceans, and a "very minute portion" of the wealth in ideas or thoughts have been possessed.⁸

The right of property, according to Spooner, is the natural right of exclusive dominion over a particular item which "one man has, as against all other men."⁹ An individual is not accountable to other persons as to how he exercises dominion over his own property, he concludes, except that he may not use this property "to invade, infringe, or impair the equal supremacy, dominion, and control of others, over what is their own."¹⁰ In other words, abiding by the harmony of natural law, each person is complete and absolute sovereign of his property. This principle, he contends, applies "against the will of all other men combined" as it does against single individuals.¹¹

⁶Ibid., p. 15.

⁷Ibid.

⁸Ibid.

⁹Ibid.

¹⁰Ibid., p. 16.

¹¹Ibid., p. 17.

Thus, all wealth can become property and be subject to ownership. Man's most basic possession is obviously his own body; this possession, Spooner maintains, is "the property of the mind," which owns everything of the body.¹² "Bodies own nothing," he concludes, "but are themselves subjects of property."¹³ No individual has the right "to take another man's body out of the control of his mind," or, in other words, own another man's body.¹⁴

The right of property, Spooner contends, may be acquired in one of two ways. First of all, an individual may take possession of natural wealth, by simply being the first possessor of the property. Natural law, he argues, fixes no limit to the amount of property an individual may possess from natural wealth. However, a limit is established by the ability of a person to actually possess any given item of property.

To simply stand upon a continent, and declare one's self the possessor of it, is not to take possession of it. One would, in that way, take possession only of what his body actually covered. To take possession of more than this, he must bestow some valuable labor upon it. . . . In these cases, he holds the land in order to hold the labor which he has put into it, or upon it. And the land is his, so long as the labor he has expended upon it remains in a condition to be valuable for the uses for which it was expended;

¹²Ibid., p. 18.

¹³Ibid.

¹⁴Ibid.

because it is not to be supposed that a man has abandoned the fruits of his labor so long as they remain in a state to be practically useful to him.¹⁵

In the initial state, Spooner recognizes no difference between the person who arrives upon the wealth first and the one who arrives second. However, wealth is provided for individuals to use, he concludes, which requires individual ownership (i.e., private property). The first comer is separated from future arrivors by the initiation of "an additional right," brought about by the former person's bestowing his labor upon the wealth.¹⁶

He can now show a better right to the thing he has taken possession of, than any other man can. He had an equal right with any other man before; now he has a superior one, for he has expended his labor upon it, and no other person has done the like.¹⁷

Moreover, the first comer is not obligated to leave wealth to those that follow. However, though natural law does not recognize that followers to a prior owner necessarily be better supplied, history proves, Spooner argues, that improvement has been the effect of private ownership.¹⁸ The increasing standard of living

¹⁵ Ibid., p. 22.

¹⁶ Ibid., p. 23.

¹⁷ Ibid.

¹⁸ Ibid. Spooner answers numerous objections to his arguments concerning intellectual property rights in particular and right of property in general; pp. 31-108.

demonstrates this advancement; the first owner, he concludes, was "a hungry, shivering savage," while the most recent owner "revels in all the luxuries" present civilization provides.¹⁹

Furthermore, Spooner argues, "the wealth of nature is inexhaustible."²⁰ Natural individual limitations make it impossible for man to utilize "but an infinitesimal portion" of all the natural wealth.²¹

Finally, any argument that does not grant the first comer certain property rights logically eliminates the possibility of any person enjoying their natural rights regarding the use of wealth. Such logic, according to Spooner, "would doom the entire race to starvation, while all the wealth of nature remained unused."²²

The second manner by which men may acquire a right of property is "by the creation, or production, of wealth, by labor."²³ Spooner views this principle as self-evident--he who creates should own. Material wealth plus one's labor generally adds to the value; new wealth is created because

¹⁹Ibid., p. 24.

²⁰Ibid.

²¹Ibid.

²²Ibid., p. 25.

²³Ibid.

of the laborer's actions. If the laborer owns all the materials (capital) on which he works, the additional value the labor adds goes to him. If he does not own the materials, he does not own the additional value. The laborer, he concludes, "gives or sells his labor to the owner of the articles on which he labors."²⁴

According to Spooner, the right of property has two foundations:

first, in the natural right of each man to provide for his own subsistence; and secondly, in his right to provide for his general happiness and well-being, in addition to a mere subsistence.²⁵

The right to life, he argues, necessarily includes the right to "accumulate the means of living"; in fact, "no other human right has a deeper foundation" than right of property.²⁶ The enjoyment of all rights requires that individual property rights remain absolute within the boundaries of natural law. Each person must be free to use or possess his property as he desires, respecting the same right of other persons. As with all natural rights, Spooner argues that the individual must remain absolute sovereign over the right of property, as against the government.

²⁴Ibid.

²⁵Ibid., p. 28.

²⁶Ibid.

Otherwise, the right is completely lost, and the political process determines who is slave or master.

The right of absolute and irresponsible dominion is the right of property, and the right of property is the right of absolute, irresponsible dominion. The two are identical; the one necessarily implying the other. Neither can exist without the other. If, therefore, Congress have that absolute and irresponsible lawmaking power . . . it can only be because they own us as property. If they own us as property, they are our masters, and their will is our law. . . .

If I made [my Congressman] uncontrollable by me, and irresponsible to me, he is no longer my servant, agent, attorney, or representative. If I gave him absolute, irresponsible power over my property, I gave him the property. If I gave him absolute, irresponsible power over myself, I made²⁷ him my master and gave myself to him as a slave.

The obvious corollary to an absolute right of property is an absolute right of contract. Individuals, Spooner reasons, "have also a natural right to convey their natural rights of property from one person to another."²⁸ The right of men to enter obligatory contracts "is a natural, inherent, inalienable right," existing "antecedently to, and independently of, any positive or municipal law."²⁹

Thus, in determining right of contract, the key determination is whether the agreement is "naturally

²⁷ Spooner, No Treason, No. VI The Constitution of No Authority, pp. 24-25.

²⁸ Spooner, A Letter to Grover Cleveland, p. 59.

²⁹ Spooner, Constitutional Law, Relative to Credit, Currency and Banking, p. 4.

obligatory."³⁰ According to Spooner, naturally obligatory contracts include all agreements that are "naturally capable, competent, and sufficient to convey, transfer, and bind the natural right of property."³¹ This standard requires three conditions: first, the parties of the agreement must be mentally competent; second, the contract must be wholly voluntary; third, the right of property to be transferred must be a right capable of being passed from one individual to another.

Government neither adds nor deletes anything from this natural law obligation. It does, however, Spooner contends, confuse the obligatory status of contracts through excessive interference. It may forbid certain contracts that are naturally obligatory. It may utilize legislation in an effort to create obligation. Finally, government can limit the nature of the contract within a structure of made law by formulating legal stipulations as a part of the contract. Thus, unjust (i.e., not natural) laws can create the illusion of obligation due to the political structure's manipulation of law.

None of these techniques, argues Spooner, changes the true obligation of the contract. However, "as a cover for some of the greatest crimes," government (used as the

³⁰ Spooner, A Letter to Grover Cleveland, p. 59.

³¹ Ibid.

instrument) restructures obligation.³² The extent of government interference in the processes of contract, Spooner concludes, can have the same effect upon individual activity as complete control over all exchanges.

No one will pretend that the law can make entire contracts for parties, without their consent, and then presume their consent, and enforce the contracts as if the parties had actually agreed to them. . . . All admit, then, that the law cannot make an entire contract for parties, and then presume their consent? If the law has a right to make the least part of a contract, it has the same right to make a whole one.

The idea that the law makes a part of the contract cannot be sustained at all, except upon these suppositions, viz, that the natural right of individuals to make contracts has either been entirely surrendered to government, or entirely usurped by the government--that government exercises the rights thus granted or usurped, so far as it chooses, and then gives back to the individuals the privileges of exercising so much of the remainder of their original rights as government₃₃ thinks it judicious to allow them to exercise.

Spooner severely limits the role of the legislative body concerning contracts. Their only authority concerns determining the mechanisms to be utilized for enforcing

³²Ibid., p. 60. Spooner discusses Bank Charters as an example of a governmentally obligatory contract that is not a naturally obligatory one. For example, by law, they "profess to guarantee to individuals the immunities . . . of a joint, incorporeal, intangible being, diminishing the necessary condition of individual liability. Any limiting liability, argues Spooner, must be expressed in the contract between individuals, and not through the enactment of legislation. See Constitutional Law, Relative to Credit, Currency and Banking, pp. 18-21.

³³Spooner, Constitutional Law, Relative to Credit, Currency and Banking, p. 14. See also, A Letter to Grover Cleveland, pp. 61-62.

obligatory contracts and establishing the extent to which these mechanisms will be applied.³⁴ Legislatures should stay out of the determination of obligation, though. Two general legal principles, he concludes, regarding obligation of contract exist: first, the "obligation is intrinsic, arising solely from the acts of the parties"; second, it is "the province of the judiciary to determine in what cases that obligation exists."³⁵ However, the judiciary, in following the law, cannot decide on the natural justice of the contract, if legislative stipulations transform the situation. For example,

In the case of the contracts of unlicensed bankers, for instance, [Congress] enact that the judiciary, whenever these contracts come before them, shall decide that they have no obligation. This is the whole purport of the law that declares that these contracts shall be void. It is nothing more, nor less, than a requirement upon the judiciary to deny their obligation--because the contracts are naturally obligatory, and the courts would of course hold them obligatory, if they were not required to do otherwise. And the legislature make this requirement, not at all on the ground that these contracts really have no obligation--but they do it arbitrarily, and simply because it is their will that the judiciary should deny the existence of this obligation. They thus, in effect, require that the judiciary shall assert a falsehood.³⁶

³⁴As Spooner's thought evolved, a role for legislative bodies became less and less apparent. By the 1880's, one could convincingly argue that he felt they had no justification or utility.

³⁵Spooner, Constitutional Law, Relative to Credit, Currency and Banking, p. 7.

³⁶Ibid., pp. 7-8.

Thus, Spooner establishes right of property and right of contract as necessary and absolute natural principles in the emergence of a harmonious economic order. Government involvement beyond the maintenance of the individual rights represents an intrusive and unjustifiable action on its part.

Spooner also presents seven "economical propositions" which he argues are "obviously conducive, if not indispensably necessary," to the greatest aggregate increase and most equalitarian diversion of wealth that the natural law concerning property allows."³⁷ The first proposition concerns right of property; each individual, he contends, should be allowed to retain all the fruits of his labor (consistent with natural law). When government interferes with this "obvious principle of natural justice," it creates "very unequal proportions among those whose labor produced" the property."³⁸ Force supersedes right, and inequality results.³⁹

³⁷ Spooner, Poverty: Its Illegal Causes and Legal Cure, p. 6.

³⁸ Ibid., p. 7.

³⁹ In Spooner's view, inequality resulted from the use of force, not the inherent differences of men. See Ibid. Inequality is

not the result--except in a partial degree--of the superior mental capacities, which enable some men . . . to compass more of the means of acquiring wealth than others; but it is the result . . . of

Spooner also anticipates that total social wealth will expand when natural law is adhered to. When men are forced to live off their own labor, he reasons, rather than the production of others, production necessarily increases. Moreover, when an individual is able to maintain all the fruits of his labor, his incentive to produce is much greater than when a large portion goes to other members of the economic structure.

Spooner secondly proposes that each person, to guarantee the protection of right of property, "should be his own employer, or work directly for himself" to prevent part of his labor going to employers.⁴⁰ Obviously, to effectively be his own employer, the individual must have access to mechanisms that lead to individual success. Thus, Spooner's third proposition is that each man must have access to the capital "upon which to bestow his labor."⁴¹

The implication of Spooner's third proposition is not that each person shall have an absolute right to capital in all cases. Instead, persons have a right to acquire capital

arbitrary and unjust legislative enactments, and false judicial decisions, which actually deprive a large portion of mankind of their right to the fair and honest exercise of their natural powers, in competition with their fellow men.

⁴⁰ Ibid., p. 8.

⁴¹ Ibid.

(credit) as the natural, freely functioning market establishes the rates of interest. The fourth proposition, for instance, requires that men be allowed to obtain credit. However, these propositions must be consistent with individual right of property. Thus, individuals should be "allowed to contract for such a rate of interest as will induce a man, having surplus capital, to loan it to him."⁴² In other words, these propositions rest upon the natural right of property and contract. Hence, the essence of these propositions is that interest rates must be completely free of interference from external forces.

Spooner recognizes that each separate credit exchange exists in different circumstances. The security offered by the borrower for repayment always differs, and, thus, the risk factors are never identical. If legislatures fix the interest rate at a prescribed rate, he concludes, it effectively "deprives all those, who cannot offer the most approved security, of their right of hiring capital at all."⁴³ The effect of the law is to create a monopoly in the loan markets. Persons whose risk factors place them above the legislatively fixed rate are unable to borrow working capital. On the other hand, he argues, those most

⁴² Ibid.

⁴³ Ibid., p. 9.

able to offer the greatest security in this risk-oriented exchange benefit.

The result of these monopolistic practices, according to Spooner, is even greater economic inequality. The person of greater risk, the economically less fortunate laborer, is forced to work for the most fortunate beneficiary of the legislation. Those in dire need of capital are effectively blocked from borrowing. To survive, these persons must become wage-earners for those persons who have or can attain capital. In turn, he concludes, the former group is required to surrender even further portions of the production of their labor. Not only, then, does the law distort the capital market, it also restricts the labor market by eliminating alternatives for laborers unable to borrow capital because of the fixed rates of interest. Whereas the free market, founded on natural law, would prevent a structure that restricted a large portion of men from economic advancement, a market utilizing laws restricting voluntary exchange guarantees the privileged groups security and a widening structure of inequality and sub-standard existence.

Spooner's solution is quite evident--leave the economic process, consistent with natural right, to its own results.

Leave the rich and the poor to make their own bargains in regard to the interest of capital, and it is as certain as the laws of nature, that capital will find its way into the hands of those who are to perform the labor upon it. . . .

Of all the frauds, by which labor is cheated out of its earnings by legislation, and of all the monopolies established by legislation, probably no one is more purely tyrannical in its character, or more destructive at once of the natural right of individuals to make their own contracts, and of the just distribution of wealth, than that monopoly of the right of borrowing money, which forbids the mass of men to obtain capital, on which to bestow their labor and this compels them to sell their labor at a price far below the amount of its actual products.⁴⁴

Therefore, in his fifth proposition, Spooner contends that a free system of banking is necessary to allow individuals the opportunity to obtain capital at the lowest possible rates.⁴⁵ In a system of free, unhindered banking, he argues, loanable funds or capital would not be concentrated in the hands of a few, but would be "scattered over the country, in small amounts, in the hands of a large number of separate owners."⁴⁶ When capital is "placed under the control of a single directory," he maintains, loans tend to be executed in larger, more concentrated amounts.⁴⁷ Rather than a large number of persons borrowing in small amounts, which Spooner argues could be utilized to capitalize individuals' own labor, select individuals

⁴⁴Ibid., p. 12.

⁴⁵A complete discussion of Spooner's banking system follows in Chapter 6.

⁴⁶Spoooner, Poverty: Its Illegal Causes and Legal Cure, p. 15.

⁴⁷Ibid.

are able to borrow large sums to employ others' labor for their benefit. Blocked out of the process because of these restrictions, laborers are forced to sell their labor at rates below what the free market would produce, which allows for a large profit at the expense of the workers.

Spencer's final two propositions further develop the exchange relationship between the debtor and creditor. His sixth proposition concludes that

all credit should be based upon what a man has, and not upon what he has not. A debt should be a lien only upon the property that a man has before and when the debt becomes due; and not upon his earnings after the debt is due.⁴⁸

In other words, the debtor should only pay to the extent of his ability when the debt becomes due. At that point in time, the debt ends; any unpaid portion "should be no lien upon his future acquisitions."⁴⁹

Spencer argues that the law can require no impossibilities of any man. Thus, the contract is valid only to the point the individual can possibly perform. Since uncertainty always exists, the debtor can be "bound only to the faithful exercise of all his powers, and the faithful application of all his means."⁵⁰ Neither can

⁴⁸Ibid., p. 17.

⁴⁹Ibid., p. 18.

⁵⁰Ibid., p. 66.

one contract to perform a "manifest impossibility," like requiring performance in all cases.⁵¹ Valid contracts, he concludes, must be "subject to the limitation of all contingencies that may make its fulfillment impossible; and as binding only to the extent of what shall be possible."⁵² Moreover, time is also a "material element of the contract."⁵³ At the maturity of the debt, all obligation ends.

According to Spooner, the contract of debt is a "bailment." A bailment

is where one person is temporarily intrusted with the property of another, either for safekeeping . . . or to be used . . . or to be sold . . . or for some other purpose; under an agreement, express or implied, that he will comply with the conditions on which it is intrusted to him, and finally restore it to the owner, or otherwise dispose of it agreeably to the owner's directions. . . . If the property be lost or injured in the hands of the bailee, without any fault, or culpable neglect on his part, the loss falls on the owner.⁵⁴

From this conceptual understanding, Spooner's crucial argument follows. The debtor exchanges for the money at the time the contract is executed. In return, the creditor obtains "value, that has been received" through the promise

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid., p. 67.

⁵⁴ Ibid.

of the debtor to hold the value of the money and deliver it at a later date.⁵⁵ Thus, the rights of property are exchanged at the initiation of the agreement and not when the debt becomes due.

The value of the money as it is transformed by the borrower, Spooner argues, is the risk of the creditor from the initiation of the contract, and not the debtor. The debtor is "bound to due fidelity and diligence in the preservation of the value, and not for its absolute preservation."⁵⁶ If the debtor has not been fraudulent and has honestly attempted to perform the contract, Spooner concludes, then the debt ends.

Spooner maintains that this debtor/creditor system would produce both greater individual and social benefit. The creditor, realizing the obligations end on the due date, would adjust the rate of interest charged to cover the likelihood of greater risks. However, he argues, this initial additional interest would be more than worth the cost. It would serve as a payment of a "slight premium for being insured against the calamity of an arrearage of debt and perpetual poverty, in case of any miscalculation or misfortune" in the part of the debtor.⁵⁷ Otherwise, an

⁵⁵Ibid., p. 68.

⁵⁶Ibid., p. 69.

⁵⁷Ibid., p. 19.

unfortunate debtor could fall into unending poverty for one mistake, or for factors beyond his control.

This system, Spooner reasons, would also likely decrease the length of credit agreements. It would, furthermore, produce prompt settlements. Both of these results would decrease the uncertainty of a future-oriented agreement. Moreover, he contends, the borrower would have a greater incentive to do his best to pay the greatest portion of the debt he can possibly pay. Realizing the debt is cancelled at maturity, his incentive is to "save his character and credit."⁵⁸ If the debtor remains perpetually liable, he likely would become disillusioned, Spooner concludes, once he recognizes his debt cannot be paid. In turn, he may remain a debtor perpetually; his reputation as a debtor would diminish, as would his likelihood of ever completing any debt agreement. On the other hand, though, if only what the debtor can honestly deliver is required by the creditor, the debtor, seeing his future reputation at stake, would be apt to meet his liabilities to the best of his ability.

Thirdly, the principle would restructure the concept of bankruptcy. The arbitrary manner by which debts are discharged would be replaced, according to Spooner, by a principle that distinguishes honesty or diligence and

⁵⁸Ibid.

dishonesty or idleness. If the failure of deliverance arises from events out of the control of the debtor, the debt would end, normally without blemishes on the financial reputation of the borrower.

Fourthly, his proposed relationship of creditor and debtor eliminates a major flaw that arises out of the present system. Once a borrower recognizes he will be unable to pay his debt, the present system, he argues, creates incentives for the debtor to bury himself deeper into debt. Realizing that he cannot pay the debt in full and that future credit opportunities are therefore diminished, the debtor is likely to proceed deeper into the depths of insolvency, while he still has a good credit reputation. In other words, the individual is forced into a no-win situation; all he is able to do is postpone the inevitable result of the initial unpaid debt. The results are predictable for the borrower and for society.

He, therefore, makes new debts to pay old ones; borrows money at ruinous rates of interest; makes desperate moves in his business; every struggle to extricate himself only sinks him deeper in the mire; finally he gets to the end of his credit; his race is run, the insolvent laws come in to settle the matter; and his whole arrearages of debt, and the consequent losses of his creditors, are perhaps ten, twenty, or fifty times greater than they would have⁵⁹ been, if he had settled with his first creditor.

Finally, Spooner concludes this principle would create an incentive for a more open and clear-cut understanding by

⁵⁹ Ibid., p. 21.

the contractual parties. The creditor would be more likely to take an almost partnership interest in the activity of the debtor, realizing his return depended on the success of the latter. Furthermore, it would eliminate the quasi-fraudulent practices of experienced contractual parties misleading inexperienced parties. Rather than the agreement becoming one that is built on one party taking advantage of the other, the contract's success for either party requires the similar success of the other individual.

With his seventh proposition, Spooner argues that "creditors should have liens upon the property of their debtors, in the order in which their debts are contracted."⁶⁰ In other words, the lien of the first creditor takes priority in payment before any other liens can be paid.⁶¹ Except in very few cases, any payment contrary to this principle, he concludes, should be considered fraud.⁶²

⁶⁰ Ibid., p. 23.

⁶¹ This proposition would not create chaos for the banking system, Spooner contends. Banker's notes are payable on demand and thus become due "immediately on their being issued." If, therefore, the holder does not present them back for conversion when issued, he concludes, "such omission is a voluntary waiver" of his right of priority to payment of the first lien. This obviously applies to any debt not demanded on its due date. See Ibid., p. 28.

⁶² Unless a subsequent creditor can prove that the existing debtor's property, Spooner argues, is "still remaining distinguishable from the rest" as that which he

According to Spooner, this ordering process is the only just manner to handle contracts of debt. The first creditor, he reasons, makes a loan to the debtor in recognition of the latter's financial condition, at the time of the agreement. Likewise, any creditor that follows the first lien "stands in the same relation to a prior creditor"; he understands the financial status of the debtor upon making the loan and is "subject to the incumbrance of the prior lien."⁶³

The failure to legally recognize creditors' rights concerning the ordering of liens, maintains Spooner, serves as a powerful incentive for the loaning of capital, particularly to poor high-risk individuals. If the capitalist cannot be assured of the greatest return of the money/capital he loans, the likelihood of his ever loaning to the poor individual severely decreases. However, if he knows that, as the first creditor, he receives the full extent of the debt contract available before any later creditors receive any portion of the return, he is much more likely to loan the capital.

This activity produces favorable economic results. First of all, Spooner maintains, creditors can loan to poor

(the creditor) loaned, the first creditor has "a prima facie lien upon all the property in the hands of the debtor." See Ibid., p. 25.

⁶³Ibid., p. 23.

persons with a greater security of return. As the first lien, the capitalist controls his loan and the product of the debtor's labor. Thus, any additional value that the labor creates only heightens the chances of the loan being a profitable venture. The implication is that greater returns are to be had from loaning capital to labor to work with as their own than from hiring labor to produce returns for the capitalist in return for wages. While part of the additional value the laborer creates would go to subsistence or economic security, he concludes that this would be but a small portion of the investment made up for by greater economic incentives.

Secondly, credit distribution would spread across a much broader population. Heavy debtors would find it extremely difficult to borrow. The incentive of capital owners, Spooner contends, would be to "seek for borrowers who were free of debt."⁶⁴ It would be disadvantageous for lenders to become second creditors, which decreases the likelihood of complex or excessive debt structures. Also, it becomes advantageous for first creditors to loan sufficient funds to prevent the debtor from losing part of the investment (the debtor being generally unable to acquire a second loan).

⁶⁴Ibid., pp. 27-28.

As with the sixth proposition, this principle creates a borrower-lender partnership.

The debtor, having a right to cancel his debt, by paying to the extent of his means, would do so whenever the creditor should refuse to furnish sufficient capital to enable him to prosecute his business profitably. And the creditor, when he should see that his debtor was using capital advantageously, would choose to advance to him whatever might be necessary, because such advance⁶⁵ would be a profitable investment of his capital.

The borrower provides the labor and/or innovation while the lender furnishes the capital which he risks on the debtor's success. The "quasi-partnership," argues Spooner, is "the true relation between capital and labor."⁶⁶ Rather than the capitalist hiring the labor, labor hires the capital. The risk made by the two parties should be a shared one, in both profit and loss, with the subsistence of the laborer being "the first charge upon the joint proceeds of the capital and labor."⁶⁷ This division of risk, he concludes, is both a just and beneficial economic principle.

The key to the propositions, Spooner argues, is that they increase the incentive for capital owners to loan to high risk "laborers, or poor men."⁶⁸ First of all, the loan market would be much less uncertain and much more secure.

⁶⁵ Ibid., p. 29.

⁶⁶ Ibid., p. 30.

⁶⁷ Ibid.

⁶⁸ Ibid., p. 33.

It is much safer, he maintains, to loan small sums to great numbers of persons, "who were each their own employers," than larger sums to small numbers of borrowers, "who employ the labor of others."⁶⁹ Small borrowers operate with less risk, less waste, and generally greater incentives. Furthermore, he adds, they are less dependent on stimulating the productivity of others (i.e., hired labor). Finally, small borrowers are "less likely to squander their loans in extravagant living" or in "hazardous enterprises that can [intoxicate] men with the conceit of their superior judgment" or "with a passion for magnificent schemes."⁷⁰

Secondly, smaller loans diversify the risks for the capitalist. Rather than placing all his eggs in one basket, he would be able to take on a large number of smaller risks. Furthermore, Spooner argues, the small laborer, being more productive than their counterparts, the hired wage-earner, would pay a higher rate of return on investments. Spooner contends this is possible for two reasons: first, it is economically feasible because of greater overall investment returns; second, other psychic benefits (greater self-respect or higher social standing) would likely lead the laborer to be willing to receive less financial return proportionally, in exchange for a more equalitarian economic structure.

⁶⁹ Ibid.

⁷⁰ Ibid., p. 34.

However, the most important result of this partnership is the elimination of a class of speculators and middlemen who "stand between the capitalist and laborer," and through legislative channels, distort the interest rate, "sponge money," and "put the plunder into their own pockets."⁷¹ Particularly utilizing the usury laws, these so-called "business men," according to Spooner, utilize government to control a large share of society's wealth. Rather than continue to pay "gratuity" to these groups, laborers and capitalists can bargain to divide productive proceeds among themselves only.

Initially under these seven propositions, Spooner forecasts that the capital owner would probably gain the greater proportional share of this new wealth because of high rates of interest (though he feels both parties would be better off in absolute terms). However, "as the general safety of the system should be tested," as laborers gradually increase their own wealth, and as a system of free banking breaks down concentrations of wealth, he expects that in a short interval of time "capital would go begging for borrowers."⁷² In turn, interest rates would fall.

Once the labor class is able to effectively borrow capital, Spooner reasons, one can expect most of them to be

⁷¹ Ibid., p. 35.

⁷² Ibid., p. 36.

"zealous," given an opportunity to better their economic conditions. Moreover, he concludes, most laborers would better their conditions. Exceptions in this advancement would come almost wholly from extraordinary circumstances of misfortune rather than mismanagement by the borrower. Furthermore, as the laborer's standard of living increases, his own accumulation allows him to decrease his need to borrow. The demand for borrowing would decrease while the supply of loanable funds would greatly increase. "The tendency of the system," he concludes, "would be to individual accumulations by the mass of the people."⁷³ The result, still consistent, in Spooner's view, with an absolute right of property, would be a more equalized distribution of wealth.⁷⁴ A system based on large concentrations of wealth would gradually transform into an aggregately richer society of fairly equalized smaller estates.⁷⁵

⁷³Ibid., p. 40.

⁷⁴Spooner foresees a breakdown of large accumulated estates and the end of "general poverty." Only "some few incompetent or improvident individuals" would remain poor; the whole system would benefit from a rising level of living. Those "honest, industrious, and frugal" persons would advance. See Ibid., pp. 40-41.

⁷⁵Spooner presents a very interesting assessment concerning distribution and accumulation, however. While he argues that wealth would likely aggregately expand, apparently it is distribution of which he is most concerned. While social wealth likely would grow, he argues, "it is of

The effects of this equalization process, according to Spooner, would also produce other non-economic results. He argues that the great bulk of injustice among men results not from an evil human nature, but from a lack of shared experience. A large portion of human virtue, he contends, depends on "sympathy," or the "susceptibility of being affected by the feelings of others."⁷⁶ Thus, like experience (more likely in an equalitarian society) decreases acts of injustice among men. In fact, he concludes, the greatest bulk of conflict in a society is due to divergent sympathies between classes--created when natural law is not adhered to.

It is obviously a matter of the highest social importance, that men--so far as it can be effected without infringing their individual liberties and rights--should occupy such situations and circumstances relatively to each other, as will promote the widest personal acquaintance, and the nearest similarity of experiences among them all.

This naturally correct system, Spooner reasons, would also produce beneficial moral results. First of all, crimes against property would decrease. "Almost without

little moment whether [it] would be greater or less. Distribution is of infinitely more consequence than accumulation." He concludes that existing wealth, if distributed by natural rules of justice, would more than suffice the well-being of all persons. See Ibid., p. 41.

⁷⁶Ibid., p. 45.

⁷⁷Ibid.., p. 46.

exception," he maintains, crimes against property result not from an evil nature, but from one of three reasons: "the suffering of actual poverty; the fear of coming poverty; or a desire for those luxurious displays and indulgences, which the perpetrators see to be enjoyed by the possessors of wealth."⁷⁸ Conversely, if natural principles are adhered to, men would neither likely face poverty nor would great concentrations of wealth exist.

Secondly, the nature or process of the social order would be transformed. No longer, Spooner predicts, would the cut-throat competition that legislative monopolization creates avail. Rather than persons constantly pressing their advantages beyond the limits of natural justice, they would be free and satisfied to "honestly obtain all the wealth that would be necessary to their respectability."⁷⁹

Finally, Spooner argues, the great divergence of wealth creates activities among men not conducive to moral living. The rich fall into intemperance, "relieved from the necessity to labor," and the poor turn to immoral activity in disillusionment and desperation, becoming "reckless from want, or from envy of the rich."⁸⁰

⁷⁸Ibid., p. 47.

⁷⁹Ibid., p. 49.

⁸⁰Ibid., pp. 49-50.

Moreover, this system ruins young persons. To survive, Spooner contends, the parent is compelled to "sell the labor of his children," "to occupy some menial situation in a rich man's service."⁸¹ Driven from home, these children "fall sacrifice to their own inexperience, and the enticements of the libertines that swarm in such places."⁸² If the extremities of poverty could be avoided, he argues, the family could be kept intact, with the children being raised in a more upright tradition. Marriage likely would then be nearly universal and at young ages. Men, more able to ascertain capital and build their financial resources earlier, would marry earlier. With earlier matrimony, there is less likelihood of illicit lifestyles among the young. The avenue to eliminate all these problems of morality, he concludes, is not to merely mitigate the problem, but to "cure the disease," by removing the causes of poverty.⁸³

These natural principles would also produce positive intellectual results. Individuals, no longer subsisting on the favor of others, would have the opportunity to enjoy free speech or free thought to challenge social institutions or avowed truths. Leisure time would increase for all classes of persons; in turn, cultural opportunities would

⁸¹ Ibid., p. 50.

⁸² Ibid.

⁸³ Ibid.

expand. As resources increased at all levels, the universal education of all children would also become possible, which would further assist in eliminating any remaining problems rooted in poverty.

Most importantly, the intellectual endeavors of individuals would be much better directed.

It would be directed more to the service and improvement of man, as man; and less to the aggrandizement of one portion of mankind, at the expense of the other portions, than it is, or ever has been under systems where wealth and power are distributed by arbitrary, instead of natural and equal laws. . . . The system proposed would bring such men down very nearly to the same social, political, and pecuniary level with the mass of men; and place entirely beyond their reach and their hopes those great fortunes, and that great political power, which can now be obtained, and which can only be obtained, by means of those arbitrary political arrangements that produce a corresponding poverty and subjection on the part of the masses.

Therefore, according to Spooner, these propositions also have political results. They return political institutions to their just role--protecting the natural rights of all individuals. This requires protecting man's person and property; any legislative activities contrary to these principles can only upset natural right and produce conflictual and undermining results.

For Spooner, the most important result of these propositions remains economic in nature. Under this system,

⁸⁴Ibid., pp. 56-57.

innovation and invention would flourish. Likewise, the standard of living would vastly increase. Without invention, Man would be "little else than savages."⁸⁵ With such innovation, Man's standard of living is unlimited.

However, extremities in wealth are not favorable to an increase in innovation and invention. The very wealthy have no need for them and the poor are too economically feeble to be capable of innovative genius. If both parties had the incentive to produce innovative labor-saving mechanisms, Spooner argues, society would experience an increase in productivity and overall wealth. However, poverty and inequality has largely prevented a significant portion of this increase in living standards.

One such invention as Fulton's adds more to the wealth of the world than the mere manual labor of a whole generation. Yet how many Fultons . . . have had their genius smothered by luxury, or starved by want; and how has poverty been entailed upon the world in consequence. . . . War, and monopoly, (which is but a species of war,) have ever been⁸⁶ employed in killing and starving mankind.

Man's mind, Spooner reasons, "is fertile of invention almost beyond conception," if given an opportunity to develop.⁸⁷ Left free to the fruits of his own labor, Man

⁸⁵ Ibid., p. 41.

⁸⁶ Ibid., p. 44.

⁸⁷ Ibid.

advances at tremendous rates. Innovation would "go on increasing in geometrical ratio" as living standards increase; Spooner expects that new modes of production could likely sustain a society "a hundred times its present population."⁸⁸ Through the elimination of poverty, the spurring of innovation and the equalization of wealth produced by adhering to the principles or propositions of natural law, Spooner foresees a bright and entirely different future world.⁸⁹

⁸⁸ Spooner, A Letter to Scientists and Inventors, p. 20.

⁸⁹ The analysis of Chapter 5 is combined with that of Chapter 6 and can be found at the end of Chapter 6.

CHAPTER 6

FREE BANKING AND THE MONEY SUPPLY

The most thoroughly developed segment of Spooner's writings concerns monetary theory and particularly his views on banking. Throughout his life, he advocated and continually fine-tuned his free market banking system based on a paper currency.

Spooner contends that his banking system would eliminate the cyclical patterns that continually disturb economic growth. The key variable, he argues, in the creation of these up-and-down patterns is credit manipulation, caused by excessive government intervention. In expansive periods, one witnesses a "great extension of credit"; in contracting periods, one finds "the suspension, or restrictions, of credit."¹

However, Spooner's greatest concern is the disproportionate fashion in which these cycles occur.

[Industrial downturn] comes at intervals, and falls unequally. And it falls most heavily upon those least able to bear it. In the first place, it falls, in a greatly disproportionate degree, upon those who labor for daily or monthly wages; depriving them of a large part of their accumulations, and often reducing them to absolute suffering. In the second place, it is attended with a fall of prices, which sweeps away, at half its usual market value, the property of thousands, in payment of debts, that had been contracted

¹ Spooner, Our Mechanical Industry, p. 4.

under high prices; thus bringing upon such persons either utter bankruptcy or grievous impoverishment. In this way a large portion of the people are kept in perpetual poverty; whereas if their industry were but uninterrupted and the prices of property stable, nearly everyone would acquire competence.²

Under the existing system, Spooner concludes, these "suspensions of credit" are unavoidable. The only means to correcting the cycles is to reform flaws in the economic structure. That action requires reformation of the currency system.

One cause of a contraction in the economy, Spooner reasons, is the exportation of specie. If specie alone supports the existing paper currency, he maintains, the loss of specie through exportation shrinks the amount of currency. That process alone slows the economy by drying up currency that could have otherwise been capitalized.

Even such a small shrinkage in the stock of currency, Spooner argues, can produce a wide-spread decrease in available credit. "Any contraction of the currency," he concludes, "operates equally upon all debtors in proportion to the amounts of their indebtedness respectively."³ Therefore, a ten percent decrease in currency, for example, very likely will create a much greater failure in the credit market.

²Ibid.

³Ibid., p. 5.

If the amount of currency in circulation be diminished to the extent of ten per cent of the whole amount, each and every debtor, as a general rule, will find his facilities for meeting his engagements diminished by ten per cent, of what they were before. . . . If, now, a man has been using his credit to its full limit, the diminution of his facilities, to the amount of ten or twenty per cent, is as fatal to his credit as the entire annihilation of those facilities would be. . . . A failure to meet one [debt] is a failure to meet all. He cannot pay ninety per cent of his debts, and refuse payment of the other ten per cent, and yet retain his credit, and continue his business. When, therefore, the currency contracts by the amount of ten per cent, this contraction, operating, as a general rule, upon all debtors alike, compels every debtor in the whole community to fail, except those whose margins of resources are ten per cent above all their liabilities.⁴

Few men have this margin above their debt liabilities to cushion the effects of a contracting economy. One key to preventing this contraction, then, is to create a system not dependent on specie as a basis for the solvency of the circulating paper currency.

A second reason for the contraction of credit, Spooner contends, is the "avarice of the money lenders," who are unable to control the rise of interest rates as industry revives, which eventually destroys the market again.⁵ The demand for credit increases, forcing interest rates upward. Eventually, he concludes, money lenders, reacting to the market structure as it exists, "raise the rate of

⁴Ibid.

⁵Ibid., p. 7.

interest so high as to swallow up" business profits.⁶ However, this occurrence does not result because of any inherent flaw in a capitalistic economy. Instead, these cyclical problems result from the granting of a monopolistic privilege to the holders of metals. By coercing individuals into using metals (gold or silver) and only metals as tender in exchange, the government places the holders of these metals in highly preferred positions.

An understanding of this argument requires a comprehension of Spooner's theories concerning money. He contends that the "origin of all the demand" for metal specie, as a currency, rests in its final consumption--the final and only demand for metal money is for taking the coin from circulation and converting it for some use (plate, jewelry, etc.).⁷ Obviously, since it continues to circulate as currency, not all metal currency immediately converts to use.

By this it is not meant that every man, who takes a gold or silver coin, as currency, takes it because he himself want a piece of gold or silver plate, or jewelry . . . for such is not the case, probably, with one man in a thousand, or perhaps one man in ten thousand, of those who take the coin. Each man takes it, as currency, simply because he can sell it again. But he can sell it again solely because some other man wants it, or because some other man will want it, in order to

⁶ Ibid.

⁷ Spooner, A New System of Paper Currency, p. 30.

convert it into articles for use. . . . This final consumption, or use, then, is the mainspring that sets the coins in circulation and keeps them in circulation, as a currency. It is solely the consumption, or use, of them, in other articles than currency, that creates⁸ any demand for them, in the market, as currency.

At any moment, the value of metal (minus a government-imposed monopoly requiring or preferring metal over other forms of currency) rests in its final consumption value. Since the value in consumption is constantly changing, Spooner concludes, it is absurd to argue that metals can maintain a fixed or definite standard of value. The value of any monetary "standard" rests on the demand for that specific commodity. As with any good, its value changes with the shifting of demand.

Spooner estimates that "very likely nineteen-twentieths" of all the discovered gold and silver internationally exists in forms other than coinage.⁹ Even the percentage which becomes coin, he argues, remains in that form for only a short period. Their use as coin exists "only while they are going from the mint to the goldsmiths and silversmiths."¹⁰ If their value rested in their circulation as coin, rather than their consumption or use as metals, he concludes, these coins would remain in

⁸ Ibid.

⁹ Spooner, Gold and Silver as Standards of Value, p. 4.

¹⁰ Ibid., p. 5.

circulation. Yet, while the nineteenth century witnessed a tremendous growth in metal supply, the amount of coinage in circulation increased only modestly.

Thus, Spooner concludes, no intrinsic market value or standard exists concerning these metals, as money. Individuals accept these coins in exchange only because of a confidence in their final use value; metal as coin has no use at all. Persons must exchange these coins for things that can be productive, or convert them into goods that yield "in the shape of luxurious pleasure," or ornament.¹¹ In fact, he argues, one would expect a much greater demand for other invested goods than they would for metals, since other properties "yield an income in money," whereas these metals serve only as "articles of fancy."¹² Their utilization as coins is not a final use.

The sale of [coin] as money is not a use of them any more than the sale of a horse is a use of the horse. For convenience in speech, we call the buying and selling of money a use of it, but it is no more a use of it than the buying and selling of any other merchandise is a use of such merchandise. When a man says he wants money to use, he means only that he wants to part with it,--that he wants either to pay a debt with it, or to give it in exchange for something that he can use or consume.¹³

Obviously, if metals' value is determined solely by

¹¹ Ibid., p. 8.

¹² Spooner, A New System of Paper Currency, p. 33.

¹³ Spooner, Gold and Silver as Standards of Value, p. 8.

use, and an individual exchanges for them at a rate greater than the use value, then he gives more than the true "market value" of the coins. In the market structure, Spooner reasons, this only occurs when gold or silver are granted privilege by intrusion and coercion by outside forces (i.e., government). These coins are no different from any other commodity. Furthermore, he contends, the use of circulation of paper currency cannot affect the market value of the coins by diminishing their value, because paper's usages do not compete with metal's uses. Coins utilized as money adds no additional value to the metal; likewise, any property can be represented through contract as circulating currency. The crucial element for money is that it be solvent.

Spooner willingly accepts that metals, at their true market rates, can easily serve as the basis of a solvent monetary system. In fact, though other properties might also be utilized, gold and/or silver might become the most popular basis. However, any "standard" requires a monetary system free of governmental monopolistic intrusion. To protect the system, other viable substitutes must always be available for use as money.

All restrictions imposed by law in any one country upon all other money than gold and silver coins, under pretence of maintaining the true standards of value in that country, are the merest farces, not to say the merest frauds . . . they only serve to derange the standard in that country by establishing a monopoly of money, and giving a monopoly and extortionate price to the coins in

that country, instead of suffering them to stand at their true and natural value, both as metals and as standards, and also at the same value that they have in the markets of the world.¹⁴

However, Spooner maintains, when limitations or prohibitions are placed on all other moneys, metals are granted "a purchasing power far above their true and natural value."¹⁵ The result is that holders of these metals are given an unfair and privileged advantage. It enables the holders "to coerce all other persons into selling their property to the holders of the coins for less than it is worth," or, in other words, illegitimately increases the value of this enforced tender.¹⁶

Suppose, Spooner argues, a government adopts one specific commodity as the only money in an economy, prohibiting the use of all other currencies.¹⁷ The owners of this special commodity, by the fact they now monopolize all currency, would be placed in an extremely preferred position. With a monopoly over the money supply, these few persons, he reasons, could dominate those persons without the legalized currency. No exchange could be made except through the owners of the money, at the stipulations they determine.

¹⁴Ibid., p. 15.

¹⁵Ibid., p. 20.

¹⁶Ibid.

¹⁷ Spooner uses hummingbirds in his example. See Gold and Silver as Standards of Value, pp. 26-29.

Everybody in the country, except these hundred men [who own the money] would be robbed of all their property at once, unless they should chance to be some few so situated that they could contrive to live within themselves without selling either their property or their labor. And these hundred men would soon make themselves masters and owners of substantially all the property in the country. . . . Such would be the effect of establishing a monopoly of money ¹⁸under pretence of establishing a standard of value.

The power to fix the legal tender of all debts, Spooner concludes, grants government two exceptional powers: first, it determines what currency shall be used in all transactions; second, in effect, it determines how much of the currency shall be used. The result is that men "have no power, of themselves, to make obligatory contracts," since Congress (by passing such legislation) can alter, as they see fit, any contract between individuals by forcing its (public) currency into any otherwise voluntary exchange.¹⁹ The tender used in any exchange is legal tender, he explains, not because Congress declares it legal, but because the partner to the contractual agreement voluntarily and competently accepted it. The effect of such legislative activity allows the government "to force into circulation its own currency, and the currency of banks authorized by itself; and to force out of circulation all other currency; or bring it down to a level with its own."²⁰

¹⁸Ibid., p. 27.

¹⁹Spooner, Considerations for Bankers, p. 37.

²⁰Ibid.

The key to preventing this monopolistic situation is to allow individuals "to exercise their natural right of buying and selling as money anything and everything which they should choose to buy and sell as money."²¹ That requires that no preferred status be given to any commodity as currency over all other properties. Therefore, he argues, the only possible institutional arrangement consistent with natural law is a free-market banking system built on solvent and stable property that grants no special advantage to any commodity.

A third cause of credit suspension and the subsequent economic contraction, according to Spooner, is the "superfluous indebtedness" created by excessive and unnecessary credit exchanges, which produces the "materials for a panic or crisis."²² The more often persons utilize credit rather than cash in making exchanges, he argues, the greater the level of uncertainty. Determining the solvency of each person's credit becomes much more complex. With a substantial number of banks, however, most persons can make all transactions (excluding bank debts) in cash payments, diminishing the great uncertainty and complexity arising from numerous credit transactions.

²¹ Spooner, Gold and Silver as Standards of Value, p. 28.

²² Spooner, Our Mechanical Industry, p. 10.

Furthermore, these problems are heightened by the existing system's "loose" nature concerning the accountability of transactors.

No specific property is holden for a specific debt, as in the case of a mortgage. Every thing, in this respect, is loose. The creditor, in each case, has only a general confidence, based upon circumstances, and not upon any intimate knowledge, that all of his debtor's miscellaneous assets will prove adequate to meet all of his miscellaneous liabilities. . . . In this chaotic mass of indebtedness, no specific property is holden for any specific debt. . . . Every man's debtors are entangled with every other man's debtors, by an almost infinity of cross credits, whose ramifications no one can trace. . . . Thus nearly all credit proceeds avowedly upon the principle of risk--even of great risk--and not of certainty.²³

A fourth possible factor in the contraction of the market is "the lack of variety" in the market, which results in the "over-production of particular commodities."²⁴ Unless plentiful and ready capital markets exist, older secure companies, often outdated, will continue to control the market. These industries, controlling large percentages of the market in a monopolized structure, cannot and do not easily divert their funds into new avenues as demands change. According to Spooner, this problem is more likely avoidable when the market is more diverse or extended. Moreover, more ready capital for greater numbers of

²³ Ibid., pp. 10-11.

²⁴ Ibid., p. 12.

individuals, he argues, produces a greater variety of goods, less over-extension of production in specific segments of the market, quicker sales of goods, and more secure credit markets. All of these results decrease, he concludes, the likelihood of an uncertain and slow reacting economy. All of these results hinge upon the existence of a free banking system.

In his early writings concerning banking, Spooner develops numerous constitutional arguments supporting the legality of his free banking system. He admits that government was granted several expressed powers concerning money. Moreover, the states are not allowed to coin money.²⁵ However, these provisions provide no evidence "to preclude the people from the enjoyment of their natural right to buy and sell, from hand to hand, any other articles of property" the exchangers consider of adequate value for the exchange.²⁶

Spooner draws a legal distinction between money and currency. Money is the legal tender, recognized by the Constitution and "stamped by authority of government."²⁷ Currency, though, requires a more encompassing definition.

²⁵See the United States Constitution, Article I, Section 8.

²⁶Spooner, Constitutional Law, Relative to Credit, Currency, and Banking, p. 26.

²⁷Ibid., p. 25.

Currency may be anything having value, or presumed to have value, which, on account of its greater convenience, or for lack of money, or for any other reason, is by mutual consent of the parties to bargains, given and²⁸ received in lieu of, or in preference to, money.

Thus, all money is likely to be currency, but all currency is not legal money. Legal money, Spooner argues, serves to provide a uniform standard across the entire economy, to allow a defined inter-state contractual interpretation, and to serve as payment of public debt. Currency exists any time an article is exchanged "frequently or more frequently than property in general."²⁹ As long as the exchanges are voluntary, any commodity can serve as currency. Money is the legal tender; thus, the debtor can require that his creditor receive it as payment, as can the creditor demand payment in that tender. Therefore, the functions of government emerge to prevent litigation with a standard legal tender, and, if conflict does arise, provide a "legal medium for paying debts."³⁰

Even though variations in the value of goods obviously take place over time, Spooner concludes, government should take no involvement in this market process. Government's role is to uphold contract so "that the identical thing

²⁸ Ibid., pp. 25-26.

²⁹ Ibid., p. 26.

³⁰ Ibid., p. 31.

promised, shall be paid."³¹ Therefore, he concludes, the Constitutional requirement to regulate the value of money can only pertain to fixing values of coins relative to each other. Likewise, the establishment of a legal tender is only to "facilitate the making and fulfilling of contracts by the parties, and the enforcing of them by the courts, with perfect certainty and precision."³² Thus, nothing constitutionally contravenes individuals' rights to utilize whatever solvent currencies they desire.

Spooner develops in particular detail a banking system that relies on paper currency. "The principle of the system," he explains, is that "currency shall represent an invested dollar, instead of a specie dollar."³³ The paper currency may be redeemed by an invested dollar when brought to the bank by the holder, unless the bank chooses to redeem the paper with metal specie.

The capital of the bank, Spooner continues, "is made up of a given amount of property deposited with trustees" of the bank.³⁴ This capital, encompassing property of stable or increasing value, remains as liens on the mortgaged property; it may, however, pass to new owners if the trustees fail to eventually redeem the currency with specie.

³¹ Ibid., p. 28.

³² Spooner, Considerations for Bankers, pp. 40-41.

³³ Ibid., p. 5.

³⁴ Ibid.

Banks under Spooner's plan have several alternatives when a holder brings currency into the institution for redemption. First of all, if the bank does not wish to let out specie, they may redeem "by a conditional transfer of a corresponding portion of the capital."³⁵ The holder draws interest on the transfer until the trustees of the banks redeem the note--either by a specie payment, or "under certain exceptional and extraordinary circumstances," by "an absolute transfer" from the old owner to the holder of the conditional title.³⁶ In the latter case, the original conditional title holder takes full possession of that capital and becomes a stockholder in the bank. Therefore, while bankers may change through their own failures (i.e., inability to redeem the currency), the bank, according to Spooner, cannot fail.

The possessor of the circulating currency is assured of receiving either specie on demand, specie with interest, or an amount of the bank's capital equal to the value of the currency presented. The value of the currency, he reasons, rests upon the value of the capital backing it up (since the redeemer might only receive that rather than specie). But if the capital is greater in value or at least equal to the

³⁵ Ibid.

³⁶ Ibid., p. 6.

value of the specie, the bank would redeem the currency in specie, either at a present or future time.

Obviously, for banks to be continually solvent, its capital must be backed by a productive property that holds eternal and stable value. Spooner suggests land mortgages, railroad stock, and public stocks as likely the best forms of capital. In particular, land serves as the most desired capital, since it is a property "of a fixed and permanent nature, liable to few casualties and hazards, and yielding a constant, regular, and certain income."³⁷

Spooner envisions individual landowners placing their land in the "hands of trustees, to be held as banking capital."³⁸ Spooner calls this capital the "Productive Stock"; it should be "worth ordinarily par of specie in the market."³⁹ This capital is transformed into joint stock shares of different denominations and transmitted by the bank's trustees. This transfer to the trustees authorizes them to utilize the capital for the bankers. The individual landowners, then, are the bankers, "doing business through the trustees."⁴⁰ Their dividends include the rents of the land and any banking profits created by loans.

³⁷ Spooner, A New System of Paper Currency, p. 9.

³⁸ Ibid., p. 7.

³⁹ Ibid., p. 9.

⁴⁰ Spooner, Considerations for Bankers, p. 7.

A second type of stock, explains Spooner, is also created, "Circulating Stock." The trustees are responsible for issuing these certificates at a value equal to the value of the Productive Stock in the bank. These notes circulate as currency and are "in law, a lien upon the lands for . . . the number of dollars expressed in the certificate."⁴¹ This circulating stock, therefore, produces no dividends. "Its value," he maintains, "will consist wholly in its title to be received at its nominal value for debts to the bank."⁴²

Spooner presents several legal conditions of the lien. First of all, the certificates must serve as legal tender for all transactions due the bank that issues the notes. When larger denominations of a certificate are presented for conversion, Spooner expects the trustees to redeem with a conditional title equivalent to the currency.⁴³ The holder receives interest on the title per annum, until the certificate is redeemed in specie. Most importantly, no dividends go to the bankers for any reason until this conditional title is cancelled.

Smaller certificates, Spooner surmises, likely would

⁴¹ Ibid.

⁴² Spooner, A New System of Paper Currency, p. 10.

⁴³ Of course, the bank, if it wishes, may pay in specie if it is readily available. What the conditional transfer does is protect or hedge against excessively large depletion of a bank's specie, which might create failing confidence and, in turn, runs on the bank.

continue as it would on a purely metal based standard. The banks would convert these notes with specie, being smaller in value and not a threat to excessive drainage of specie at any particular time.

Secondly, whenever part of the bank's capital is conditionally titled to a redeemer of currency, a corresponding amount of currency (equal to the conditional title) must be reserved from circulation. Therefore, Spooner argues, the amount of currency in circulation never exceeds the amount of capital (land) the bankers have to support the currency. As long as the bankers avoid conditional titles by paying in specie immediately or cancelling existing conditional titles rapidly (with interest), they procure the dividends. Thus, while the system is solvent without specie, the incentive of the bankers is to redeem whatever currency is desired to be converted by holders into specie as rapidly as possible.

However, if the bank is improperly managed, so that all the capital is placed in conditional titles, the original bankers' (primary stockholders) land "shall be absolutely forfeited into the hands of those holding the conditional titles" (secondary stockholders).⁴⁴ Assuming that land value does not severely diminish, Spooner concludes, the currency must remain solvent.

⁴⁴ Spooner, Considerations for Bankers, p. 9.

It will be absolutely incapable of insolvency; for there can never be a dollar of currency in circulation, without there being a dollar of land, in the hands of the bankers, (or their trustees,) which must be transferred . . . in redemption of it, unless redemption be made in specie.⁴⁵

Any losses fall on the bankers and not the holders of currency. If negative forces require the banker to transfer all his capital into conditional titles to redeem his circulation, then the lands simply pass to new owners who hold the titles. "This process would go on indefinitely," he concludes, "as often as one set of bankers should fail."⁴⁶ In other words, while investment, and subsequently bankers, may fail, circulation could never fail because of an inability to redeem circulating notes.

The crucial importance of this system, Spooner contends, is that free banking would immensely increase the capital (money) supply. The growth of American industry, he explains, demands a vast increase in solvent money.

Spooner estimates that a paper currency could create as many as 150 times more dollars than metal based currency.⁴⁷ Yet, if solvent, the value in the market as money would not decrease, since all the dollars would be backed by valued property. There would be no more currency in circulation

⁴⁵ Ibid.

⁴⁶ Ibid., pp. 9-10.

⁴⁷ Spooner, Gold and Silver as Standards of Value, p. 12.

that would be needed for market exchange. Anytime the paper (at unhindered market values) is not worth gold or silver in exchange, it would leave circulation through redemption. In other words, the paper dollar would equal the specie dollar, but would not be subject to the monopolistic legislation that distorts the value of the metal.

However, since money is not freely circulated, the market cannot maintain, Spooner reasons, the money stock necessary to adequately advance the economy at the rate it could advance if free banking existed. In fact, he concludes, more money is absolutely necessary for economic expansion.

To demonstrate the "fundamental law," which "necessitates a constant and indefinite increase in the volume of money," Spooner utilizes an isolated island economy analogy.⁴⁸ He concludes that as the market extends to more and more diversification and population expands, the need for an increase in the money supply also expands. The

⁴⁸ Spooner, The Law of Prices, p. 3. He begins his analogy with one hundred men all producing the same product, with a set amount of legal money stock. Gradually, he increases the number of persons and the variety of goods, holding money stock constant, which demonstrates the rapid increase in money's velocity to maintain the existing market structure. Unfortunately, he concludes, demand for the money is so active (without an expanding supply of money) that exchange is slowed and money hoarded, obstructing trade and upsetting economic growth. Unless the money supply advances to support an advanced economic state, the economy cannot advance because of an inadequate supply of currency.

velocity of the money supply otherwise would reach incredible rates of exchange, and likewise create additional problems. Without freely emerging forms of money, the market could not expand.

Such rapidity of exchange would be practicable enough if the holders of the coins should all part with them readily at their true and natural value, instead of holding them back in the hope of getting for them more than they were really worth. But where there was so active a demand for the coins as to require that the whole stock be sold [so rapidly], it is natural to suppose that the holders of the coins would hold them back, in order to get more for them than their true and natural value. And in so far as they should do so, they would obstruct trade, and by obstructing trade obstruct and discourage production,⁴⁹ and thus obstruct the natural increase of wealth.

Unless money supply is free to keep pace with the increasing demand brought about by the division of labor, Spooner concludes, a "corresponding obstruction to the increase of wealth" must occur.⁵⁰ In fact, unless money increases so as to allow this expansion, men would advance very little beyond simple self-sufficiency. Thus, the problem of the existing system, he reasons, is the lack of solvent money.

There is, therefore, no more occasion for a scarcity of currency than for a scarcity of air. And this currency would all be solvent, stable, and furnished at the lowest rate of interest at

⁴⁹ Ibid., pp. 5-6.

⁵⁰ Ibid., p. 13.

which the business of banking could be done. Under such a system there could never be another crisis; the prices of property would be stable; the rate of interest would always be moderate; industry would be uninterrupted, and much more diversified than it ever hitherto has been;⁵¹ and prosperity would necessarily be universal.

While currency increases, the likelihood of insolvency does not expand. Currency in excess of cash demand returns to the banks for redemption. The holder either receives specie, conditional title and interest, or permanent title and property. In all three situations, the currency is withdrawn from circulation. If the currency "will not buy property that is worth as much as money at interest," it will be returned and placed on interest and removed from circulation.⁵² Currency issued and not demanded for actual transactions are converted into "interest bearing stocks" instead of creating inflationary price tendencies.⁵³

On the other hand, if the stock becomes more valuable than specie, the process again adjusts itself.

Even if the rate of dividend, fixed for the Secondary Stockholders to receive, were such as to make their stock worth more than par of specie, that would not be likely to make the bills worth more than par of specie, because a person, by returning his bills for redemption, would not be sure of getting Productive Stock for them. He might be paid in specie, instead of Productive Stock.⁵⁴

⁵¹ Spooner, Considerations for Bankers, p. 11.

⁵² Ibid., pp. 11-12.

⁵³ Ibid., p. 12.

⁵⁴ Spooner, A New System of Paper Currency, p. 12.

Even if the currency were redeemed with Productive Stock, Spooner argues, it would be highly unlikely the bank would maintain that arrangement for any extended period of time, considering existing economic conditions. The market would call for the bank to redeem the currency into specie as quickly as possible. Thus, there would be no run to exchange bills for Productive Stock, he concludes, because the banks can also opt to pay in specie.

According to Spooner, these arguments should "extinguish forever all the hard money theories as to the indefinite inflation of prices by any possible amount of solvent paper currency.⁵⁵ Moreover,

it ought also to extinguish forever all pretence that a paper currency should always be redeemable in specie on demand; a pretence that is merely a branch of the hard money theory. This experience ought to be taken as proving that other values than those existing in gold and silver coins . . . can be represented by a paper currency, that shall be adequate to all the ordinary necessities of domestic commerce; and consequently that we can have, at all times, as much paper currency as our domestic industry and commerce can possibly call for. . . . This experience ought, therefore, to serve as a practical condemnation of all restraints upon the most unlimited paper currency, provided only that such currency be solvent, and actually redeemable, at the pleasure of the holder, in the property which it purports to represent.⁵⁶

The free banking, paper currency system, Spooner

⁵⁵ Spooner, Considerations for Bankers, p. 13.

⁵⁶ Ibid.

contends, affords several advantages. First and foremost, it furnishes a plentiful currency supply. Currency would no longer be relegated to a pure specie basis. Any property of value could be transformed into loanable capital. Whereas the metal standard could add to the loanable capital stock only by so much currency as it could keep in circulation, over and above the amount of specie needed on hand for redemption, Spooner's system could increase loanable funds by postponing specie payment with interest yielding stock. The bank need not fear runs on their specie supplies. Once they realized a profitable rate of interest to charge borrowers, they "could always loan their entire capitals" at mortgaged values.⁵⁷

Secondly, this currency system is beneficial because it maintains a much greater degree of stability. Land, for example, is a relatively stable commodity, unlike specie, which can flow in and out of a specific market. Neither the amount of currency nor its stability in value would be linked directly to the less stable metals.

Thirdly, the currency system would be guaranteed solvent. In fact, "it would be absolutely incapable of insolvency."⁵⁸ Any circulating currency must be backed by

⁵⁷ Spooner, A New Banking System, p. 47.

⁵⁸ Spooner, A New System of Paper Currency, p. 14.

productive stock. Bankers may fail because of malinvestment, but banks remain solvent (minus fraudulent activities).

Fourthly, the system would be much more secure. Information concerning the solvency of a bank, Spooner explains, would be more readily available. All mortgages would be a matter of public record; if the property is not worth the value of the mortgage, the reputation of the bank is tarnished. Banks, he maintains, would have an incentive to openly demonstrate their activities and to prove their solvency. The competitive nature of a free banking system, along with the subsequent growth in the supply of currency, would force banks to recognize market conditions and protect or secure their circulation practices.

Furthermore, mortgages would likely be made at a fraction of the land's value. Even this rate, however, would increase the amount of currency over present levels. If the banks mortgage at insecure rates, they would be discredited by other more secure-oriented banks. The lower the value of the mortgage, the greater the security, particularly as land values increase over time because of expanding economic conditions (created by free banking, he surmises). Additionally, all the mortgages

are made mutually responsible for each other. If any one mortgage proves insufficient, no dividend can afterwards be paid to any Primary Stockholder, until that deficiency has been made good by the company. The effect of this provision will be to

make all the founders of a bank look carefully to the sufficiency of each other's mortgages; because no man will be willing to put in a good mortgage of his own, on equal terms with a bad mortgage of another man's, when he knows that his own mortgage will have to contribute ⁵⁹ to make good any deficiency of the other.

The effect of this process, Spooner concludes, is that the bank "will be either all good, or all bad."⁶⁰

A good bank, therefore, could operate at home and abroad with its customers readily recognizing the institution's solvency. Fear of insolvency would not pose a large problem for banks who extend their credit to a more comprehensive geographical sphere, according to Spooner.

Suppose a bank, at Chicago, should wish to establish the credit of its bills in New York. All that would need to be done would be to make arrangements with some banks in New York to redeem them. And to induce the New York bank to redeem them, it would not be necessary, as now, that the Chicago bank should keep a deposit of specie in New York. All that would be necessary would be to satisfy the New York bank of its (the Chicago bank's) solvency--that is, of the sufficiency of the property holden. This could be done by the New York bank's sending a commission to Chicago to investigate the question. And when the New York bank should have once become convinced of the solvency of the Chicago bank, the credit of the latter is established forever. The New York bank would not need to be continually investigating the condition of the Chicago bank; because under this system, a ⁶¹bank, once solvent, is forever solvent.

⁵⁹ Ibid., pp. 22-23.

⁶⁰ Ibid., p. 23.

⁶¹ Ibid., p. 24.

Finally, the banks, among themselves, would have the incentive to "act as guardians to the public against frauds by each other."⁶² No bank, he argues, would accept the currency of another bank without clear proof of the solvency of the bank. Therefore, unsound currency goes unwanted, first by the banks and then by the community.

Spooner contends that the critical element in preventing runs or panics upon banks is solvency. Where solvency is doubted (England and the United States are his examples), runs occur frequently; where solvency is unquestioned (Scotland), few problems have occurred. In Scotland, assurance in the soundness of the money emerged from a structure where "each of the banking companies had a very large number of stockholders, and that the private property (including the real estate) of all these stockholders was holden for the debts of the banks."⁶³ Conversely, England was ridiculed with runs throughout the same eighty year period of the Scottish free banking system. In granting vast monopoly privileges to the Bank of England, Spooner argues, the government "virtually enacted that there should be no solvent banks in England."⁶⁴ In America,

⁶² Ibid.

⁶³ Spooner, Gold and Silver as Standards of Value, p. 21.

⁶⁴ Ibid. Apparently the biggest problem with the English banks, according to Spooner, was the legislation

legislation required banks to go beyond their limits of capital in currency and, further, exempted stockholders from liability for the bank's debts.⁶⁵

Fifth, the currency would be "cheap," or "afforded at a low rate of interest."⁶⁶ In fact, he concludes, the "capital costs nothing," since its use as banking capital would not interfere with the other uses.⁶⁷ Moreover, the system "admits of competition limited only by the real property of the country."⁶⁸ No monopolistic or manipulative structure would artificially keep "money" expensive. Both these factors would continually pressure interest rates downward.

Sixth, since this currency is backed by real estate, Spooner argues, its basis or standard, unlike specie, could

that limited all banks, other than the National Bank of England, to no more than six partners, raising serious doubts as to the worthiness or solvency of their credit.

⁶⁵ However, Spooner blames the Panic of 1873 in America on an inadequate money supply, caused by detrimental legislative actions that shrunk the amount of circulating currency. These events, in turn, increased the credit traffic and private debt and eventually placed "the credit of the whole community at the mercy of a few holders of money, who had no motive but to extort the utmost possible from the necessities of the community." The result was a collapse of credit and depression. See Ibid., pp. 22-23.

⁶⁶ Spooner, A New System of Paper Currency, p. 17.

⁶⁷ Ibid.

⁶⁸ Ibid.

not be removed from the country, distorting the value structure and leaving persons with currency shortages. With this proposed system, specie flow is not a critical part of the monetary process; in fact, metal can be liberated for other uses if one desires.

Finally, the "system stands wholly on common law principles," requires very little government intervention, and "avoids all necessity for privileged legislation."⁶⁹ Any man or group of men with property can formulate a bank and provide loanable capital. Moreover, Spooner reasons, one could expect a more evenly distributed credit structure. He envisions an increase in bank credit, and a decrease in individual credit. As a result, almost all temporary credit would be obtained through banks. Cash, rather than credit agreements, would be used in economic transactions. The hazards of trading on credit would be greatly decreased, he concludes, as each person's solvency would be generally determined independently of each separate transaction. The bank would singularly determine an individual's solvency; subsequent transactions would be made in cash payments.

"Money," concludes Spooner, "is the great instrumentality--the indispensable capital," by which the wealth of the world emerges.⁷⁰ To monopolize or deny

⁶⁹ Ibid.

⁷⁰ Spooner, Universal Wealth, p. 5.

persons the ability to readily make exchanges severely or completely deters the likelihood of potential income growth. In a purely free economy, Spooner envisions an increase in production, followed by a gradual rise in prices and a corresponding need for a larger money stock. Any attempt to keep down prices, by limiting the amount of money, would only result in "suppressing" an expansive economy. The critical element is the availability of money (i.e., capital) to maintain the most productive and innovative market possible.

CRITICAL ANALYSIS OF CHAPTERS 5 & 6

Spooner's discussion of right of property and contract reaches radically individualistic conclusions, arguing that Man has total self-dominion of his possessions. Whereas Locke, for example, establishes limitations so that some wealth exists for all persons, Spooner does not even formulate that boundary.⁷¹ He establishes no explicit limits to these economic rights, arguing that wealth exists in "unlimited supply."

However, acknowledging the implications of Chapter 2, this absolute self-dominion cannot exist. Implicit in a natural justice that requires duties is the acknowledgment

⁷¹ For a discussion of Locke's limits on the right of property, see C. B. MacPherson, The Political Theory of Possessive Individualism (Oxford: Clarendon Press, 1962).

that right of property, defined as sole and arbitrary self-dominion, is not absolute. If persons are not required by the laws of nature to initiate actions they otherwise would have avoided, then no rights can be absolute in the way Spooner defines them. Furthermore, contending that a person has full dominion of his property under natural law may mean little if justice requires individual duties that emerge from the nature and not the actions of the individual.

Building on an extremely undeveloped system of justice, Spooner's right of property and right of contract are therefore left undefined. He argues that Man should retain all the fruits of his labor consistent with justice and that only contracts that abide by natural law are obligatory. While he may be correct in maintaining that government interference distorts the right of contract, the primary burden falls on Spooner to clearly define justice as it relates to property relationships. If he argues that certain objective standards exist, and that any rules contrary to these standards illegitimately restructures the social order, he must first clearly determine the objective rules. By extending his justice beyond a non-coercion axiom, with the institution of duty, he makes his task exceedingly complicated.

As the results of his economic ideas demonstrate, it is unclear what Spooner foresees from justice--equality or

freedom. He apparently argues both sides of the fence-- espousing freedom while protecting equality. In fact, his conclusion clearly leads him to argue that equality and freedom are not incompatible concepts. Within his system of justice, it is not the free economic process that creates inequality but the use of political force.

One supporting the contention that freedom and equality are ultimately contradictory concepts might formulate the following argument. A freely functioning economic structure, where savings and capital formation are possible, expands in unequal proportions among men. This unequal division of property creates a division of power, which may produce an unequal division of civil "rights." In other words, the political process is merely a residual of economically-created inequality.

However, Spooner's argument approaches the causes of inequality in a reversed manner. Under a voluntaristic economic structure, individuals exist in a generally egalitarian order. Inequality results with the initiation of political coercion or force, which divides property unequally.⁷² A division of power emerges and is maintained through force. Therefore, if one avoids the utilization of

⁷² An unanswered question remains from Chapter 4: What initiates the actions of certain persons that leads to the application of force in a generally equalitarian structure? In other words, what is the catalyst that moves society from non-State to State?

political force (inconsistent with natural law), no separation of freedom and equality exists.⁷³

One may wonder whether Spooner is more interested in equality than freedom. To argue that distribution is exceedingly more important than accumulation leaves one unsure of what justice, when fully cultivated, actually encompasses. For example, whereas J. S. Mill in his Principles suggests the use of high inheritance taxes to maintain a general equalization of individual wealth, Spooner develops a natural law process of debtor-creditor relations designed to serve the same function. Why is Spooner's process naturally right and Mill's example "coercive"? For Spooner's interpretation of justice to have any effect, it must be imposed through a legal system. Yet, if persons do not voluntarily contract in accordance to his natural propositions, he also must rely on coercion for compliance.

Spooner's natural propositions also produce several

⁷³In The Federalist Papers, #10, Madison argues that the most "durable source of factions has been the various and unequal distribution of property." The Federalist Papers (New Rochelle, New York: Arlington House, 1966), p. 79. Spooner would wholeheartedly agree, but would resolve the problem in a much more radical manner. By ignoring individual self-interest, he avoids what he considers the "breeding" of political coercion. Thus, if he eliminates politics, he eliminates the raison d'etre of factions.

interesting social aspects. The most glaring consequence of his system is the extremely puritanical social outcomes he both foresees and evidently supports. Spooner anticipates extremely prudish conclusions from a generally freely functioning social order. He rejects Christianity, yet maintains a strict moral system, which leaves one curious of whether he supports his philosophical views because they produce these traditional norms or whether these social outcomes are merely a dessert of his system.

He maintains an extremely optimistic view of Man. Given the opportunity, Spooner's individual is a creative, innovative and productive person. Consequently, when this view is connected with an almost religious fervor for the role of innovation in society, Spooner's ideal structure emerges, where Man is set loose to lead civilization on a never-ending expansion of prosperity.

His structure is clearly a utopian construction, at least as it concerns the disappearance of poverty. He misconceives several economic factors in his interpretation of a just economy. He does not evolve to recognize the functions of middlemen or speculators in the market structure, in particular, and the role of information and risk, in general. For example, without the knowledge generated by speculation, Spooner's market economy is unable to adjust to a changing and complex informational

structure.⁷⁴ One cannot simply assume that the role of middlemen can be transferred to individual exchangers. The result would be a very inefficient economy.

This same process of shifting all functions of any economic exchange back upon each individual permeates Spooner's entire discussion of laborer's wage-earning, he completely ignores the role of comparative advantage. Likewise, he omits the factors of risk and time-preference in the capitalist-worker relationship. Murray Rothbard notes:

If they wanted to, all workers could refuse to work for wages and instead form their own producers' cooperatives and wait for years for their pay until the products are sold to the consumers; the fact that they do not do so, shows the enormous advantage of the capital investment, wage-paying system as a means of allowing workers to earn money far in advance of the sale of their products. Far from being exploitation of the workers, capital investment and the interest-profit system is⁷⁵ an enormous boon to them and to all of society.

Spooner is less than convincing in proving that wage labor exists because of an oppressive structure. In fact,

⁷⁴ Furthermore, the increased role of liability that Spooner proposes would increase the demand for this information function. To rely, as he does, on the individual actors making the exchange requires a level of knowledge beyond reason.

⁷⁵ Murray Rothbard, "The Spooner-Tucker Doctrine: An Economists's View," in Egalitarian as a Revolt Against Nature (Washington: Libertarian Review Press, 1974), p. 132. This very brief analysis is apparently the only published criticism of Spooner's economic views by an economist.

he rejects the industrial revolution by arguing for a "simpler time," where self-contained capitalists, in an extremely laissez-faire structure, compete. However, as the results of the industrial revolution demonstrated, he throws the baby--economic growth--out with the bath water.

Overall, Spooner's natural economy maintains some extremely naive assumptions concerning the nature and abilities of Man. Set free of his political chains, the common man becomes a near-messiah figure. However, can one blame all social problems on the political process? One might argue that the destruction of political structures merely shifts Spooner's fear, the use of force, from political to economic institutions.

It seems there would be many individuals in any economy that simply are too risky for economic involvement. While a freely fluctuating rate of interest may benefit the poor, it is unlikely that all persons will be included in this apparent egalitarian advance of civilization. The unsophisticated nature of Spooner's economic assumptions leaves him unable to produce a social system that promotes steadily decreasing levels of poverty. Yet, he does present a well-thought ideal structure of an economic order that epitomizes his conception of natural law.

Likewise, there are flaws and successes in Spooner's unique monetary ideas. In basic classical economics, money is like the hub of a wheel, connecting production and

exchange. As the economy grows and population increases, prices gradually decrease with money remaining fairly constant in the process. However, to Spooner, money is the fuel of the economy; money "drives" the expansion of the market. In a small way, he precedes Keynes--without supporting statist intervention.

These theories create two problems. First of all, will Spooner's solution (the growth of money) produce his desired goals (real growth of the economy)? Secondly, will his banking system create the existence of his solution?

Rothbard correctly answers both concerns.⁷⁶ The fallacy of Spooner's approach, he argues, concerns the argument that the interest rate is determined by the quantity of money, in inverse proportion. Thus, since a lower rate of interest is better, more money is necessary. One "school" utilizes the State to increase the monetary supply, whereas others (Spooner and Benjamin Tucker, Rothbard argues) rely on private banking.

However, nothing occurs merely by an increase in money that confers a benefit on the market. To have value, money must be a scarce good; increasing the supply would simply move individuals to bid up prices. No reason exists for the

⁷⁶Ibid., pp. 127-133. Unfortunately, Rothbard somewhat unfairly lumps Spooner and Tucker into the same camp. However, concerning monetary theory, this is a fair categorization.

rate of interest to fall. The additional money would "only dilute the purchasing power" of money, or, in other words,

[if] \$1000 once brought \$50 interest per year, \$4000 will now bring \$200; the amount of interest will rise fourfold, like everything else, but there is no reason for the rate to change.

[Spooner] believed that if the supply of money were raised sufficiently (as it supposedly would on the purely free market), the rate of interest would fall to zero; actually, there is no reason for it to change at all.

The rate of interest is a function of time preference and not money supply. Furthermore, since an increase in the quantity of money (by the State) also likely distorts the loan market by affecting different segments of the economy at different degrees, individuals will generally perceive a more risk-filled and uncertain market. Rather than decreasing or remaining stable, the interest rate will likely increase.

Spooner's economic structure is based on a private banking system. However, the greater the number of notes in circulation, the greater the costs of accepting the notes become, as information and transaction costs increase. Furthermore, driven by the effects of a competitive market structure, any notes not maintaining a very secure posture are driven from the economy. The less sound money would disappear without the State's encouragement of credit expansion, thus restricting the supply of money! Unlike a

⁷⁷Ibid., p. 131.

governmentally imposed fiat system, where bad money drives out good money, the private system would drive out all notes that are not securely solvent. Hence, Spooner's second problem arises. Can he expect a competitive free banking system to increase the money supply? Spooner's process of capitalization requires that real capital growth occurs from his fueling process that lowers the rate of interest. While his free banking might, in the long run, produce lower rates of interest, it does it through a process entirely opposite the one he proposes.

Because Spooner's institutional structure is sound, it is unfair to lump him with mutualist anarchist banking theorists such as William Greene and Benjamin Tucker.⁷⁸ Greene's mutual bank allows anyone pledging property to become a member, legally binding themselves to accept the currency of the bank. Most importantly, the rate of interest is determined only by the expenses of the bank, meaning the real rate would be zero percent.⁷⁹ Tucker, generally following Greene's ideas, argues the system would

⁷⁸Though Greene has received more attention than Spooner, Spooner's system preceded Greene by almost ten years. For a brief discussion of some of the American free banking proponents during the Jacksonian period, see Joseph Dorfman, The Economic Mind in American Civilization, Vol. II (New York: Viking Press, 1946), pp. 652-661.

⁷⁹For a discussion of Greene's views, see Bowman Newton Hall, "A History and Critique of American Individualist Anarchists' Economic Theories," a Ph.D. Dissertation at Duke University, Jan. 1971, Chapter 3.

work because businesses collectively have an incentive to form mutually beneficial banking institutions to obtain capital at no interest.⁸⁰

This mutualist system possesses two serious flaws that Spooner avoids. First of all, it is naive to argue that loanable funds would exist without some rate of return on the loan. Capital goods are "in finite supply, but in infinite demand."⁸¹ Some individual incentive must exist for the holder of the money to lend for future benefit. Otherwise, he would put it to some other use in the present. Secondly, Tucker's argument does not take into account the problems of initiating collective action. No single business alone has an incentive to fund a bank granting no returns, when it could reap a return elsewhere. It would be almost impossible to generate such collective action out of an existing market structure.

Spooner apparently understands these flaws. He expects very similar results--low rates of interest--but foresees this outcome emerging from a spontaneous market process rather than through the conscious construction of specific institutions. Through a combination of factors--a competitive monetary system, more solvent money, less

⁸⁰ Ibid., pp. 154-155.

⁸¹ Ibid., p. 212.

uncertainty, and an increasing supply of currency--Spooner anticipates a gradually diminishing interest rate.

Furthermore, Spooner raises a very interesting inquiry concerning the nature of a short run effect on the economy in the long run. A decrease in the money supply relative to production, as already demonstrated, produces no long run effects; prices simply shift to new levels. However, does this same process emerge from a decrease in the money supply caused by government legislation? What happens to individual actors when the State imposes a gold standard and requires that only gold can be used as currency?

In the long run, one might argue that eventually things would "even out," as persons gradually transform to the use of one currency and competition brings the cream back to the top despite the initial monopoly structure. However, are there, as Spooner contends, important short run effects that have long run ramifications? What occurs when a freely competing currency system is suddenly limited by legislation that permits only one exchangeable currency?

Spooner argues that the changing of the rules benefits one specific group, holders of gold. Persons require exchange to survive. With the new legislation, they must either exchange in gold or completely barter without the benefit of a liquid currency. Obviously, the latter choice is inefficient and not as desirable as the old state of currency exchange. By legislation, the money supply shrinks

and increases the value of the still remaining currency, though. Therefore, the value of gold becomes greater relative to other goods. Those holding gold thus reap greater gains than they would have, had the confining legislation not been passed.

In the short run, at least, holders of the privileged money may develop huge advantages. Moreover, Spooner's argument is that these gains made initially from the privileged position of gold owners make it possible for these same persons to maintain privilege after the monetary upheaval "smooths out." These advantages gained through political mechanisms remain unrecognized after the original benefit, serving as a "head start" for even greater benefits.

Perhaps the best approach to understanding Spooner's argument is through a simple analogy. An hypothetical economy has four goods--A, B, C, and D--which all exchange equally. Suppose A consists of A_1 and A_2 , both of which serve the same use. What occurs if government arbitrarily eliminates A_2 from the market? Obviously, it decreases the supply of A in the market and makes it more expensive relatively to exchange for A_1 for, while demand has remained constant, supply has decreased by half. Moreover, those holding A_1 at the time of the rule reap the benefits of the change, especially if A represents the sole medium of

exchange for all the goods in the economy (if, in fact, the government can prevent the rise of currencies from a pure barter economy).

However, Spooner makes a very important assumption in this analogy. He must assume that those holding gold when the legislation is passed will hoard their supplies until the market readjusts the relative value of the metal. In other words, these holders must have knowledge of the change in supply, and the corresponding increase in market value that results, to benefit from the legislation.

Otherwise, an entirely different process emerges. Through the market process of exchange the "price" of money is gradually bid upward. In this deflationary process, those gaining the most from the legislation would be groups at the end of the productive structure. The original holders of gold would thus be net losers! They "sold" their gold for less than what it actually was worth in the new supply structure. Spooner is correct in arguing that the legislation creates winners and losers; however, his depiction of who these persons are depends on the correctness of his assumptions concerning individual knowledge in the marketplace.

A second more universal problem exists concerning the utilization of a restrictive monopoly on money. All potential competition and, therefore, all substitutes are

eliminated.⁸² More importantly, all future evolution of the monetary order effectively ends. Even if gold, for example, is the best form of money when a restriction is imposed, nothing guarantees that it will perpetually remain the best money. All discussions on monetary reform thus "suffer from the very serious defect that we do not quite know what sort of money would really be the best."⁸³

Spooner's banking system represents a well-developed and fertile presentation of a specific institution. Formulating a system very similar to the successful Scottish free-banking system,⁸⁴ and avoiding the failures of American banking,⁸⁵ he eliminates a remaining problem of a privately

⁸²One might argue that Spooner defeats his own private system by supporting a role for a government legal tender. However, his assumption is that government should compete with other currencies freely. It is unlikely that the State will not take advantage of its position though. However, one must remember Spooner's conception of the role of government!

⁸³F. A. Hayek, "The Theory of Currency Competition," in Currency, Competition and Monetary Union, ed. Pascal Salin (The Hague: Martinus Nijhoff Publishers, 1984), p. 32.

⁸⁴For a complete overview of the Scottish free banking system, examine Lawrence H. White, Free Banking in Britain (New York: Cambridge University Press, 1984). Also see Roland Vaubel, "Private Competitive Note Issue in Monetary History," in Currency, Competition and Monetary Union, ed. Pascal Salin (The Hague: Martinus Nijhoff Publishers, 1984), pp. 59-73. Vaubel presents three reasons for the success of the Scottish system: (1) complete freedom of entry; (2) the overwhelming majority did not enjoy limited liability; and (3) no limitations were placed on the size of the banks. Spooner's system entailed all three of these components.

⁸⁵Vaubel, pp. 66-69. He reports that American "private

backed system, the run or panic. In fact, he transfers the full liability for runs on those persons most deserving, the stockholders of the bank. Conversely, the bank's constant incentive is always to pay in specie whenever possible. Otherwise, they attain no financial dividends. Spooner's system, therefore, would likely continue very similarly to a hard-metal system, but with a built-in insurance against unforeseen market problems.

Two potential problems arise in this free banking system. First of all, like his mutualist colleagues Tucker and Greene, Spooner depends on persons accepting his bank. Would persons be willing to accept property titles rather than specie? If they would, he can ensure against panics with interest bearing notes backed by future payment. If they would not, no one would involve themselves in Spooner's bank, and it would obviously fold under competition.

However, his program is more than merely hedging against panics. If that were all it was, he could simply give out interest bearing notes on specie when persons demand redemption beyond the bank's means. The crucial element in the success of his bank is the stability of the

banking" was anything but private. Since the states could not issue bills of credit, they were heavily involved with these banks. He concluded there were two reasons for failures--burdensome and destructive state intervention in the banks and an inadequate legal framework that did not effectively enforce contracts or maintain strict liability.

value of the property backing up the mortgage. For example, if land is utilized, Spooner's system is solvent only if the value of land remains stable, increases, or at least does not fall below the initial mortgaged value.

In Spooner's plan, if an individual mortgages \$1000 of land at \$800, then \$800 in notes are circulated. However, suppose the value of that parcel falls to \$600; then \$600 of land values is supporting \$800 of circulating notes. Spooner is correct in arguing that the bank cannot fail of redemption; the bankers, however, would fail for lack of redemption power and the holders of the notes would not receive full value of their notes in the title transfer. Obviously, no one would wish to do business with a bank whose money is losing value.

Thus, the success of the bank depends on the value (and stability) of land as it is applied as a money. This could be a crucial factor. General commodities may be "stable in value provided we are not being forced to sell them rapidly." Though different goods may have similar degrees of acceptability, they may not exhibit the same degree of stability.⁸⁶ Because land exhibits a generally stable value as a commodity does not necessarily prove it will remain stable when it becomes more liquid. Moreover, it is unclear how Spooner can argue that once a bank is solvent, it must

⁸⁶ Hayek, p. 32.

necessarily always remain solvent, even if land values remained stable. Financial institutions cannot be purely flawless in their selection of risks or in their assessment of property mortgages.

Still, Spooner's program has some very important strengths. First of all, it generally eliminates the ill effects of specie flow on the domestic market. Secondly, his bank protects against decreasing land values by allowing free competition in determining the security of mortgages. If land values are unstable, then one can expect mortgages to be extremely under-assessed. However, this protection, as earlier demonstrated, further increases the security of the system while decreasing the likelihood that the quantity of money would increase. Only if land values were stable or increasing in value would the money supply increase.

Dismissing his monetary views, Spooner's ideas on money and banking represent a very consistent and complete system of thought. Beyond these major strengths, he also develops an interesting argument concerning the dangers of excessive private credit that creates increased uncertainty and higher information/transaction costs. Moreover, he demonstrates an understanding of the disproportionate individual effects of the business cycle on market actors. In fact, one could forcibly argue that Spooner's economic writings represent the most thoroughly developed, yet least explored, segment of his thought.

CHAPTER 7

SPOONER: A RETROSPECTIVE ANALYSIS

The primary concern of Lysander Spooner is always to seek justice in human relations. He reconstructs American political institutions in an effort to create a society built on these natural principles. These efforts are unique for two reasons. First of all, the world he promotes could in fact emerge from the institutional framework he produces. If Man has the ability and propensity to seek the justice Spooner prescribes, his system does encourage this pursuit. Secondly, he remains within the present structure of American government to obtain his ends. Spooner's ideal system does not require a complete metamorphosis of political structures to attain its goals, but actually only a reformation of already existing institutions.

Of course, Spooner's system of thought is not without problems. The most basic question concerns his understanding of justice. One might say concerning justice that Spooner wants two contradictory structures at the same time. Throughout his writings, his strongest conviction is for individual autonomy. Furthermore, he creates an institution, trial by jury, designed to protect this absolute self-dominion. Yet, he also introduces a role for duty in this natural system of justice.¹ Spooner could

¹The first apparent articulation of this concept of

reconcile his advocacy for extreme individualism with his theoretical foundation of justice only by relying on a clear non-coercion axiom that provides no naturally originated duties.

However, there is likely a consciously conceived rationale for extending his objective legal structure beyond merely non-aggression. For example, arguing that men should abide by no more than this individualistic axiom does not mean all men will concur. Therefore, one cannot expect that all men will enjoy these natural rights. The problem of slavery is a perfect example; it is also where Spooner's first clear enunciation of legal duties arises. His system is not being imposed in "year one." Spooner is faced with the need of some justification for correcting the state of injustice. Rather than simply stating that no man should instigate aggression against another, he formulates, within his objective legal structure, the requirement that individuals should also protect these same rights in others. To the degree this standard affects his advocacy of extreme individualism, Spooner's ideal system takes on a social perspective.

It would be unfair to argue that natural law is simply a "catch-all" for justifying whatever Spooner is presently

duty in Spooner's system of thought appears in a letter to Tucker's Liberty following Spooner's death. See Victor Yarros, "Sentimentalism at the Spooner Meeting," Liberty, 18 June, 1887, p. 1.

advocating. He is too thoroughly consistent for one to justly reach this conclusion. Spooner's requirement of duty always relates to the promotion of his primary concern--the protection of individual rights.²

Spooner attempts to squelch a growing concern of liberalism, the contrary paths of freedom and equality. Stephen Newman justly argues of Spooner:

While accepting the primacy of individual liberty, which is the distinctive mark of liberalism, [he rejects] the inequality of condition that Locke found inevitable. Mainstream political theorists and political economists since Locke have tended to place liberty and equality in opposition, defending inequality as a necessary by-product of freedom. In opposition to this tide of liberal opinion, Spooner . . . [insists] that inequality corrupts freedom. [His] anarchism is directed as much against inequality as against tyranny.³

Spooner's approach is novel in that he argues that freedom creates general equality. While one might argue this requires, first, the initiation of duty and, second, the acceptance of Spooner's brand of natural law, it is still apparent that he anticipates a freely functioning social order to produce equality of outcome.

²However, one might argue that this requirement manifests itself in the concept of "positive liberty"--the extension of liberty to the "masses" at the expense of securing purely individual self-dominion. Thus, Spooner's imposition of duty could legitimize the twentieth century's trend of moving away from a "negative" conceptualization of right (i.e., merely freedom from intervention).

³Stephen L. Newman, Liberalism at Wit's End (Ithaca: Cornell University Press, 1984), pp. 73-74.

One might also respond by arguing that inequality has been the norm of liberalism's freely functioning social order. However, this observation does not necessarily demonstrate an inverse relationship between freedom and equality. At no time, as Spooner rightfully contends, has another variable of liberalism, the political process, been absent in this same structure. Why have the "mainstream" scholars more blamed the voluntarism of a free economic structure for the inequality of liberal society than the utilization of political means? If nothing else, Spooner's discussion of politics forces one to at least reconsider the supposive "laissez-faire" of nineteenth century America. He builds a strong case that the massive inequality of outcome and the expanding superstructure of American corporatism was more a political manifestation than an economic one.

Thus, Spooner solves the inequality problem by eliminating what he considers the cause, the political process. His institutional structure is, in fact, almost completely apolitical. He utilizes two means to avoid the use of politics. First of all, he creates a system built on the rule of law that is determined by objective, or at least commonly supported, standards. Law emerges from the rightness of the rule rather than the appeasement of interests. The second instrument, which serves as the medium for achieving the first goal, is an institutional structure that ignores and effectively prevents political interests from

having a rule-making consequence. Basic commonly supported rules govern the polity; leaving to its citizenry the greatest amount of freedom possible. Spooner's government represents neither a process of special interest appeasement nor a "public interest"; it merely represents common interest.

Spooner perhaps spends as much effort outlining expectations of his social order as he does developing the system itself. First and foremost, he anticipates a just polity, producing a great amount of individual freedom. He likewise expects a generally equalitarian structure, with men of basically equal talents enjoying similar freedoms and performing in similar manners. Spooner anticipates the role of economics to dissolve the concentrations of power created by political manipulation. Once these pockets of power diminish, he concludes the vast separations of classes will gradually disappear.

Spooner's optimism for the utilization of peaceful means in redirecting society to his conclusions dwindled as he grew more intolerant of alternative arguments in his later years. However, one must recognize that peaceful enlightened change always preceded a call to violent activity. Though his optimism decreased, he never abandoned a highly hopeful view of Man's future, if justice was adhered to. Spooner simply grew less patient as he grew older, but he still is best categorized in a segment of

thought that "relied more on education than on nitro-glycerine to demolish government."⁴ Firmly embedded in his ideas is the view that "Man is fitted for an eternal intellectual and moral advancement."

Spooner's thought is both reactionary and revolutionary. In many ways, he is a "last gasp of a political and economic romanticism," swallowed up by the growing complexity of society.⁵ His role might best be viewed as a transformer of the philosophical and romantic views of the self that dominated the mid-nineteenth century into a legal or political framework. He proposes to solve the emerging problems of industrial society by returning to a pre-industrial structure of individualistic self-sufficient proprietors. In many ways, Spooner was a last hurrah of a simpler American culture, "given to millennial fantasies and utopian visions."⁶

Yet, on the other hand, his system represents a revolutionary reformation of liberal society, breaking it away from the outcomes of majoritarian democracy handed down from Locke that is gradually devouring individual rights. If, in reality, it is functional, Spooner's ideal system

⁴David DeLeon, The American as Anarchist (Baltimore: Johns Hopkins University Press, 1978), p. 76.

⁵A. John Alexander, "The Ideas of Lysander Spooner," New England Quarterly, 23 (June 1950), p. 200.

⁶Newman, p. 74.

accomplishes something liberalism has yet to achieve--the primacy of individual freedom with the maintenance of a secure rule-based social order. Furthermore, it accomplishes this goal without destroying the economic reality of free market efficiency.

Locating Spooner's position in American political thought is an extremely difficult task. He is tied, in many ways, to the history that affected him. It is likely that his own condition in life had a substantial influence on his writings. Raised in a strict puritanical home, he saw the world in absolutes. He lost all his finances on at least three occasions when government either directly or indirectly prevented his enjoyment of conditions that appeared so attractive on the surface. He lived an impoverished hand-to-mouth existence throughout his life. The outright bondage of his fellow man, which seemed so obviously wrong to him, was either ignored or kicked around in the political arena without resolution. Finally, he completely broke from the American polity after a Civil War he recognized was fought for reasons unbefitting such bloodshed. It is at this point he realized the ideals of liberalism--individualism, consent, accountability, justice--were far from what he observed in reality.

Spooner remained radically independent throughout his life, even after his intellectual linkage with Tucker and other similar thinkers in his later years. One is required

to return to James Martin's description of Spooner as most explanatory--a "dissident among dissidents." He never fits the mainstream of American thought; yet, he never falls into any classification of radical thought either. Each separate bundle of ideas--his deism, his abolitionism, his banking theory--leaves him outside any category of thought. He is neither completely a liberal nor completely an anarchist. He stretches the liberal structure to a point one might argue it cannot function, yet he does not ever deny the role or need of a representative and limited government. He recognizes the existence of self-seeking Political Man and promotes the institutional checks and the progressive enlightenment of men to alleviate the danger.

Unfortunately, "the all too usual fate of deviant thinkers whose lives are also characterized by a lack of sensational gestures is rapid obscurity."⁷ Spooner started no revolutions, nor bombed any buildings. He lived an impoverished and unspectacular life of writing in virtual obscurity. His radically independent thought left him with no reading audience until very late in his life; he was too radical for the liberal mainstream and too moderate or alien for the anarchist.

However, Spooner's writings do represent the

⁷Harry Elmore Barnes, "Foreword," in Men Against the State, James J. Martin (Dekalb, Illinois: Adrian Allen Associates, 1953), p. vii.

extremities of a consistent current in American political thought. David DeLeon separates the so-called "Right" into two historical camps, initiating from the ideas of Burke and Jefferson.⁸ The Jeffersonian evolution includes writers such as Garrison, Tucker, H. L. Mencken, Robert Taft, Albert Jay Nock, and Spooner. In fact, the most fitting representation of Spooner may be as an extreme extension of Jeffersonianism. Passing through the Transcendentalists, America's gilded age, and the "Old Right" of Nock, Taft, and Frank Chodorov, this strand of thought finds its modern articulation in Libertarianism. The key element throughout this evolution that links these thinkers is the view that government exists only for "strictly negative intervention" to protect individual rights and that any other use of the State creates concentrated pockets of power.⁹ Many of the same arguments Spooner articulates reappear in contemporary libertarian thought.

Thus, Spoooner's modern relevance rests upon the same foundation of relevance as modern libertarianism. It would be naive to conclude that no relevance exists. Spooner's underlying fears concerning the expanding State are even

⁸DeLeon, p. 122.

⁹John P. Clarke, "What is Anarchism?" in Anarchism, eds. J. Roland Pennock and John W. Chapman (New York: New York University Press, 1978), p. 9. One might compare Jefferson, Spooner and Albert Jay Nock, Our Enemy the State (New York: Free Life Editions, 1973).

more applicable in contemporary America. William Reichert concludes:

The central problem in political science today is . . . the problem of constructing limits to the expansion of the Leviathan State. It becomes ever more clear that the "modern democratic state" has evolved more along the lines of the model that Hobbes constructed than the one fashioned by Locke. . . . As the modern democratic welfare state has increased the scope of its operations, bringing new material comforts to its citizens, the state has become more and more monopolistic in terms of the power it exercises over the individual. It is no exaggeration to say that we stand in awe and fear of Leviathan today, for the creature we have brought into being and nurtured over the past several hundred years now appears to be out of control,¹⁰ threatening our very existence as a free society.

If one obtains nothing else from an understanding of Spooner's thought, he should attain an appreciation of the serious and possibly irreversible effects of an expanding State on individual autonomy. Unless this appreciation exists, alongside an institutional structure that protects this self-dominion, the hallmark of individualistic liberalism will disappear.

Spooner's system correctly demonstrates the necessary prerequisites for maintaining individual rights. First of all, liberalism must defend specific objective standards among human relations. Without some sort of moral ordering that exists above all political concerns, liberalism cannot protect individual rights. Likewise, without an established

¹⁰ William O. Reichert, "Anarchism, Freedom, and Power," Ethics 79 (Jan. 1969), p. 139.

rule of law above political self-interest, politics turn society into an arena built on the variable of force rather than right. Spooner's early arguments against "interest-group liberalism" are even more relevant today than in the nineteenth century.

Spooner recognizes perhaps the most serious and detrimental outcome of this political process. To argue for a role of government in countervailing economic power merely builds a second illegitimate and ineffective process on one that already exists. Capitalists, he argues, dominate the American power structure not in spite of government but because it exists as it does institutionally. The American experience, according to Spooner, is one of economic gain becoming economic security through political privilege or favor. His solution is not to break down productive capabilities by formulating an allocative political conflict that attempts to divide the material pie while ignoring economic reality, but to eliminate the political structures of capitalism.

Moreover, Spooner recognizes the inability of internal governmental checks to provide an effective barrier to factional government in all cases. This argument acknowledges the effect of governmental actors within the political process. It also realizes the likelihood that access can always be prevented of some groups or individuals. Thus, without the effective and external check

Spooner promotes through his judicial branch with trial by jury, the fears of the Constitutional framers become reality.

The questions Spooner asks concerning the nature of American government remain unanswered today. Liberalism still faces the same real dangers of political self-devourment. Adages like "consent of the governed" or "accountability" in reality, as Spooner demonstrates, cannot answer the serious question of legitimacy. Liberalism must either look elsewhere and turn its back on individualism or recognize that Spooner's system represents the necessary components of linking real liberalism to its ideals. Where Spooner's system fails in reality, so fails liberalism.

Lysander Spooner's ideal system represents a social structure built on simpler ideals, either ignoring or rejecting the modern complex State. The modern State exists, but that in no way proves it should or must remain. Spooner gives to American thought a conceptualization of a libertarian ideal toward which Man may travel. He "advanced libertarian individualism from a protest against existing evils to pointing the way to an ideal society toward which we can move."¹¹ While it may well be a difficult journey based on an extremely optimistic foundation, it is not one that has been proven impossible.

¹¹Rothbard, p. 125.

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