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THE CONCEPT OF LIBERTY IN TRADITIONAL ENGLISH POLITICAL THOUGHT WITH  
PARTICULAR REFERENCE TO THE VIEWS OF

JOHN STUART MILL

AND

HERBERT SPENCER.

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Presented by

SAMUEL OBIORA OKAFOR

for the degree of MASTER OF ARTS

of

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## P R E F A C E

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TABLE OF CONTENTS.

<u>CHAPTER.</u>		<u>PAGE.</u>
1.	INTRODUCTION  Traditional views about freedom in English thought prior to 1830; social condition in the same era - a historical consideration with emphasis on liberty.	1 - 39
2.	MILL ON ECONOMIC FREEDOM.  An analysis of <u>Principles of Political Economy</u> . Taking into account any significant variations between editions..	40 - 67
3.	MILL ON POLITICAL AND SOCIAL FREEDOM.  An analysis of his essay on <u>Liberty</u> .	68 - 95
4.	SPENCER ON FREEDOM.  An analysis of The <u>Proper Sphere of Government and Social Statics</u> .	96 - 126
5.	SPENCER ON FREEDOM  An analysis of (a) <u>Principles of Sociology Vol.1.</u> (b) <u>The Man versus The State.</u> (c) <u>From Freedom to Bondage.</u>	127 - 158
6.	CONCLUSION.	159 - 209
	REFERENCES.	208 - 223
	BIBLIOGRAPHY.	224 - 228

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## CHAPTER I

The traditional English political thought about freedom was predominantly "negative" until the second half of the 19th century when the "positive" sense was popularized. The former idea, was associated before the 19th century with Hobbes, Locke, and Adam Smith; whilst in that century itself, it became linked with the Classical Economists, the Utilitarian liberals like Bentham, James Mill, John Stuart Mill and Herbert Spencer. Whereas the latter was connected with T.H.Green. According to the notion of "negative freedom", a person is said to be free, to the extent that he is not interfered with or coerced by anything outside himself. The "positive" view identifies liberty with a man's power or capacity to live according to the best of himself.

Hobbes was characteristic of the English tradition in defining liberty as absence of external restraint. This traditional idea can be best interpreted as the condition of our being ourselves. In his words : "By liberty, is understood, according to the proper signification of the word, the absence of externall impediments: which impediments may oft take away the man's power to do what hee would ; but cannot hinder him from using the power left him according as his judgement and reason shall dictate him".<sup>1</sup> Hobbes's materialism led him to observe that "whatsoever is so tyed, or environed, as it cannot move, but within a certain space, which space is determined by the opposition of some externall body, we say it hath not liberty to go further. And so of living creatures, whilst they are imprisoned, or restrained, with walls, or chayns; .... we use to say ; they are not at liberty, to move in such manner, as without those externall impediments they would." <sup>2</sup>

It follows then, that according to the appropriate meaning of the word - freedom, "a free man, is he, that in those things, which by his strength and will he is able to do, is not hindred to doe what he has a will to."<sup>3</sup> If this were the

traditional idea, could it not be surmised that J.S. Mill and Herbert Spencer maintained the traditional notion of "negative freedom" ? Mill for example, considered liberty as a process by which men pursued their own good in their own way, so long as their actions did not attempt to deprive others of the same privilege or to impede their efforts to obtain it.<sup>4</sup> Spencer as well argued that according to the concept of liberty, a person ought to be free to do whatever his desires dictate only within the prescribed limits - that each is free.<sup>5</sup>

An attempt has been made so far, to show what freedom traditionally implies. But, there is another aspect of it which requires elucidating. If liberty means pursuing our own good in our own way and according to our means without hindrance from other people, with what justification do people claim such privilege ? Before the emergence of Benthamites, the conventional wisdom was that liberty was a natural right conferred upon men by God, or Nature in virtue of their special status. Hence not only Hobbes but also Locke insisted that freedom belonged to people as a natural right. In order to establish that idea, both men had to consider the natural state man was originally in (state of nature) before joining with others to form a political or civil society. Signs of this implicit belief in the original state of things could also be seen in Adam Smith's writings.

On examining the condition in which men were placed by nature, Hobbes affirmed that individuals were not only equal, self-seeking and free, but also there was always a tendency for them to hurt each other. Accordingly, if there were no "..... common power to keep them all in awe, they are in that condition which is called warre; and such a warre, as, is of every man against every man."<sup>6</sup> Human life, he conceived, was rather too competitive and seldom entirely free of the struggle for symbols of status, that the solution to peaceful living was only to create a unified and single authority with power to compress an anarchy of

wills. Although such a creation involved limiting individual liberty, it was nevertheless necessary to avoid "that condition which is called warre."

What causes this desire to hurt ? One cause is that goods are scarce. "..... therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies, and ..... endeavour to destroy or subdue one another."<sup>7</sup> The man who gains the goods cannot claim full ownership because the other man can unite with others and dis-possess him of the goods. Another cause is lack of trust among people. People always regard themselves as threats to each other's life and liberty. A person cannot with certainty tell how his neighbour or friends feel about him, and as such cannot confide much in them. Similarly his neighbours think the same way about him. The difficulty is not that they lack reason : it is rather the fact of being rational and anticipating danger which makes everyone a potential enemy of another. In other words, if any man is in doubt about his neighbours intentions, he ought to strike first. But, at the same time, it is also rational for his neighbour to strike at him first for both constitute a threat to each other. Finally, competition for honour and dignity to which men are exposed can lead to their injuring themselves.

Besides the desire to hurt caused by these factors, there was another feature of the state of nature which if pursued unckecked was capable of making social life a jungle or a wilderness. This feature was what Hobbes termed the right of nature and " .... is the liberty each man hath to use his own power, as he will himself, for the preservation of his nature ; that is to say of his own life, and consequently of doing anything, which in his own judgement and Reason, hee shall conceive to be the aptest means thereunto."<sup>8</sup> But because it was vain for an individual to have a right to the end (self-preservation) if the right to the necessary means was denied him, it followed, that since every man had a right to preserve himself, he must also be allowed a right to use all the means and to

do all the actions, without which he could not preserve himself. "..... because the condition of man ..... is a condition of warre of every one against everyone ; in which case everyone is governed by his own Reason; and there is nothing he can make use of, that may not be a help unto him ; in preserving his life against his enemies; it followeth that in such a condition, every man has a Right to every thing; even to one another's body."<sup>9</sup>

It was less beneficial for people to live in a state of perfect equality and exercise equally the right to everything. The effects of this right were the same almost, as if there had been no right at all. Reason thus, suggested to them conditions of society or peace, which their fear of violent death, or their desire for a "commodious living", might lead them to accept. These "convenient articles of peace upon which men may be drawn to agreement" are according to Hobbes the principles which are generally called the laws of nature. These laws of nature were further described as "a precept, or generall rule, found out by Reason, by which a man is forbidden to do, that which is destructive of his life, or taketh away the means of preserving the same, and to omit, that, by which he thinketh it may be best preserved."<sup>10</sup>

They demanded "that a man be willing, when others are so, too, as farre-forth, as for peace, and defence of himselfe he shall think it necessary, to lay down this right to all things, and be contended with so much liberty against other men as he would allow other men against himselfe."<sup>11</sup> The motive of surrendering these rights "..... is nothing else but the security of a man's person, in his life, and in the means of so preserving life as not to be weary of it."<sup>12</sup>

Although a person surrendered his rights, he never gave all up. There were some necessary for his existence which he retained. "As it is necessary for all men that seek peace, to lay down certain rights of Nature; that is to say, not to have libertie



to do all they list : so is it necessarie for man's life, to retaine some, as right to governe their bodies, enjoy aire, water, motion, waies to go from place to place ; and all things else without which a man cannot live or not live well."<sup>13</sup>

It might be useful to remark that when a person, in an endeavour to secure peace, surrendered his freedom, that such a transfer did not necessarily imply a diminution of his liberty or an increase for the recipient, but could be considered as a process by which he increased the means by which he could exercise his liberty. "To lay downe a man's Right to anything, is to divest himselfe of the liberty, of hindring another of the benefit of his own Right to the same. For he that renounceth, or passeth away his Right, giveth not to any other man a Right which he had not before , because there is nothing to which every man had not Right by Nature, but onely standeth out of his way, that he may enjoy his own original Right, without hinderance from him; not without hindrance from another. So that the effect which redoundeth to one man by another man's defect of Right, is but so much diminution of impediments to use of his own Right originall."<sup>14</sup>

All in all, though the state of nature was one of insecurity, it was one of equality and freedom. But to attain peace and self-preservation, it was desirable for the individual to surrender part of his freedom. This transfer was necessary to ensure that he had scope to enjoy the liberty which he retained. As there was no human authority to regulate the respective actions of individuals in that state, every person had to depend on his private conscience. Accordingly, no person could complain about another's conduct as being unjust, because every person acted as reason dictated to him. These laws of nature were always obligatory in a person's conscience but in some circumstances, particularly in the realm of external action, they obliged the individual to act according to their dictates only where there was sufficient security. Freedom could be said in this state to consist in obeying the

dictates of reason.

Because of insecurity in the state of nature, there is craving for a civil society with a human authority with power conferred on him by his subjects to control their actions. How can this desire for a political society be explained ? It can be done with reference to Hobbes's hedonism. Hobbes identified good with "appetite or desire", virtue - what brings pleasure to a person, and evil with aversion, vice - what is unpleasant to an individual. From his study of human nature, he observed that there are two types of motion. One is vital and the other voluntary. Vital motions are those vital processes in the animal organism which takes place without any deliberate or conscious effort on the part of the animal. Voluntary actions are the reverse. The endeavour, directed towards something which caused the voluntary motion is called "appetite or desire". When it is directed away from something, it is called aversion. The fundamental forms of endeavour are thus "appetite or desire" and aversion, both being motions.

On this basis, "good and evil are names that signify our appetites and aversions."<sup>15</sup> The consensus of opinion among mankind is that not only peace is good but also the means of securing it. In other words, peace as an end and the means of attaining it are good, virtuous, right, while war and causes generating it are evil, vicious and wrong. It is because peace is good and brings pleasure that men are led to introducing restraints upon themselves ; to establishing a sovereign and to investing their respective powers in him "by covenant only, which is artificiall."

The only process by which this common power is established by the people " .... is to conferre all their power and strength upon one Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one Man, or Assembly of men, to beare their Persons; and every one to owne, and acknowledge himselfe to be

Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and herein to submit their Wills, everyone to his Will, and their Judgements, to his Judgement ..... it is a recall Unitie of them all, in one and the same Person, made by Covenant of every man with every man in such manner, as if every man should say to every man, I Authorise and give up my Right of Governing myselfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and Authorise all his Actions in like manner. This done, the Multitude so united in one Person, is called a Common-Wealth, in Latine Civitas."<sup>16</sup>

A civil society can either be developed by institution or acquisition. The only difference between them is that in one individuals choose their sovereign because of the fear they hold for one another, whilst with the other, they subject themselves to the authority they are afraid of. On the whole, the motive urging men to form a political society is the fear of pain or uneasiness they will suffer if there is none.

As a civil society is created, men do also make " ..... Artificial chains called civil lawes, which they themselves, by mutuall covenants have fastned at one end, to the lips of that Man, or Assembly, to whom they have given the sovereign Power; and at the other end to their own Ears. These bonds in their nature but weak, may nevertheless be made to hold, by the danger, though not by the difficulty of breaking them."<sup>17</sup> This pact, being an artificial thing, can easily be broken by people, but for the consequences which may follow, it is in their interest to preserve it.

Civil laws we are told, "is to every subject, those rules, which the Common-wealth hath Commanded him, by Word, Writing, or other sufficient Sign of the Will, to make use of, for the Distinction of Right, and Wrong; that is to say, of what is contrary, and what is not contrary to the Rule."<sup>18</sup> In the state of nature,

man had no positive law to refer to besides reason or conscience in distinguishing right from wrong. But in the civil society, there are civil laws built for his guidance. The motive of making positive laws is to establish restraints, without which there cannot be any peace, "... law was brought into the world for nothing else, but to limit the natural liberty of particular men, in such a manner as they might not hurt but assist one another, and joyn together against a common Enemy."<sup>19</sup> Was it not the same view Mill was repeating when he affirmed that the only condition in which an individual's freedom could be justifiably limited was to prevent harm to others ?<sup>20</sup>

Further to the relation between natural liberty and positive laws, Hobbes observed that " .... Right is liberty, namely that liberty which the civil law leaves us. But civil law is an obligation; and takes from us the liberty which the Law of Nature gave us."<sup>21</sup> Though civil codes are infringements of individual natural freedom, they do not affect all aspects of a person's life. Accordingly, Hobbes would allow a person " .... in all cases where the Sovereign has prescribed no rule, ..... the liberty to do, or forbear, according to his own discretion."<sup>22</sup>

In conclusion, it could be said that in Hobbes's political philosophy, the existence of the state (hence civil laws) was necessary for the preservation of individuals' freedom and security. This view was not only shared by the utilitarians but it served also to link them with Hobbes. He had argued that positive codes enacted by the sovereign or state ensure that each man pursued his own end unmolested by others. In the same fashion, Bentham<sup>23</sup> pointed out that the main function of government was to protect people from sufferings. The state fulfilled this task by creating rights which it conferred on them. Amongst these rights, were those of personal security. How does the state secure these rights ?

Bentham had this answer to give ..... " The law does not say to a man, 'work and I will reward you' but it says to him, 'work, and by stopping the hand that would take them from you, I will ensure to you the fruits of your labour, its natural and sufficient reward, which without me, you could not preserve'. If industry creates, it is the law which preserves : If at the first moment we owe everything to labour, at the second, and every succeeding moment, we owe everything to the law."<sup>24</sup>

Freedom would then consist in acting in accordance with the precepts of positive codes enacted by the state, particularly in those aspects of people's life which were controlled by such laws. It was on this basis, Hobbes described what he called the true liberty of an individual, or in other words - "..... the things, which though commanded by the sovereign, he [the individual] may neverthelesse, without injustice, refuse to do; ....."<sup>25</sup>

Locke insisted, as Hobbes did, that for the full realization of liberty in a civil society it was essential that laws should exist. Convinced that liberty belonged to man as a natural right, he proceeded to trace it from the primitive state man was in before forming a political society. He contended that the state of nature was one " .... of perfect freedom [where individuals were perfectly free] to other their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of Nature, without asking leave or depending upon the will of any other man. [It was also] a state .... of equality, where in all the power and jurisdiction is reciprocal, no one having more than another, [and for evidence, he called on the divine idea of creation] there being nothing more evident than that creatures of the same species and rank promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection, unless the lord and master of them all should by any manifest declaration, of his will, set one above another, and confer on him, by an evident and

clear appointment, an undoubted right to dominion and sovereignty."<sup>26</sup>

Though it was a state of perfect freedom and equality, it had its own laws to govern it. These laws "...which oblige every one, and reason which is that law, teaches all mankind who will consult it, that being all equal and independent, no one ought to harm another in his life, wealth, liberty or possessions."<sup>27</sup> The existence of this law reminds us that the state of perfect freedom and equality prevailing in the state of nature was not one of licence. "But though this be a state of liberty, yet it is not a state of licence, though man in that state have an uncontrollable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its basic preservation calls for it."<sup>28</sup> Besides having their freedom and equality, individuals had certain other rights, for example, the right to punish anyone who overstepped the limits of free action or broke the law of nature.

Locke postulated as Hobbes did, that in this state of nature, there was no superior human authority, people depended on reason to control their action. Freedom resided in obeying the dictates of the laws of nature.

In Locke's social and political ideas, the sole alternative to the state of nature was the state of political society. Although a person could act freely in the former, his freedom was "...very uncertain and constantly exposed to the invasion of others; for being kings as much as he, every man his equal, and the greater part no strict observers of equity and justice, the enjoyment of the property he has in this state is very unsafe, very insecure."<sup>29</sup>

Apart from insecurity, the state of nature lacked three essential factors for the preservation of the lives, property and liberty of mankind. These factors were - lack of "an established settled, known law, received and allowed by common consent to be the standard of right and wrong, and the common measure to decide all

controversies between them ..... Secondly, .... indifferent judge, with authority to determine all differences according to the established law ..... Thirdly, .....power to back and support the sentence when right to give it due execution."<sup>30</sup> Because of these inconveniences, men willingly gave up the powers which were rightly theirs, of judging and punishing in the state of nature, to form a political society and to entrust civil rulers with power over them.

Locke "... grant[ed] that civil government is the proper remedy for the inconveniences of the state of Nature, which must certainly be great when men may be judges in their own case, since it is easy to be imagined that he who was so unjust as to do his brother an injury will be scarce be so just as to condemn himself for it."<sup>31</sup> Not only granting this, he also stressed that "... no political society can be nor subsist, without having in itself, the power to preserve property [i.e. life, estate, freedom], and in order thereunto punish the offences of all those of that society ....."<sup>32</sup>

These disadvantages which people suffer in the state of nature and which are held as contributory causes of men leaving it, despite its atmosphere of freedom and equality explain some hedonistic elements in Locke. He asserted that by pleasure and pain, he ".....would be understood to signify whatsoever delights or molests us; whether it arises from the thoughts of our minds, or anything operating on our bodies. For whether we call it satisfaction, delight, pleasure, happiness ..... on the one side, or uneasiness, trouble, pain, torment, anguish, misery ..... on the other, they are still but different degrees of the same thing, and belong to the idea of pleasure and pain, delight or uneasiness."<sup>33</sup>

As pleasure and pain are produced in us by the operation of certain objects, either on our minds or on our bodies, and in different degrees, "what has an aptness to produce pleasure in us is what we call good, and what is apt to produce pain in us we call evil; for no other reason but for its aptness to produce pleasure and pain in us, wherein consists our happiness and misery."<sup>34</sup>

What generates the will with regard to a person's action ? Locke perceived that it was not necessarily caused by the "greater good" the person had in view but by the uneasiness he was under. It was this uneasiness which determined the will, and thus made the person act in one way or the other. This uneasiness Locke described as desire, "which is an uneasiness of the mind for want of some absent good." Experience shows also that a person "under any uneasiness" cannot feel happy. Consequently, what "...determines the choice of our will to the next action, will always be the removing of pain, as long as we have any left, as the first and necessary step towards happiness."<sup>35</sup>

It could then be deduced that when people left the state of nature to form a civil society, they were moved by the desire to attain happiness, pleasure. Although the state of nature was one of perfect equality and freedom, there were some inconveniences in it which made people feel discontented. When men are dissatisfied with a situation uneasiness follows, and this tends to produce pain. But nobody wants to suffer pain, Hence, people regard a civil society as something good because they feel that it is capable of yielding pleasure in the way of protecting their property. This property we were told consists of "lives, liberties and estates".

Thus man entered into a solemn compact with others, out of fear of insecurity and for the good of all, whereby they found a civil state. They vested in the state those powers of judgement and punishment which they forsook while leaving the state of nature. The act of judgement and punishment becomes now the duty of the state to perform. Locke held that "Whenever ..... any number of men so unite into one society as to quit every one his executive power of the law of Nature, and to resign it to the public, there and there only is a political or civil society. And this is done whenever any number of men, in the state of Nature, enter into society to make one people one body politic under one supreme government: or else when any one joins himself to, and incorporates with any government



already made. For hereby he authorises the society, or which is all one, the legislative thereof, to make laws for him as the public good of the society shall require, to the execution whereof his own assistance (as to his own decrees) is due."<sup>36</sup> So far, it has been established that the desire to preserve his property urges man to surrender his freedom of doing whatever he likes in the state of nature in order to join the civil society and be regulated by its positive codes. These laws confine his natural liberty.

Although civil laws are infractions of individual natural freedom, they are necessary not only for its maintenance but also for its protection. No person will like his freedom restrained by law, but for the general good of the society, it is important to establish laws to ensure every person of his liberty. In an ideal society made up of rational human beings, there may not be the need to establish civil laws, but in a society which contains rational as well as irrational individuals, it is absolutely essential to develop laws which should determine the scope of individual liberty. In order to enact laws, it is necessary to choose a regulating apparatus whose sole function it becomes.

Laws are essential though at times they may infringe individual freedom. For those who think that laws are inimical to freedom, or obsessed at their existence, Locke had this to say: "... law, in its true notion, is not so much the limitation as the direction of a free and intelligent agent to his proper interest, and prescribes no farther than is for the general good of those under law ..... so that however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings, capable of laws, where there is no law there is <sup>no</sup> freedom. For liberty is to be free from restraint and violence from others, which cannot be where there is no law ....."<sup>37</sup>

The society, hence the political authority, having been established, the latter exists as an umpire to protect individual rights. Man having decided to join with others to form a civil

society and be controlled by its rules should remember that "..... by consenting with others to make one body politic under one government, puts himself under an obligation to everyone of that society to submit to the determination of the majority, and to be concluded by it, or else this original compact whereby he with others incorporate into one society, would signify nothing, and be no compact if he be left and under no ties that he was in before the state of Nature."<sup>38</sup> The political authority created by general consent, acquires its power from the members of the society, and this power should be used for the public good of the society.

The idea of consent plays a dual role in Locke's political philosophy. Firstly, Locke used it to settle a controversial issue of his period - namely, whether rulers or kings derived their royal authority from God, or rested on the consent of the people. King James and other Stuarts believed that their royal power originated from God. Hobbes attacked this doctrine, and as has been shown earlier,<sup>39</sup> he argued that rulers received their authority from the people. Locke, though differing to some extent from him with regard to the degree of power the ruler had, put the case more clearly, and in fact, he is held as the theorist who overthrew the belief in the Divine right of kings.

Secondly, this notion of consent demonstrates that freedom belongs to people as a natural right. No authority can rightly limit people's liberty without their consent. Hence, Locke pointed out that "every man being, as has been showed naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent ....."<sup>40</sup> Neither, can any civil law be respected if it is not made by a legally constituted authority - an authority chosen by the consent of the people. Thus, he insisted that for the positive enactments of the legislature to be considered laws by the people, they must have "..... that

which is absolutely necessary to ....[their] being ..... [Laws], the consent of the society, over whom nobody can have a power to make laws but by their own consent and by authority received from them."<sup>41</sup>

What does freedom entail in a civil society ? Locke affirmed that "the liberty of man in society is to be under no other legislative power but that established by consent in the common-wealth, nor under the dominion of any will, or restraint of any law, but what that legislative shall enact according to the trust put in it."<sup>42</sup>

It has been shown so far that liberty does not imply absence of laws but obedience to them. As long as the individual obeys the law, he is free in spite of some restraint to which he may be subjected. But as civil laws do not touch every part of a person's life, Locke would allow the dictates of reason to guide the individual in those parts of his life unaffected by them. Thus, he asserted that a person has "a liberty to follow .... [his] own will in all things where that rule prescribes not, not to be subject to the inconsistent, uncertain unknown arbitrary will of another man, as freedom of nature is to be under no other restraint but the law of nature."<sup>43</sup>

The political legacy which Locke left for his successors can be summarized thus - that though law curtails freedom, it is not inimical to it, and that the state should exist for its development. Individuals are obliged to obey these laws because of their interest. Failure to do so, will frustrate the end for which the society is formed. In the state of nature, the notion of right and wrong depends to a large extent on the judgement of the private conscience of the individual. In the civil society, it depends on the public conscience i.e. on the political authority, and where civil laws do not prevail, men depend on their private conscience. The power of political authority instituted, is not absolute but subject to the will of

the people. This authority can only interfere with the freedom of a person if his other regarding actions will cause displeasure to others, or reduce the general good of the society.

It is desirable to mention certain points which link Hobbes and Locke with the Utilitarians. Firstly, all agreed that law was essential for security though it could always be created at the expense of Liberty. Bentham affirmed in this connection that "without law there is no security, consequently no abundance, nor even certain subsistence. And the only equality which can exist in such a condition, is the equality of misery."<sup>44</sup> In short, the social utility of law was the security it offered to people.

Secondly, the hedonistic positions of both Hobbes and Locke serve as another connection between them and the Utilitarians. Locke for example, sometimes identified good and evil immediately with pleasure and pain ; and often he applied the terms to the objects which produce pleasures and pains in people.<sup>45</sup> Bentham held a similar view. As it will be shown later,<sup>46</sup> Bentham defined the doctrine of utility as that principle which approved or disapproved of every action irrespective of what it was, according to the tendency which it seemed to have either to increase or decrease a person's happiness. Utility he affirmed was that property in any object, whereby it tended to yield "benefit, advantage, pleasure, good, or happiness . . . ., or . . . . to prevent the happening of mischief, pain, evil, or unhappiness"<sup>47</sup> to a person. "A thing is said to promote the interest, or to be for the interest of an individual, when it tends to add to the sum total of his pleasures ; or what comes to the same thing, to diminish the sum of his pains."<sup>48</sup>

Though Bentham rejected the notion of social contract, he attributed the force working for social union to the principle of utility. He insisted that people obeyed the state hence civil codes because ".....the probable mischiefs of obedience are less than the probable mischiefs of resistance."<sup>49</sup> This view can be taken to mean that people obey their government because obedience

assures greater pleasure than pain. In other words, it is for their interest to obey civil laws because such a behaviour tends to add to the sum total of their happiness. Accordingly, as individuals always desire pleasure rather than pain, it will be to their advantage to obey the state. What then is the link between Bentham and his disciples on one hand, and Hobbes and Locke on the other ?

As it was pointed out before,<sup>50</sup> Hobbes and Locke held that a civil society was good because it was capable of producing pleasure (peace) in the way of preserving individuals' freedom and life. Because of this end, men were drawn by their own interests into establishing a social pact by which a political society was formed. As such it would be to their advantage to observe or obey the civil laws of the society as failure to do so would frustrate the end for which the pact was made.

Bentham rejected the idea that people had natural rights, On the contrary, what he maintained was that the rights which they had were those given them by the legislator. In support of this view, he asserted that the state did its duty of protection "...by creating rights which it confers upon individuals: rights of personal security, rights of protection for honour, rights of property; rights of receiving assistance in case of need ..... it can neither command nor prohibit without restraining the liberty of individuals."<sup>51</sup> For any person to acquire certain rights, he must necessarily sacrifice part of his freedom. The individual could not enjoy the advantages of his rights without sacrificing part of his liberty. Bentham affirmed "that these curtailments of liberty are inevitable. It is impossible to create rights, to impose obligations, to protect ..... liberty itself, but at the expense of liberty."<sup>52</sup>

As regards the scope of individual freedom, Bentham established a principle which would determine it. This principle was utility. It is designed as a guide to the state in its

interference with individual liberty. It is described as "...that principle which approves or disapproves of every action whatsoever according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question : or what is the same thing in other words to promote or to oppose that happiness ..... By utility is meant that property in any object, whereby it tends to produce benefit, advantage, pleasure, good or happiness, or to prevent the happening of mischief, pain, evil or unhappiness to the party whose interest is considered. If that party be the community in general, then the happiness of the community; if a particular individual, the happiness of that individual."<sup>53</sup>

This doctrine of utility had a great impact on John Stuart Mill. He admitted in his autobiography that "the principle of utility understood as Bentham understood it, and applied in the manner in which he applied it ..... fell exactly into its place as the keystone which held together the detached and fragmentary component parts of [his] ..... knowledge and beliefs."<sup>54</sup>

Bentham endeavoured not only to analyse man's natural response to any action but also at the same time to build up his science of morality on it. He claimed that "nature has placed mankind under the governance of two sovereign masters, pain and pleasure. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On one hand, the standard of right and wrong, on the other, the chain of causes and effects are fastened to their throne. They govern us in all we do, in all we say, in all we think ...."<sup>55</sup> If by nature, people are controlled or responded to any action according to the amount of pleasure or pain they receive from it, rational people being what they are, will always seek pleasure rather than pain. Accordingly, under conditions of perfect freedom, every rational person tends to direct his action towards attaining his own greatest happiness.

While Bentham on one hand insisted that people were without rights except those given them by the state, Paine, on the other hand, argued that people possess, by right of their existence, a certain number of rights. These rights include intellectual rights, or rights of the mind, and the various rights possessed by every person of acting with a view to securing his comfort, and happiness, in so far as the exercise of these rights did not threaten the natural rights of other people. This traditional idea of natural rights which was handed down by Locke was pursued in the 19th century by Herbert Spencer.<sup>56</sup> His idea of natural rights was neither those which were assured by metaphysical ethics nor those artificial rights conferred by a government agent. They were those indispensable rights which must be guaranteed to an individual so that society might exist and function properly. He was quite prepared to show that they were found by ages of experience to be necessary for any normal and continuous social life. These apart, he pointed out that natural rights were not only of divine but also of biological origin.

Paine classified individual natural rights into two. One set of rights, man retains when joining the civil society with his fellow individuals, and the other he has an interest in resigning to the society. The former rights include freedom "of thinking, of speaking, of forming and expressing opinions." The individual retains these rights in virtue of his existence, for they are "...those in which the power to execute .... is as perfect in the individual as the right itself."<sup>57</sup> The latter rights which the individual resigns to the society are the rights to protection and to the acquisition and possession of property. These rights are perfectly the individual's but the ability to use them is imperfect without the security given by the society.

These latter rights are civil rights. Though they are natural rights which people have exchanged in order that they may freely enjoy others, they are distinguishable from natural

rights in that in the exercise of civil rights, people are acting under the guarantee of society. For example, Paine argued that "a man, by natural right, has a right to judge in his own cause, and so far as the right of mind is concerned, he never surrenders it. But what availeth it him to judge, if he has not power to redress."<sup>58</sup> Man, accordingly, borrows "the arm of society" of which he is a member, in preference to and over and above his own. There is now a need that the society should become a government and should employ restraints to impose on people to respect their neighbours rights. The individual has "deposited in the common stock" a certain part of his natural rights ; society therefore "grants him nothing." Every individual is the owner of the social capital, and has the right to draw from it under certain specific conditions.

Concluding, it could be said that the utilitarian philosophers admitted that an individual's freedom was valuable but differed from the natural law school of thought in that they argued that it was artificially created. Both schools of thought agreed that laws were essential but not inimical to freedom. Having examined the concept of freedom in traditional English political thought till the early part of the 19th century, it is also desirable to extend this investigation to the economic field.

Liberty in the economic sphere:- In the economic sphere, man engages himself in any activity out of pure self-interest. The motive which induces a person to work or save is self-love - the need to procure a living. As Adam Smith observed with regards to saving, ".....the principle which prompts [individual] to save, is the desire of bettering their condition a desire which, though generally calm and dispassionate, comes with us from the womb, and never leaves us till we go into the grave. In the whole interval which separates those two moments, there is scarce perhaps a single instant in which any man is so perfectly and completely satisfied with his situation, as to be without any wish of



alteration or improvement of any kind."<sup>59</sup>

If self-interest is the motivating factor which controls individuals' conduct, how can their various interests be directed towards a common good ? Is it by leaving them freely to pursue their self-interest or by a system of restraints ? Adam Smith had two propositions to make. Firstly, he insisted that the common good was attainable naturally. A system of economic freedom in which people were left alone to pursue their economic interests according to their means with the least amount of interference from any external body. Secondly, he affirmed that it could also be secured by feelings of sympathy. In neither case, was government interference encouraged because he was convinced that the harmony of interest or the general good could be spontaneously achieved.

Not only Adam Smith, but also Bentham and Herbert Spencer admitted that sympathy could induce the individual to take interest in the happiness of another. Bentham had referred to the pleasures of sympathy, which he termed benevolence or goodwill, and readily admitted that sympathy as well as interest could attach one individual to another. Herbert Spencer<sup>60</sup> asserted that the instinct of personal rights, which he described as a purely selfish instinct, could be controlled by sympathy. He regarded it as a faculty in the individual which awakened a like state of sentiment for others, and accordingly, the individual could identify his interest with others by means of sympathy without any external coercion.

Individuals were considered to be the best judges of their own interests, a view shared by J.S.Mill, and on the basis of which he would oppose any state interference with certain aspects of individual freedom. If they are left to act freely, they will always seek those interests most advantageous to them, ultimately benefiting the society. Adam Smith pointed out that "every individual is continually exerting himself to find out the most advantageous employment for whatever capital he can command. It is his own advantage, indeed, and not that of the society, which he has in view. But the study of his own advantage

naturally, or rather necessarily leads him to prefer that employment which is most advantageous to the society."<sup>61</sup>

Similarly, Ricardo affirmed that "whilst every man is free to employ his capital where he pleases, he will naturally seek for it that employment which is most advantageous; he will naturally be dissatisfied with a profit of 10 per cent; if by removing his capital he can obtain a profit of 15 per cent."<sup>62</sup> As it will be shown below, J.S.Mill tended to accept this view and would oppose the state disorganizing international trade by artificial restraints. As a supporter of free trade, he was against the idea of protectionism. He maintained that capital left to itself would tend to seek by preference the most advantageous market.<sup>63</sup>

Adam Smith's explanation of how the principle of non-interference tends to harmonize individual interests towards the common good rests on the fundamental theory - the division of labour. He saw in this theory a proof of the notion of the natural identity of interest, and regarded it also as an effect of exchange. These apart, it exhibited a link with the principle of utility.

He tried to tie this theory to the concept of reason. This idea of reason was what the natural law school of thought considered capable to harmonize individuals in the absence of civil laws, provided that they were willing to obey its dictates. The division of labour and the many advantages which were derived from it were not the effect of a calculation on the part of "human wisdom". They were "...the necessary, though very slow and gradual, consequence of a certain propensity in human nature which has in view no such extensive utility; the propensity to truck, barter, and exchange one thing for another."<sup>64</sup> This propensity could itself be considered either as primitive or more likely as "the necessary consequence of the faculties of reason and speech."

It was a propensity "...common to all men, and to be found in no other race of animals, which seem to know neither this nor any other species of contracts,"<sup>65</sup> and it brought about the immediate reconciliation of general and private interests.

He was convinced that in so far as men agreed to accomplish their own part according to the principle of division of labour, there was a constant harmony between particular interests and the general interest. So long as individuals fulfilled their different duties according to that principle, each one individually for his own interest, the identity of particular interest was absolute without much interference from the state. Hence, "it is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages."<sup>66</sup> Accordingly, exchange is the cause of the harmony of egoisms. It is constantly differentiating the tasks of all individuals considered as producers, and constantly equalizing the interests of all individuals considered as consumers. This exchange, Halevy<sup>67</sup> and Plamenatz<sup>68</sup> observed was essentially the endurance of present pain in the hope of future pleasure to be got by satisfying our needs.

State interference was not necessary because the division of labour and the market ensured that the labour of an individual received an expected remuneration. What is this expected remuneration? Adam Smith affirmed that it was the natural price. A price which he defined as the total value of the labour which must be expended in producing and bringing a commodity to the market. This was the just price labour could obtain in a free market. If less were received, there was a tendency for the individual to stop production. On the other hand, if it were appropriately remunerated, the individual would continue production. In which case, the market price was indistinguishable from the natural price,

which was in turn the same as the real price.

In other words, through the process of exchange, the individual should have obtained, in the products of the labour of someone else, the same value that he should have obtained if he has himself laboured in producing the commodity instead of him. Hence with out interference, the labour he has put in producing the good can be considered equal to the labour which this commodity can command or buy on the market. This conforms to the nature of things. Hence, he maintained that "it is natural that what is usually the produce of two days or two hours labour should be worth double of what is usually the produce of one day's or one hour's labour."<sup>69</sup>

Whatever impedes the division of labour and the free mechanism of the market is therefore injurious. It is then unnecessary for government to interfere if labour should receive its due reward. "The whole of the advantages and disadvantages of the different employments of labour and stock must, in the same neighbourhood, be either perfectly equal or continually tending to equality. If in the same neighbourhood, there was any employment evidently either more or less advantageous than the rest, so many people would crowd into it in the one case, and so many would desert it in the other, that its advantages would soon return to the level of other employments. This at least would be the case in a society where things were left to follow their natural course, where there was perfect liberty, and where everyone was perfectly free both to chuse what occupation he thought proper, and to change it as often as he thought proper. Every man's interest would prompt him to seek the advantageous, and to shun the disadvantageous employment."<sup>70</sup>

Adam Smith has been able so far to establish that an individual has not only an interest, but can be considered as the best judge of his interest. He was prepared to show further on this basis, that without state interference, the interests of producers

and consumers could equate supply to effective demand. This was how he put it - "the quantity of every commodity brought to the market naturally suits itself to the effectual demand. It is the interest of all those who employ their land, labour, or stock, in bringing any commodity to market, that the quantity never should exceed the effectual demand, and it is the interest of all other people that it never should fall short of that demand .....

The whole quantity of industry annually employed in order to bring any commodity to market naturally suits itself in this manner to the effectual demand. It naturally aims at bringing always that precise quantity thither which may be sufficient to supply and no more than supply, that demand."<sup>71</sup>

Though Adam Smith upheld the notion of division of labour as a force capable of securing a natural identification of interests, Halevy observed that "it appears from other passages [of the Wealth of nations], however, that the division of labour is not adequate to identify interests, and that, in certain cases, a divergence of interests occurs between the capitalists, the landed proprietors, and the labourers. But even when they start from contradictory premises, Adam Smith's arguments arrive at a common conclusion - economic liberalism, the almost indefinite reduction of the functions arrogated to themselves by governments in these matters. Adam Smith never admits that the government should intervene to protect one class against another, even when his principles seem to justify this conclusion: he upholds industrial as well as commercial liberty. Since human society exists and subsists, it must be that the principle which identifies individual interests is more powerful than the principle which severs them; and reason, which criticises social injustices, has little strength to remedy them, as compared with the instinctive power of nature."<sup>72</sup>

Adam Smith appeared so wedded to the principle of non-interference, and economic liberalism that in defining the

functions of the state, he allotted negative duties to it. He believed that "according to the system of natural liberty the sovereign has only three duties to attend to; three duties of great importance, indeed, but plain and intelligible to common understanding. First, the duty of protecting the society from the violence and invasion of other independent societies; secondly the duty of protecting, as far as possible, every member of the society from the injustice or oppression of every other member of it, or the duty of establishing an exact administration of justice; and thirdly, the duty of erecting and maintaining certain public institutions, which it can never be for the interest of any individual, or small number of individuals, to erect and maintain; because the profit could never repay the expence to any individual or small number of individuals, though it may frequently do much more than repay it to a great society."<sup>73</sup>

Bentham was no less optimistic in the pursuit of economic liberalism. He had told the members of the French national Convention that the natural price of a commodity was secured by allowing producers to compete freely. In his address - entitled - Emancipate your Colonies - delivered before the convention, Bentham insisted that no amount of monopoly exerted over the trade of their Colonies would make the price of their goods fall below its natural price. But holding this view did not absolve him from the idea of utility in the economic sphere.

The end the state should seek for in the economic sphere according to Bentham was the attainment of the greatest happiness, in so far as it was enhanced by the production of the maximum national wealth and population. This end was better achieved by less state interference. "The motto, or watchword, ought to be - Be quiet"<sup>74</sup> in the economic field. Bentham's reasons for supporting "quietism" were first, like Adam Smith, he maintained that individuals knew their interests better than government could. Secondly, people operated more skillfully in pursuit of their own interests than the state could or would operate on their behalf,

and thirdly, state interference meant coercion either directly or indirectly through taxation. Coercion involved pain and therefore was bad.

This view did not imply a detached recommendation not to interfere at all. There were three requisites - Power, knowledge or intelligence and inclination - which Bentham argued should exist in perfection in an individual to produce the desirable effect of increasing the national wealth. When they were perfect, national wealth could be increased without any state interference. But when any of these requisites was deficient, government control might be valuable and its interference should be determined" ...according as the inconveniences attached to the measures in which the interposition of government consists, preponderate or fail of preponderating over the advantage attached to the effect which it is proposed should be produced."<sup>75</sup>

The need for state interference was made less because with regard to inclination, there was always the desire among individuals to increase their own wealth and hence the nation's. The state could improve the other requisites. Intelligence could be advanced by way of granting reward to people who merited it, and power was enhanced by giving freedom to individuals. For example, Bentham in support of his view argued that providing capital was supplying power. It could be raised by giving people the freedom to form partnership. All that people require in the economic field were "security and freedom". "The request which agriculture, manufacturers and commerce present to government, is modest and reasonable as that which Diogenes made to Alexander : 'stand out of my sunshine' we have no need of favour we require only a secure and open path."<sup>76</sup>

Paine, following the foot-steps of Adam Smith postulated that there was a natural society, which was prior to the formation of government and which would continue to exist if forms of government were abolished. This society was built on the principle of exchange. In other words, a society where the

individuals' interest could be harmonized through the mechanism of exchange. He admitted that this society rested partly on a system of social affections and above all on the selfish interests of man. An individual by nature had some selfish interests but "in all cases [nature] ...made his natural wants greater than his individual powers. No one man is capable without the aid of society, of supplying his own wants; and those wants acting upon every individual impel the whole of them into society, as naturally as gravitation acts to a centre."<sup>77</sup> This view coupled with the Newtonian metaphor links Paine directly with Adam Smith; he appears to share the same principle of divisions of labour and exchange which Adam Smith had made the foundation of his doctrine.

Paine held economic co-operation as a social bond of unity among people. In his words: "the mutual dependence and reciprocal interest which man has upon man and all the parts of a civilised community upon each other, create that great chain of connection which holds it together. The landholder, the farmer, the manufacturer, the merchant, the tradesman, and every occupation, prospers by the aid which each receives from the other, and from the whole. Common interest regulates their concerns, and forms their law; and the laws which common usage ordains have a greater influence than the laws of government. In time, society performs for itself almost everything which is ascribed to government."<sup>78</sup> Government interference is not necessary, for as soon as men, by instinct and reciprocity of interest, have become accustomed to social and civilised life, social principles are active enough to take the place of government regulations.

All great social laws can be described as natural laws, laws of mutual and reciprocal interest. People conform to them and obey them because it is to their advantage to do so, and not through respect for laws which the state builds. Paine, in short, was trying to explain that society was capable of performing for



itself almost all the functions which were ordinarily allotted to the state, "and instances are not wanting to show, that everything which government can usefully add thereto, has been performed by the common consent of society, without government."<sup>79</sup>

Considering Paine's ideas, it is observed that he held two opposing views though reconcilable if political and economic spheres are treated as two distinct worlds. In the political sphere, nature conferred on man more rights than he can maintain and for security reasons he resigned some rights to a regulating force for protection which he established. Accordingly, government is considered a necessity for the preservation of individual freedom.

On the other hand, in the economic sphere, nature gives the individual more natural wants than power with which to satisfy them; but in exchange individuals develop means with which to satisfy their natural needs without resorting to any constraint and without any sacrifice of interest. There are two likely explanations for this confusion. Either Paine was treating political and economic spheres as two distinct fields or was just adopting the general idea about liberty shared by most writers of his time.

Just as Paine asserted, that an individual's needs were always greater than his power to satisfy them, Malthus in a similar fashion observed that society was threatened by overpopulation and poverty. Malthus, by his theory of population, introduced a distinct break from the egoistic pre-supposition of the natural law school of thought. He inaugurated the biological point of view, and emphasized the fact that all human structures arose from an animal basis. The facts he exposed heralded the competitive "survival of the fittest" aspect of natural liberty. Close links can be seen between himself and Spencer. Most puritanical views which Spencer held in social affairs - for

example his opposition to state relief of the poor - can be said to be based on Malthusian doctrine. Leslie Stephen<sup>80</sup> pointed out as well that J.S.Mill was influenced to a certain extent by it. He maintained that the doctrine had been the foundation of Mill's entire social philosophy. Mill himself admitted that it was through the impact of the doctrine that he could argue that full employment at high wages can be maintained only if the working classes could restrict voluntarily any increase in their numbers.<sup>81</sup>

Through his theory of population, Malthus observed that "the power of population is indefinitely greater than the power in the earth to produce subsistence for man."<sup>82</sup> Consequently, he argued that if population increased without check the means of subsistence would not be sufficient to feed the increasing population. The difficulty caused by this phenomenon would tend to fall on the lower classes rather than the upper. To avert this, he advocated increasing production, and applying restraints on the increase of population. Until population tended to equality with subsistence, there was always the inclination among people to compete for the scarce means of life. These views gained ground particularly as they were substantiated by the rapid increase of population which took place during the early years of the 19th century.

Having given an account of the traditional ideas about liberty which would have formed the background from which Mill and Spencer developed their thoughts, it is desirable to consider the social condition of the period also. It has been established that civil enactments (hence the state) are not necessarily inimical to individuals' freedom. It is one thing to admit that the existence of government is essential for the preservation of liberty. It is another, to create a state which instead of protecting people's freedom, tends to become tyrannical to it. The purpose of examining the trend of social affairs in the era before Mill and Spencer wrote is to determine the extent to which

the liberty of the masses was restricted by the state.

Social Background.

The social condition of the period before Mill and Spencer wrote was one in which most of its institutions were not only dominated by one class but also were permeated by restrictive practices. These practices were encouraged to protect the interests of the class concerned. Similarly, the institutions either at central or local level were controlled by the aristocracy.

Admittedly, there was a parliamentary representative system of government which should give individuals freedom to choose their representative. But, until the reform bill of 1832, the qualifications for a vote favoured the wealthy class. The qualifications varied from one borough to another. Some boroughs required from a voter a residence of at least six months, the payment of poor rate or church rate; in others, the only condition was that the voter had not been a charge on the poor rate. Some insisted on a voter proving that he was an inhabitant in the borough, had a family and "boiled a pot there". In others, the right to vote attached exclusively to the possession of "burgage property". With some, their inhabitants waived their right of election, and delegated it to corporations. These were established by charters and it was not uncommon for the landed aristocracy to extend their wave of influence to them. In some extreme cases, franchise which ought to be left freely to people of the boroughs were often limited to members of a trade guild, Malpractices in parliamentary processes were common. To secure a seat in parliament had a high value and as votes commanded money, the corporations had every inducement to keep down the number of voters. Besides these, there was a general tendency to sell the freedom of the borough to non-residents. Accordingly people who wanted votes, or to become members, could always buy, and those favoured were the

aristocrats. All in all, the aristocracy became a favoured class because they met with the qualifications required for enfranchisement. As a consequence, the heat of their influence could be felt by the mass not only through state actions but also through the prevailing opinion and feeling in the society.

A concentration of power reposed on this basis would have appeared reasonably complete, but the aristocracy took further steps to consolidate its monopoly. In 1710, by an act of parliament, they tried to qualify members who were in the House of Commons to exclude all people who had not a certain estate of land, worth in the case of knights of the shire £500 and in the case of burgesses £300. Though this act was evaded by one way and another, it greatly limited the freedom of those who should normally have obtained a seat.

The general effects of this state of affair were firstly, the mass were disinherited, and all government and power vested in a small body of aristocrats. The populace were not allowed a share in public life or government. Besides this denial of liberty, parliamentary government was no longer a system of government but that of property. As it was property which mattered, these landed aristocracies endeavoured to preserve their powers and privileges by establishing a system of entail which gave to each successive generation merely a life interest in the estates, and kept the estates themselves as the permanent possession of the family. Secondly, this was inconvenient for the new masters of machines ushered in by industrialization.

At local government level, everything drifted into the hands of the Justice of the peace. Originally they were created to keep peace in the counties in which they served, but later

they developed an administrative power which drew to itself almost the functions and properties of government. For example, it was the Justice of the peace who was appointed to administer laws by which the capitalist classes sought to limit the freedom of the working classes. Under the Elizabethan Poor Law, it was the Justice of the Peace who appointed the parish overseers, and approved their poor rate. It was he who held in his hand the meshes of the law of settlement.

From the trend of affairs it could be properly concluded that the landed aristocrats were omnipotent. In parliament, they had the overall power and controlled the affairs of the society. At local government level, their influence was felt through the Justice of the peace. They controlled academic institutions, the church, law and all the springs of life and discussion. Their authority was consolidated by the strong social discipline embodied in the system of entail.

In order to meet the increasing demand for food necessitated by growth of population and irregular foreign supplies caused by constant wars that the country was engaged in, agriculture tended to become capitalistic, involving a system of enclosures. Their expense was a burden too great for some classes engaged in agricultural industry. These classes were those most affected by enclosures. They were : the small farmers, the cottager and the squatter. Some small farmers had no other alternative than either to emigrate to America or to an industrial town or to become day labourers. After the enclosure, the cottager was turned to a labourer without land. The economic basis of his independence was destroyed. He lost a great many rights for which he received no compensation. Among the rights lost was the prescriptive right of keeping a cow, and the privilege of cutting furze and turf on the common land. Similarly, the Squatters lost their access to the common and waste lands.

According to Hammonds,<sup>83</sup> the condition of the labourer was one ".....with no corporate rights to defend, no corporate power to invoke, no property to cherish, no ambition to pursue, bent beneath the fear of his masters, and the weight of a future without hope. No class in the world has so beaten and crouching a history, and if the blazing ricks in 1830 once threatened his rulers with the anguish of his despaire, "the parish is a law with its Squire." For the parish was no longer the community that offered the labourer friendship and sheltered his freedom: it was merely the shadow of his poverty, his helplessness, and his shame."<sup>83</sup>

In the face of this distress, coupled with increases in prices, a labourer was not free to roam about England, and try his luck in some distant village or town when his circumstances became desperate at home. The law which limited his natural liberty of movement was the old law of settlement. The destruction of the commons by enclosures had deprived him of any career within his own village, and the settlement laws had increased his calamity by barring his escape from it. Despite various concessions made by subsequent laws, the labourer still found his freedom controlled by the parish officers. I will not go into details of these laws but will rather quote a reactionary statement about the impact of such a body of laws on the liberty of the poor. This was given by Adam Smith whose feelings protested against so raw and brutal an interference with individual freedom.

In his words: "To remove a man who has not committed no misdemeanor from a parish where he chuses to reside, is an evident violation of natural liberty and justice. The common people of England, however, so jealous of their liberty, but like the common people of most other countries never rightly understanding

wherein it consists, have now for more than a century together suffered themselves to be exposed to this oppression without a remedy. Though men of reflection too have sometimes complained of the law of settlements as a public grievance; yet it has never been the object of any general popular clamour, such as that against general warrants, an abusive practice undoubtedly but such a one as was not likely to occasion any general oppression. There is scarce a poor man in England of forty years of age, I will venture to say, who has not in some part of his life felt himself most cruelly oppressed by this ill-contrived law of settlements."<sup>84</sup>

There were various views about these laws and how far they interfered with the liberty of the poor. All in all, it could be safely surmised that they were a violation of individual liberty. Though they might not have stopped the flow of labour, they tended to regulate it in the interest of the employing class.

Capitalistic organization did not stop at agricultural industry but also extended to manufacture and mining. New factory system was displacing the old domestic method of production. Industrial towns were developing, and labour was concentrating around the factory area. Most cottage workers had to seek jobs in the factory. Some were reluctant to leave the community they were used to for anywhere else. The industrial discipline of the factory system was new, real and hard. Many could not stand the strain at the outset and would prefer to stand by a falling system even if working conditions were bad.

With such distress confronting the working classes, their condition might have been soothed by an attempt to increase their wages. There were two ways in which the wages of the labourers might have been raised. One way, the way of combination

was forbidden by law. The doctrine of Laissezfaire was at this period widely accepted by the lower classes, and in fact induced a more positive action against their employers. Their action met with a strong resistance not only from the law but also from their employers. The latter were the new capitalist masters ushered in by industrialism. They were small in number and having a better opportunity of knowing each other could take a more concerted action in opposing the demands of their employees. There were marks of absolute divorce and therefore enmity between capital and labour. The relationship between some employers and their employees was rather tense, and in some cases led to outbursts of violence by the latter.

Besides, the French revolution was producing some reactions on English thought. Paine had published The Rights of Man which was a plea for democracy, equality and fraternity between man and man. This aroused a cry for reform among the working classes. Consequently, the government was becoming more vigilant and adopting stricter measures to prevent a similar revolution in the country. The result was that by the Corresponding Societies Act of 1799, all national associations with corresponding relations with local associations were declared illegal, and in 1800 combination acts were passed suppressing all forms of trades unionism by law. These steps were a further limitation of the liberty of the people, though combinations persisted in secret until the repeal of 1824.

The other way of raising the wages of the labourers was by giving them the freedom to bargain with their employers. What the rate of their wages should be. The populace were deprived of this liberty. Instead, there was a legal fixing of maximum wage in relation to the price of food. The regulation of wages by law was a venerable English institution, as old as the statute of Edward III. During this period, the laws on the same subject were an act of Elizabeth, an act of James I, and an act of 1747. The first act, provided that the Justices of the peace should meet



annually and assess the wages of farm labourers and certain other workmen. Penalties were imposed on all who gave or took a wage in excess of this assessment. The second act provided penalties for those who gave a wage below the wage fixed by the magistrates. In short, while the first act aimed at fixing a maximum wage, the second tried to establish a minimum. Finally, the act of 1747 maintained that disputes between masters and workmen should be referred to the magistrates. Without much dispute, it could be clearly seen that the intention was to use legislation to keep wages down. This was made evident by the failure which marked Whitbread's attempt to secure a repeal of the act of Elizabeth which would have implied an adoption of a policy of minimum wage. Whitbread was opposed by a majority of the House, particularly Pitt. Entertaining the policy of maximum wage gave employers the opportunity of exploiting or manipulating the wages of their workmen to their own advantage.

Mercantilism which originated with the Tudors, was still a prevailing economic thought. This concept ruled industrial and commercial policy during the 19th and through the greater part of the 18th century. It received expression in the corn laws, the protection of home industries, the navigation laws, and the colonial system. In an attempt to protect home industries trade was considered of advantage to a nation when it imported raw materials which it did not produce, or produced in insufficient quantities, to be worked up at home. The importation of luxuries, and of articles which supplanted the home manufacturers, was severely condemned. The practical effect of this doctrine was that certain branches of industry were encouraged either by bounties, or fiscal immunities, and others were restricted by tariffs and prohibition. The most important example of protection granted to the manufactured article was the case of woollen cloth.

Though this was an attempt to protect the interest of manufacturers, it greatly reduced the freedom of the populace to buy from whichever market they desired. The curtailment of liberty was further accentuated by another method of protecting industry. This was by the prohibition of the emigration of skilled artisans. During the religious persecutions of Charles I, and during the civil wars, many skilled textile workers in East Anglia migrated to the continent. Besides this, some skilled workers in many trades were attracted abroad by offers of high rates of pay and other inducements. In the supposed interests of industry, a law was enacted in 1719, making it illegal for skilled artisans to emigrate. However this legislation was justified, it limited the freedom of movement of labour to places where it could be better paid.

Similarly, the navigation laws which provided that goods from and to Asia, Africa and America could only be carried in English ships, while goods from and to any European port could be brought either in the ships of this country or of the country actually producing the goods, interfered with the liberty of choice of shipment of individuals or country importing or exporting commodities. If freedom meant minimum government interference, people or a country should be given the freedom to choose any ship which should carry their exports or imports instead of being legally bound to the ships of a power.

Corn laws had been long in existence. In 1815, a corn law was passed which practically prohibited corn imports except in famine years. According to the terms of the law, import of cereals until the price in the English market had risen to 80/- per quarter of wheat, 40/- for barley; 26/- for oats and 53/- for rye, \* was prohibited. Various interpretations were given to this law. Some held that it was passed to protect the landed interest, and to

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\* These prices were given by Briggs and Jordan.

enable it to maintain a high standard of living by inefficient methods. Others argued that the main objective was to remove sharp fluctuations from the price of corn. But whatever the motive, it appeared to have been assumed that in the years of plenty, the effect of the law would be to prevent a sharp fall in corn prices by excluding foreign imports, and conversely, in the years of bad harvests, the import of foreign corn would prevent prices rising to famine heights. The freedom of the individual to buy in a free market was still interfered with. Obviously, no importer would import corn into the country, if it were not to his advantage to do so. Accordingly, using legislative measures to exclude foreign corn in order to maintain stable prices did not only put the mass at a disadvantage of buying corn cheaply in the years of plenty but also limited the freedom of the exporter.

From the brief social history of the period, it is observed that the freedom of the people was regularly interfered with by the state. They were disinherited of their liberty to participate in the political process by which they were ruled. Their freedom of movement was regulated; the wages which they received from the effort of their labours was fixed by law, and worst of all the price which they paid for the food they ate was also regulated by a positive law.

In this chapter an attempt has been made to discuss the traditional ideas about liberty which were handed to Mill and Spencer on one hand, and on the other to show how these ideas tend to relate to theirs, (Mill's and Spencer's). In addition, a brief account is also given of the social condition of the masses at the period when both men wrote. In the following chapters, an analysis of Mill's and Spencer's views about liberty will be made.

CHAPTER 2.

As I showed in the last Chapter,<sup>1</sup> Mill's predecessors maintained that economic freedom did not necessarily imply complete absence of government interference. The consensus of opinion was that leaving people to pursue their economic interests in their own way and according to their means was better than controlling them. Adam Smith admitted that self-love or self-interest was the principal cause urging an individual to take up an economic function. He was convinced that the harmony of interests of individuals could be better secured ultimately by leaving people alone to follow their own interests. His reason was that people would only engage themselves in those functions which were advantageous to them, and through every person doing those things which were expedient, society would tend to benefit. This view is supplemented by his principle of "sympathy". He argued that harmony of interests could not only be secured in the above manner but also by the theory of "sympathy". He would allow the state to interfere in the economic sphere particularly in those gigantic projects which are of no advantage for the individual to undertake.

Bentham stood for the principle of "quietism" but this does not mean that he deviated from the doctrine of utility to join the natural law school of thought. He was a utilitarian in his economic ideas, and in fact would only allow state interference with individual economic freedom if it were justified by the doctrine of utility. He made his stand clear by attacking those who opposed taxation on the grounds that it involved a burden on those who pay it. According to him, "it would ..... be a gross error, and an extremely mischevius one, to refer to the defalcation thus resulting from the mass of liberty or free agency, as affording a conclusive objection against the interposition of the law for this or any other purpose. Every law which does not consist in the repeal, total or partial, of a coercive law, is itself a coercive law. To reprobate as a mischief resulting from this or

that law, a property which is of the very essence of all law, is to betray ..... - a total unacquaintance with what may be called the logic of the laws."<sup>2</sup>

Paine<sup>3</sup> was no less a supporter of the doctrine of "Laissez-faire". Using Adam Smith's theory of division of labour, he envisaged an economic society built on a system of exchange. He contended that without any artificial interference, the harmony of interest could be secured naturally. Malthus<sup>4</sup> was worried about increase in population outrunning the means of subsistence. Though he held this view, he would not encourage a welfare state assisting the poor.

Nassau Senior,<sup>5</sup> Mill's contemporary was not completely hostile to State interference with the economic freedom of individuals. He opposed the idea of limiting state function to the ring-fence of providing its subjects with protection against foreigners by war or by negotiation, and against one another by the administration of civil and criminal justice. This apart, he disapproved of the use of the word "optional" as applied to the functions of government, on the grounds that it appeared to imply that there might be useful measures which the government of a country might at its discretion adopt or reject.

He argued that "the only rational foundation of a right to govern and of a correlative duty to obey is expediency - the general benefit of the community. It is the duty of a government to do whatever is conducive to the welfare of the governed. The only limit to this duty is its power. And as the supreme government of an independent state is necessarily absolute, the only limit to its power is physical or moral inability. And whatever it is its duty to do, it must necessarily have a right to do."<sup>5</sup> It can be concluded that Senior just like his contemporary John Stuart Mill held to utilitarian views in the economic spheres.

Mill did not depart from the general ideas of his predecessors about economic liberty, though he tended more towards utilitarianism. "Laissez-faire" ought to be the general

principle but the state could interfere when its action was justified by the doctrine of utility. The point Mill was stressing was, that ".....under whatever political institutions we live, there is a circle around every individual human being which no government, be it that of one, of a few, or of the many, ought to be permitted to overstep: there is a part of the life of every person who has come to years of discretion, within which the individuality of that person ought to reign uncontrolled either by any other individual or by the public collectively. That there is, or ought to be, some space in human existence thus entrenched around, and sacred from authoritative intrusion, no one who professes the smallest regard to human freedom or dignity will call in question; the point to be determined is where the limit should be placed; how large a province of human life this reserved territory should include. I [Mill] apprehend that it ought to include all that part which concerns only the life, whether inward or outward, of the individual, and does not affect the interests of others, or affects them only through the moral influence of example."<sup>6</sup>

Mill approved of limiting government intervention both for political and economic reasons. Politically, as the functions of the state increase, its power increases as well, both in the form of authority, and in the indirect form of influence.<sup>7</sup> Bentham regarded unfair distribution of power as an evil. He affirmed that the greater the quantity of power that an individual or a group of individuals may possess, the greater the facility of and the incitement to its abuse. Mill saw that state intervention meant an increase in the number of public officials. From the historical experience of the country, he feared that more public employment would mean more abuse of patronage by the government. As the power of the state increased, individual freedom diminished at an inverse ratio. This would make the power of the state despotic beyond certain limits. Such a tendency, threatened individual freedom, and

"hence it is no less important in a democratic than in any other government, that all tendency on the part of public authorities to stretch their interference and assume a power of any sort which can easily be dispensed with should be regarded with unremitting jealousy."<sup>8</sup>

Economically, on the basis of the principle of the division of labour, the government had sufficient duties to perform. Every increase of function which the state undertook meant overworking its organs. Inefficiency inevitably followed as a result. Besides inefficiency, state officials would be so very much occupied that they would have no time or thought to contribute towards social improvement.

Why is individual economic freedom valuable ? Firstly, it provides a big scope for educating individuals in "the business of life". "The business of life is an essential part of the practical education of a people; without which book and school instruction, though most necessary and salutary, does not suffice to qualify them for conduct, and for the adaptation of means to ends. Education of a vigorous exercise of the active energies, which include labour, contrivance, judgement, and self-control. As these energies can diminish in efficiency, if they are not freely exercised, it becomes incumbent on the state to allow the individual the freedom to exercise them with the ultimate prospect of producing a large group with a diversified education. "A people among whom there is no habit of spontaneous action for a collective interest - who look habitually to their government to command or prompt them in all matters of joint concern - who expect to have everything done for them, except what can be made an affair of mere habit and routine - have their faculties only half developed, their education is defective in one of its most important branches."<sup>10</sup>

Government by a few in a society cramped by ignorance is akin to despotism and is inconsistent with the concept of freedom, and "the only security against political slavery is the

check maintained over governors by the diffusion of intelligence, activity and public spirit among the governed."<sup>11</sup> The ideas about despotism at this period were very unfavourable. Ricardo observed that "The most efficient causes of depression are despotism, oppression and ignorance; the most efficient causes of elevation are, civil and political liberty and education. Of the causes which tend to generate prudential habits, the most essential is civil liberty, and to the maintainance of civil liberty, political liberty is generally necessary."<sup>12</sup>

Hence, Mill would prefer a representative form of government as the ideal because every individual has the freedom not only to take part in it, but also has a voice in the exercise of the sovereign power. In his views, "....the ideally best form of government is that in which the sovereignty, or supreme controlling power in the last resort, is rested in the entire aggregate of the community; every citizen not only having a voice in the exercise of that ultimate sovereignty, but being, at least occasionally, called on to take an actual part in the government, by the personal discharge of some public function, local or general."<sup>13</sup> Its superiority as a form of government rests on two principles of "universal truth and applicability." Firstly, "....human beings are only secure from evil at the hands of others in proportion as they have the power of being, and are, self-protecting; [secondly] ....they only achieve a high degree of success in their struggle with Nature in proportion as they are self-dependent, relying on what they themselves can do, either separately or in concert, rather than on what others do for them."<sup>14</sup>

The first principle which originates from the general idea that an individual is the only safe guardian of his own rights and interest regarded by some people as a doctrine of universal selfishness, Mill defended as a security against overlooking certain interests in the society. This was his defence - "For my own part, not believing in universal selfishness, I have no difficulty in admitting that communism would even now be practicable among the



elite of mankind, and may become so among the rest. But as this opinion is anything but popular with those defenders of existing institutions who find fault with the doctrine of the general predominance of self-interest, I am inclined to think they do in reality believe that most men consider themselves before other people. It is not, however, necessary to affirm even thus much in order to support the claim of all to participate in the sovereign power. We need not suppose that when power resides in an exclusive class, that class will knowingly and deliberately sacrifice the other classes to themselves; it suffices that, in the absence of its natural defenders, the interest of the excluded is always in danger of being overlooked, and, when looked at, is seen with very different eyes from those of the persons whom it directly concerns."<sup>15</sup>

The second principle stimulates social progress, and encourages competition among people.

He clearly exposed the importance of educating people in the management of their own government with these words - "A democratic constitution, not supported by democratic institutions in detail, but confined to the central government, not only is not political freedom, but often creates a spirit precisely the reverse, carrying down to the lowest grade in society the desire and ambition of political domination .... In proportion as the people are accustomed to manage their affairs by their own active intervention, instead of leaving them to the government, their desires will turn to repelling tyranny, rather than to tyrannizing; while in proportion as all real initiative and direction resides in the government, and individuals habitually feel and act as under its perpetual tutelage, popular institutions develop in them not the desire of freedom, but an unmeasured appetite for place and power, diverting the intelligence and activity of the country from its principal business to a wretched competition for the selfish prizes and the petty vanities of office."<sup>16</sup>

Not only the importance of educating people to manage their government appealed to him: he also appreciated the

educational values of economic freedom, and in fact, felt that education was the main avenue to improving the condition of the working classes and reducing the inequalities existing in society. Hence, he encouraged the formation of a co-operative movement among the working classes. The success of associations similar to co-operative societies is "..... a course of education in those moral and active qualities by which alone success can be either deserved or attained."<sup>17</sup> The power to co-operate, he remarked, is an accurate test of the progress of civilization.<sup>18</sup>

Secondly, competition flourished better in an atmosphere of economic freedom than in one of economic restraints. Mill would have given his entire support to socialism, but failed because of socialist "declamations against competition." There were some old ideas prevalent among socialists, particularly those ideas which attributed all economic evils to competition, which he conceived as repulsive. It was his aim to show them that competition brought less evil than the socialists thought. The opposite of monopoly is competition, and he regarded monopoly as a taxation levied on the industrious to support the indolent. Economic freedom and hence competition, would prevent such a taxation. Competition works for the benefit of the working classes by cheapening the articles they consume, and by providing a source of high wages wherever the demand for labour exceeds the supply. Although competition was desirable, it could not be acquitted entirely of causing certain inconveniences in the economic sphere. "But if competition has its evils, it prevents greater evils."<sup>19</sup> It was considered as the best conceivable stimulus to improvement in the economic spheres. Thus, if the society were to operate on the assumption that individuals were competent judges of improvement in this field, it would be easier to introduce new methods of production in industries under a competitive atmosphere than under a monopolistic one.

As I pointed out above, Mill's idea of economic freedom did not mean total absence of state interference.<sup>20</sup> Sometimes, he justified government intervention, though it meant a denial of freedom. One of the social affairs in which state interference was justified was education. If people were the best judges of their interests, why should they not be allowed absolute freedom in educational matters ? Firstly, Mill pointed out that education as a commodity, "chiefly useful as tending to raise the character of human beings,"<sup>21</sup> was different from other material goods which people required for their physical needs or for the satisfaction of some taste or inclination. Accordingly, neither the knowledge of the individual (where he is not educated) nor the demand of the market was sufficient guarantee for the goodness of the commodity.<sup>22</sup>

The point Mill is making here is of some significance. Take the case of a student for example reading for a degree at University. Obviously, the things which he requires for his course of studies are different from those he needs for his physical want or for the gratification of his tastes or inclinations. The student will not regard his lecturer's interference in matters relating to the purchase of text-books as inhibitory to his freedom of choice. But will do so, if the lecturer interferes with things which he requires for his personal want; he will like his freedom of choice to prevail undisturbed in buying his shoes, shirts, cigarettes or other things which appeal to him. In most cases, in making his decisions he is influenced by the popularity, cheapness or dearness of the goods in the market; or the amount of advertisement given to the commodity. But with regards to the text-books or other necessaries, he requires for his academic work, he will allow any measure of interference his lecturer may be disposed to make.

Secondly, the social history of that period (19th Century) shows that the majority of individuals were uneducated. If the masses were uneducated, it is clear that they could not be

competent judges of learning. Mill moreover observed that "those who most need to be made wiser and better usually desire it least, and if they desired it, would be incapable of finding the way to it by their own lights."<sup>23</sup> Without a measure of compulsion and systematic organisation by the state, "...the end not being desired, the means will not be provided at all....."<sup>24</sup>

With regards to elementary education, he admitted that parents were under obligation to provide such "primary elements and means of knowledge"<sup>25</sup> to their children. But as there might be a tendency for some parents to neglect this duty, it was necessary on the part of the state "to impose on parents the legal obligation of giving elementary instruction to [their] children. This, however, cannot fairly be done, without taking measures to insure that such instruction shall be always accessible to them, either gratuitously or at a trifling expense."<sup>25</sup>

Mill had warned that "the primary and perennial sources of all social evil are ignorance and want of culture."<sup>26</sup> These could not be eliminated from society "by the best contrived system of political checks, necessary as such checks are [designed] for other purposes."<sup>27</sup> If "political checks" were not good enough to remove the evils, on what could mankind depend? "Mainly, on the unremitting exertions of the more instructed and cultivated, whether in the position of the government or in a private station, to awaken in their minds a consciousness of this want, and to facilitate to them the means of supplying it."<sup>27</sup>

Why did Mill entrust matters of education mainly to the state? Apart from the reasons which have been discussed, he held that "....any well intentioned and tolerably civilized government ..... ought to possess a degree of cultivation above the average of the community which it rules, and ..... it should therefore be capable of offering better education and better instruction to the people, than the greater number of them would spontaneously demand."<sup>28</sup> Accordingly, education ought to be regarded as one of those things the state should provide for the

people.

Although state interference is justified in educational fields, monopoly practices should not be encouraged in them. Individuals should not only be given the freedom to choose their instructors but should be allowed to build institutions, if they can afford them. "It is not enduring that a government should either de jure, or defacto, have a complete control over the education of the people. To possess such a control, and actually exert it, is to be despotic. A government which can mould the opinions and sentiments of the people from their youth upwards can do with them whatever it pleases. Though a government therefore, may, and in many cases ought to, establish schools and colleges, it must neither compel nor bribe any person to come to them, nor ought the power of individuals to set up rival establishments to depend in any degree upon its authorization. It would be justified in requiring from all the people that they shall possess instruction in certain things, but not in prescribing to them how or from whom they shall obtain it."<sup>29</sup> Mill maintained the general pattern of support given to state interference in educational affairs.

Adam Smith pointed out that the education of the common people rather than that of the rich required in any modern society the attention of the state. The wealthy at an early age have a professional education to follow which the poor did not have. "They [the poor] have little time to spare for education. Their parents can scarce afford to maintain them even in infancy. As soon as they are able to work, they must apply to some trade by which they can earn their subsistence. That trade too is generally so simple and uniform as to give little exercise to the understanding; while, at the same time, their labour is both so constant and so severe, that it leaves them little leisure and less inclination to apply to, or even to think of anything else."<sup>30</sup> He suggested that "for a very small expense the public can facilitate, can encourage, and can even impose upon almost the whole body of the people, the necessity of acquiring those most essential parts of education. The public can facilitate this acquisition by establishing in every

parish or district a little school, where children may be taught for a reward so moderate, that even a common labourer may afford it; ....."<sup>31</sup> Though the state derives no advantage from educating the poor, it is necessary that they should not be left ignorant. "The more they are instructed, the less liable they are to the delusions of enthusiasm and superstition, which, among ignorant nations, frequently occasion the most dreadful disorder."<sup>32</sup>

Nassau Senior<sup>33</sup> argued that it was necessary that the state should not only provide but also control the system of education for the labouring class. Just like Mill, he affirmed that the means, the intelligence and conscientiousness of the working class which would enable and induce them to give their children a good education were not enough. Asking them to provide their children with education would entail their sacrificing much in that cause.

Similarly, as Mill did not feel that the uncultivated could ever make good judges of the cultivated, Senior would not trust the management of the education of the poor with them. He argued, "...that in order to profit by experience men must start with much more education than is possessed by the lower classes of the English. For fifty years, they have been managing their own benefit societies. Almost all of them are founded on principles leading to inevitable insolvency. For fifty years, they have been managing their own trade unions. There is not one which is not based on folly, tyranny and injustice which would disagree with the rudest savages. They sacrifice their wives, their children's and their own health and strength to the lowest sensuality."<sup>33</sup> Senior was perhaps unduly severe in his assessment of the working class and in fact would not give them the freedom to co-operate for improvement as Mill should have.

Another sphere in which state interference was justified was in state relief of the poor. According to him, individuals should, in general, be given the freedom to do whatever was considered reasonable for them to do. But when it was

not a question of leaving individuals to themselves, but in trusting them to the assistance of others, "...the question /then/ arises whether it is better that they should receive this help exclusively from individuals, and therefore uncertainly and casually, or by systematic arrangements, in which society acts through its organ, the state."<sup>34</sup> Why was state intervention in the problem of the poor justified ?

Firstly, Mill affirmed that if poor relief were left to voluntary charity, it would be difficult to achieve a fair distribution to needy individuals. Secondly, since the state could provide for the criminal poor, it could also provide for the innocent poor or its action might be regarded as encouraging crime. Finally, "a vast amount of mendacity is inevitable,"<sup>35</sup> if the poor were trusted to voluntary charity. Consequently, Mill thought the welfare of the poor required a systematic arrangement, and this arrangement would be best carried out by the state. Although state relief is valuable, yet it should be planned in such a way as not\* to induce individuals to dispense with self-help nor\* to make the condition of a receiver better than an individual who gained his living by self-exertion - a view shared by Senior.

Colonization is another social affair which calls for government intervention. It should be a state undertaking because the benefit accruing from it affects not only the economic interest of one country but that of the world at large. Besides the benefit the expenses of colonization can be more lightly borne by the state than by the individual.

Admittedly, freedom is limited by colonization but would be more limited if it were left freely in private hands.

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\* The idea expressed here is the principle that liberty to receive state assistance should not exceed the extent which would make a person dispense with self-exertion.

Wakefield's plan for raising funds for the support of colonization, though a good one, provides a good example of the extent to which individual freedom can be limited if colonization is freely left in private hands. The plan involved not only putting a price on all unoccupied land and devoting the proceeds to emigration, but making it a rule that all emigrants whose passage was paid for out of these proceeds should earn a considerable sum before they could become landed proprietors. The effects of this plan on the emigrant were firstly that restraint was put upon his freedom to adopt the tastes and type of life he wished to lead. Secondly, his freedom of movement was restricted to certain limits. Thirdly, his natural instinct of acquisitiveness was kept under control. He could not freely own any land or increase his estate because of the cost of the land. Thus, it is conceivable that the principle of individual freedom suffered more under private hands carrying out colonizing projects than under the government.

After investigating whether individual freedom is preserved by a state undertaking Mill went on further to examine whether colonization was justifiable, by the state interfering in the internal affairs of another community. He affirmed that "there are few questions which more require to be taken in hand by ethical and political philosophers, with a view to establishing some rule or criterion whereby the justifiableness of intervening in the affairs of other countries, and [what is sometimes fully as questionable] the justifiableness of refraining from intervention, may be brought to a definite and rational test."<sup>36</sup> This is an important issue which he tried to consider. The criterion which he established stressed that the state of civilization of the people would determine whether interference was justifiable or not. If a community is made up of barbarians, any intervention in their internal affairs by a neighbouring civilized state is approved of. Though "a violation of great principles of morality it may easily be; but barbarians have no rights as a nation, except a right to such treatment as may, at the earliest possible period, fit them



for becoming one. The only moral laws for the relation between a civilized and a barbarous government, are the universal rules of morality between man and man."<sup>37</sup>

The point Mill was driving at, is one which considers the uncivilized state of a people sufficient excuse for depriving them of part of their freedom. He is regarding the state of barbarians similar to that of children and idiots whose condition justifies regular interference by an external power.

Should a dependent colony be given the freedom to trade with any other country of its choice? The protectionists asserted that the dependent colony should be compelled to trade exclusively with the dominant country. Mill disapproved of the idea, because "a country which thus secures to itself an extra foreign demand for its commodities undoubtedly gives itself some advantage in the distribution of the general gains of the commercial world."<sup>38</sup> Besides the commercial advantage, such compulsion implies restraining the choice of a society at large which is far more severe than imposing trade restriction in the form of tariffs on the country.

Having reviewed certain fields in which state interference is justified, I shall now consider the institution of property with reference to rights of bequest and inheritance. Mill observed that "the laws and conditions of the production of wealth partake of the character of physical truths. There is nothing optional or arbitrary in them. Whatever mankind produce, must be produced in the modes, and under the conditions, imposed by the constitution of external things, and by the inherent properties of their own bodily and mental structure ..... it is not so with the distribution of wealth. That is a matter of human institution solely. The things once there, mankind, individually or collectively, can do with them as they like. They can place them all at the disposal of whomsoever they please, and on whatever terms ..... The distribution of wealth, therefore, depends on the laws and customs of society."<sup>39</sup>

After a careful examination of systems of distributing national wealth, Mill asserted that the best system is the institution of private property. This he argued secures every person, an equitable share of his labour. What does the institution of private property mean ? "The institution of property when limited to its essential elements, consists in the recognition, in each person, of a right to the exclusive disposal of what he or she has produced by their own exertions, or received either by gift or by fair agreement, without force or fraud, from those who produced it. The foundation of the whole is the right of producers to what they themselves have produced."<sup>40</sup> Right of property, then, implies the right every individual has to his own faculties, to what he can produce by them, and to whatever he can get for them in a fair market. This includes the freedom of acquiring property by contract - that is, the right an individual has to give his property to another person, and the right the latter has to receive from the former.

On this basis, Mill deduced that the right of bequest was consistent with the idea of private property but right of inheritance was not. Though the right of bequest was consistent with the concept of private property, system of entails and perpetuities was not. This system was shown in the last chapter,<sup>41</sup> as one of the ways by which the landed class endeavoured to protect their interest. Mill's contention was that when any property was bequeathed, it should be done once and once only. It is wrong for example for a testator to bequeath a property to A and then prescribe that on A's death, it shall pass on to his eldest son, and son's son and so on ad infinitum.

Although Mill's motive for opposing entails was an attempt to bridge the economic inequalities existing in society, he appeared to have stressed his levelling proposition on utilitarianism. If the institution of private property allowed every person the freedom to dispose exclusively of what he or she has produced by his or her own exertion, on what grounds was Mill opposing entails and perpetuities ? His argument tended to revolve

around the conviction that society gains more by imposing restraint on the mode of bequest than allowing entails.

Assuming that he had justified his views on utilitarian grounds, what is the guarantee that the gain of utility would be greater if a posthumous restraint were imposed on the use of bequeathed wealth ? Would such a restraint not cause a diminished inducement to produce and preserve wealth ?

It could be argued that men in general would receive a greater satisfaction out of their wealth for themselves, if they were allowed to choose freely the way of spending it. But on one hand, it does not in any manner follow that they would render it most productive of utility for those who are to come after them if they were allowed to bequeath it under any condition which they chose. On the other hand, it is not impossible that the instinct of acquisition could be impaired if they realised that if after exerting themselves to acquire and preserve wealth, their freedom to dispose of it the way they desired would be interfered with. Amassing property would then be less useful which, if individuals were left freely to do as they wish with their wealth, would not be the case. The fact that there is no legal or physical restraint on its disposal will be an inducement to acquire and preserve it.

Contracts should be enforced by the state. State interference is necessary to ensure that partners to a contract fulfil their obligations. When individuals freely enter into a contract, it becomes binding on them to fulfil but in most cases, some individuals who fail to carry out their obligations do so out of negligence or with an intent to cheat. "...enforcing contracts is not regulating the affairs of individuals at the pleasure of government, but giving effect to their own expressed desire."<sup>42</sup> Besides enforcing contracts, the state also determines what contracts are fit to be enforced.

For example, a contract an individual signs to sell himself as a slave is not a good contract fit to be enforced, considered both from the point of interest of the individual, and that of the society. The individual entering such a contract misuses his freedom for licence. Hence the government is justified to interfere, because by selling himself, the individual renounces his freedom.

The idea of protectionism has been responsible for limiting an individual's freedom to buy from a foreign market when it is the cheapest, because his action is calculated to be contrary to public interest. Mill, basically a disciple of Laissez-faire principle, tried to examine how far the state was justified in limiting the individual's freedom to buy from the market of his choice.\*

Importation of foreign goods never takes place except when it is for the good of society as it enables the same amount of goods to be obtained at a smaller cost of labour and capital to the country. Prohibiting this importation affects not only the interest of the individual as a consumer, but the society at large. It affects the interest of the society by rendering ".....the labour and capital of the country less efficient in production than they would otherwise be; and compel a waste of the difference between the labour and capital necessary for the home production of the commodity and that which is required for producing the things with which it can be purchased from abroad."<sup>43</sup> The individual's freedom as a consumer is very much limited as his choice of goods is enclosed within the ring-fence of goods produced at home. Whereas, if there is no prohibition, his choice of goods is greater and hence his freedom to buy from any market greater.

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\* Note: In his essay on Liberty, Mill tried to separate political from economic freedom.

Nations are no more exempted from a moral code based on altruism than are individuals. In a case of scarcity of food, no individual nor a nation will be reproached for exhibiting that altruistic feeling by starving himself or itself in order to feed others. "...if the greatest amount of good to mankind on the whole were the end aimed at in the maxims of international conduct,"<sup>44</sup> the rich should consume less food in order that the poorer classes have some; no country should stop exporting food however scarce food is. Any state which tried to regulate the price of food because of scarcity should be condemned.

The regulation of the price of food is a sphere of action allotted to the individual. There, the individual's freedom should reign undisturbed. The average price of food is generally accepted to be equal to the cost of production plus profit. As such, the producer will continue production as long as he receives this price. But if he fails, he will, stop production unless forced to do so by law. Accordingly, state interference is objected to, because it disrupts the natural price of commodities.<sup>45</sup> As far as this moral code is concerned, "...free exportation is desired."<sup>46</sup>

The concept of protectionism was unpalatable to Mill's tastes, and consequently, he did not support the state disorganizing international trade by artificial restraints. His notion of internationalism in the economic world was one in which exports and imports should be allowed to pass the frontiers of every nation freely; every nation receiving its proportional gain of world produce according to its contribution. He believed that "...a country which destroys or prevents altogether certain branches of foreign trade, thereby annihilating a general gain to the world, which would be shared in some proportion between itself and other countries - does, in some circumstances, draw to itself, at the expense of foreigners, a larger share than would else belong to it of the gain arising from that portion of its foreign trade which it suffers to subsist."<sup>47</sup> Even this larger share which can be gained is only possible if foreigners do not maintain similar trade restrictions. This course of action on the

part of the country is unjustified by the principle of freedom. He asserted that without restrictions, capital tended to seek by preference a market where it can yield the greatest profit.

The general attitude of Adam Smith towards imposing artificial restraints on international trade was unfavourable. His ideas gave full support to free trade among various nations. He was convinced that the productive powers of a society could never exceed its national capital. As such, no regulation of trade can increase the output of an industry beyond what its capital can maintain. All regulation can do is to direct part of it into channels where it may not otherwise have gone, and it is difficult to say whether this artificial direction will be more advantageous to the society than if it is left freely to seek its own best end. He argued that without artificial barriers on trade, producers would always tend to invest their capital at home provided that it was beneficial to them. Accordingly, free trade promotes national interest more than trade restriction. The exporting and importing of goods can never be carried on if they are not conducive to the interest of the people concerned. To secure a monopoly for a home producer by means of regulation implies directing private concerns to employ their capital in a less advantageous manner.

I have already described Mill's attitude towards monopoly practices in society.<sup>48</sup> In fact, he regarded monopoly as the instrument by which the state created artificial dearness of goods. It is thus wrong for the state to confer monopoly on a producer, or a group of producers, when they are not too many to combine as it implies giving such a producer, "...the power of levying any amount of taxation on the public for their individual benefit, which will not make the public forego the use of the commodity."<sup>49</sup> He pleaded that every aspect of production in the economy should be kept free for interested individuals to participate in.

One of the exceptions to Mill's condemnation of monopoly practices is patents. An inventor granted the monopoly of using his invention should only enjoy it for a limited period.

Applying the above principle of individual property right, Mill must have been convinced that an inventor has an exclusive claim to his invention because he had produced it by his own exertion. Besides the exclusive claim, the inventor is entitled also to a reward for any public use of his invention. No other person has the freedom to use it without his consent. "This is not making the commodity dear for his benefit, but merely postponing a part of the increased cheapness which the public owe to the inventor in order to compensate and reward him."<sup>50</sup>

How can the inventor be rewarded ? Two alternative ways present themselves. Either patents are issued to the inventor, or the state raises some funds for him out of temporary taxation. Of these two alternatives, the former is better, and that is why patents are exempted from the condemnation of monopoly practices. This was one of the spheres in which individuality should prevail undisturbed by law for a prescribed period. Consequently, he declared that "...it would be a gross immorality in the law to set everybody free to use a person's work without his consent, and without giving him an equivalent."<sup>51</sup>

So far, various aspects of the economic sphere in which state interference was either justified or not justified by Mill have been examined. There is another important feature which requires consideration. This is trade unionism. How far was government interference in trade union movement justified ?

Mill argued that it was unjustified. In his views, "such laws exhibit the infernal spirit of the slave master, when to retain the working classes in avowed slavery has ceased to be practicable."<sup>52</sup> Though he had his doubts whether combination of working classes would succeed in raising wages as their numbers were great and scattered, the ability of doing so should be welcomed and rejoiced at. In other words, the freedom of forming trade unions should not be denied them. Combinations might succeed in reducing the hours of labour, and earning the same wages for less work and it might be possible to obtain an increase of general

wages at the expense of profits. But the limit to which this could be done was very narrow and if it were over-strained, it would lead to unemployment.

He went on to demonstrate the Wages Fund Theory in support of this view, and asserted that the best way of increasing wages was by restraining the supply of labour to the demand.<sup>53</sup> Combination to improve wages can be successful in trades where the workers are not only few in number but also concentrated in an area. However, it can still be possible where their numbers are great but any increase thus secured raises the value and price of the particular commodity and ultimately falls on the consumer. The entrepreneur is only affected in so far as the high price narrows the market. All in all, the impact on him is not as great as on his employees as their numbers will be reduced. The concomitant effect of this increase will be to create an artificial restraint against individuals seeking employment.

On the other hand, if high wages do not cause fewer workers to secure employment in a trade, it may lead to investing more capital in that particular trade. The general effect still falls on the workers because firstly, ".....it throws an additional number of labourers on the general market; .... [secondly] it withdraws from that market a portion of demand ....."<sup>54</sup> This, Mill claimed was a short-term effect of a successful trade union movement in a particular trade after its formation. In the long run, what actually determined the wage rate of the working class was the standard of living. This might change but while it remained the same, wages did not fall below this standard, and did not long remain above it.

If a portion of trade unions (for example, the skilled workers) could succeed in keeping up their wages above the market rate, it would be a matter of satisfaction. Nevertheless, Mill would have preferred to see a general increase affecting both skilled and unskilled workers. In order to achieve this, it was important that both skilled and unskilled workers join forces for a common end. Thus, ".....when the elevation of the character and



condition of the entire body has at last become a thing not beyond the reach of rational effort, it is time that the better paid classes of skilled artisans should seek their own advantage in common with, and not by the exclusion of their fellow-labourers."<sup>55</sup> But if the skilled workers discriminate against unskilled ones, by not allowing the latter to join freely their unions, every success which the former attains, will hinder the emancipation of the latter.

Although combinations to improve wages are seldom effective and when effective have some inhibiting results, yet the freedom to make the attempt at combining should not be denied individuals. Freedom should also be given to workers for taking collective action in the form of strikes. Why is such liberty necessary? Assuming that strike action will fail any time it tries to raise wages above the rate fixed by supply and demand; supply and demand cannot fix the rates either without the participation of the workers. The market rate cannot be fixed by some self-acting instrument, but by giving individuals the freedom to bargain between themselves. This process was what Adam Smith described as the higgling of the market, and is in fact regarded as an important factor in wage negotiations.

Mill saw trade unions as important means by which workers could protect their interest against those of the captains of industry. Hence, he did not hesitate to say "...that associations of labourers, of a nature similar to trade unions, far from being a hindrance to a free market for labour, are the necessary instrumentality of that free market; the indispensable means of enabling the sellers of labour to take due care of their own interests under a system of competition."<sup>56</sup>

Mill exhorted trade union organizations to make their unions voluntary. Besides making them voluntary, "No severity, necessary to the purpose, is too great to be employed against attempts to compel workmen to join a union, or take part in a strike by threats or violence. Mere moral compulsion, by the expression of

opinion, the law ought not to interfere with; it belongs to more enlightened opinion to restrain it, by rectifying the moral sentiments of the people."<sup>57</sup> He deplored the policy of some trade unions which was to demand abrogation of task work, equal wages irrespective of skill, a scale of wages which no individual was allowed to exceed and the abolition of piece work as being mischievous. It was not only mischievous but also involved a denial of individual freedom to the labourer to gain the reward of his labour.

Though Mill to a certain extent was representative of a liberal economic thought, there were some liberals who did not give complete support to trade unionism as he did. Adam Smith did not appear to postulate a definite idea encouraging or discouraging trade union movement. An inference could only be made from his views particularly those relating to labour and wages.

He admitted the existence of combinations both of employers and employees during his time, but observed that the interests of these combinations differed. Those of employees make them "...desire to get as much, [while those of employers] to give as little [wages] as possible."<sup>58</sup> These employers generally tend to resist the demand of their employees. In most cases the latter have recourse to violence and outrage. "The masters upon these occasions ....., never cease to call aloud for the assistance of the civil magistrate, and the rigorous execution of those laws which have been enacted with so much severity against the combination of servants, labourers and journeymen [employees]"<sup>59</sup>.

Though in disputes between employers and employees about wages, the former generally had an advantage, Adam Smith made certain observations as regard the rate of wages. Firstly, he perceived that "...there is however a certain rate below which it seems impossible to reduce, for any considerable time, the ordinary wages even of the lowest species of labour."<sup>60</sup> Secondly, the standard of wages would depend not only on the national wealth but also on the supply and demand for labour. He was convinced that the rate of

wages in the country when he was writing was above the lowest rate. Nevertheless, high wages would be advantageous for society if attained.

Hence he argued that whatever serves to improve the conditions of the mass of people in a society should not be regarded as an inconvenience but as an advantage. In his view, "servants, labourers, and workmen of different kinds, make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as an inconveniency to the whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equity, besides, that they who feed, cloath and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, cloathed and lodged."<sup>61</sup>

The primary aim of 19th century trade unionism was not only to improve their condition of life but also to secure better wages. As far as this objective goes, it could be surmised that Adam Smith would favour the trade union movement (provided that the demand for higher wages was proportionate to the national capital).

On the other hand, there was another aspect of trade unionism in that century which he would have opposed - namely that it obstructed free circulation of labour, impeded free competition among workers, and encouraged segregation in the labour movement. As will be shown later,<sup>62</sup> Nassau Senior opposed trade unionism on this basis. Mill encouraged combination of workers irrespective of skill. Adam Smith saw the ill-effects of medieval regulations on the slowly progressive life of his period and therefore bitterly attacked them. He opposed the statute of apprenticeship not only because it obstructed the free circulation of labour from one trade or employment to another, even in the same place but also ".....[they were] a manifest encroachment upon the just liberty both of the

workman, and of those who might be disposed to employ him. As .....  
[they hinder] the one from working at what he thinks proper, so ...  
[they hinder] the others from employing whom they think proper."<sup>63</sup>

Similarly, he attacked corporations and corporation laws because they encouraged monopolies instead of competition, and the privileges of the former obstructed the free movement of labour from one place to another. He argued that what obstructed the circulation of labour also impeded that of stock. Some 19th century trade union organizations confined their membership to possessors of a certain skill. This was a general phenomenon of the early part of the century and such practice was similar to what the statute fostered. If he would oppose the statute on the above grounds, apparently, he would also reject the segregative attitude of the unions.

Nassau Senior had little liking for trade unionism, in fact he opposed such a movement. His antagonism was based on the effect of its (the trade union's) restrictive policy on mobility and freedom of labour. He asserted that the duty of the state in this connection was to protect the right of the labourer to dispose of his labour as he liked. From the trend of his argument, it can be deduced that this protection is given by limiting trade union activities. His views are quite acceptable because he expressed concern about the suffering imposed on the unskilled workers by the strike actions of the skilled. It is this suffering Mill tried to prevent. Hence his demand that unskilled workers should be allowed to join freely the unions of the skilled.

Sabine argued that "the significant feature of Mill's economics was that he substantially abandoned the conception of natural economic laws and in consequence the dogma of a self-regulating competitive economic system."<sup>64</sup> This view is far from being the case in so far as it relates to Mill. If Mill actually abandoned the conception of natural economic laws, why should he have preferred

leaving workers to settle their wages with their employers in an atmosphere of perfect freedom rather than in one of restraint. Similarly he opposed state regulation of prices of commodities because, like Adam Smith, he was convinced that supply would tend to equate itself to effective demand. It was with matters relating to the poor that his views were contrary to some of his predecessors. On the whole he maintained the traditional concept of economic freedom. His predecessors were ready to welcome state intervention when it was advantageous to the society and Mill in a similar mood, was quite willing to accept state interference provided it was justified by expediency. Cowling, one of Mill's modern critics, added this notion to his credit.

"Laissez-faire [he<sup>\*</sup> affirmed] is the right principle to follow, partly because whatever the government does could almost always be done better by private agency, partly because participation in economic activity was a necessary element in the education of people. For this reason an important economic duty of government is to maintain the operation of the laws, and challenge, of the market economy; land, inheritance and insolvency laws, for example, which hamper free exchange of property should be altered."<sup>65</sup>

Before bringing this chapter to a close, it is desirable to show an important variation observed between the first and third editions of Mill's Principles of Political Economy. The question Mill tried to answer was whether the right to form association should come within the legal bounds of constitutional freedom or not.

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\* He stands for M. Cowling.

He was not very sure about the answer to this question when he wrote the first edition of the Principles of Political Economy; he only made up his mind in the third edition. In the first edition, he averred that "every society which exacts from its members obedience to rules of this description, and endeavours to enforce compliance with them on the part of employers by refusal to work, is a public nuisance. Whether the law would be warranted in making the formation of such associations illegal and punishable depends upon the difficult question of the legitimate bounds of constitutional liberty. What are the proper limits to the right of associations ? To associate for the purpose of violating the law, could not, of course, be tolerated under any government. But among the numerous acts which, although mischievous in themselves, the law ought not to prohibit from being done by individuals, are there not some which are rendered so much more mischievous when people combine to do them, that the legislature ought to prohibit the combination, though not the act itself. When these questions have been philosophically answered, which belongs to a different branch of social philosophy from the present, it may be determined whether the kind of associations here treated can be a proper subject of any other than merely moral repression."<sup>66</sup> In the third edition, these were his views :- "It does not, however, follow as a consequence that the law would be warranted in making the formation of such associations illegal and punishable. Independently of all considerations of constitutional liberty, the best interests of the human race imperatively require that all economical experiments, voluntarily undertaken, should have the fullest license, and that force and fraud should be the only means of attempting to benefit themselves, which are interdicted to the less fortunate classes of the community."<sup>67</sup>

In the former quotation, Mill was not quite sure whether the freedom to associate or combine should come within the

legitimate bounds of constitutional liberty but in the latter, he explicitly stated that all economical experiments like trade associations or combinations voluntarily undertaken for the improvement of mankind should be given the fullest freedom. Such freedom can be limited if the association is not genuine enough.

It can be concluded that the traditional idea of economic freedom which Mill inherited from his predecessors does not imply total absence of regulation. All they strived to establish was a liberal economic society in which control was to be by competition and the market, and not by the state and in which each man, left to his own means, labours effectively for the enrichment of the society. Mill maintained this notion to a certain extent but to a considerable degree refined it - clarified it in the sense that state interference is encouraged provided it is justified by expediency.

CHAPTER 3.

It was pointed out in the first chapter,<sup>1</sup> that the existence of laws, hence the state, was essential for the protection of individuals' liberty. Mill accepted this view but as he saw from the trend of social affairs during the period he was writing, not only the state appeared to be interfering too much but also society. His essay on Liberty was an endeavour to develop a principle which would determine the extent to which both bodies ought to interfere with individuals' freedom.

Mill began the essay by distinguishing between Social and Political freedom. Social liberty specifies "the nature and limits of the power which can be legitimately exercised by society over the individual."<sup>2</sup> On the other hand, constitutional history teaches that there has been not only conflict between "Liberty and Authority" but also antagonism between rulers and their subjects. These conflicts and antagonisms led to the demand that a limit should be put "to the power which the ruler should be suffered to exercise over the community; and this limitation was what they meant by [political] liberty."<sup>3</sup>

Bentham, like James Mill and his utilitarian friends, had looked upon democracy as a certain remedy for all political evils. In their days, a close study of democracy had not been carried out, Plamenatz observed.<sup>4</sup> But when John Stuart Mill wrote his essay on liberty, there were signs that this form of government was not without its evils. Consequently, he undertook to warn people of democracy's attendant danger. This evil, he affirmed, would take the form of tyranny of the majority over the minority, which, if left unchecked, would be more formidable both politically and spiritually than that of rulers. In order to safeguard individuals against this danger, "Protection, . . . . ., against the tyranny of the magistrate is not enough: there needs protection also against the tendency of society to impose by other means than civil



penalties, its own ideas and practices as rulers of conduct on those who dissent from them; to fetter the development, and if possible, prevent the formation, of any individuality not in harmony with its ways, and compels all characters to fashion themselves upon the model of its own."<sup>5</sup>

In fact Mill asserted in his essay on representative government that "...the dangers incident to a representative democracy are of two kinds: danger of a low grade of intelligence in the representative body, and in the popular opinion which controls it, and danger of class legislation on the part of the numerical majority, these being all composed of the same class. [Accordingly, he considered] ....how far it is possible to organise the democracy as, without interfering materially with the characteristic benefits of democratic government, to do away with these two great evils, or at least to abate them, in the utmost degree attainable by human contrivance."<sup>6</sup> The cure for the second evil, which is the topic under discussion, and which every lover of freedom will like to see implemented, is to ensure that minorities should be adequately represented. In his views, nothing but a "false show of democracy" can operate without it.

Another condition necessary for counteracting the impact of the tyranny is that the individual should not be made a mere puppet of social pressure. There should be a "limit to the legitimate interference of collective opinion with individual independence ..... to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism."<sup>7</sup> This is desirable but to determine the limit of social interference with an individual's freedom is admittedly a task.

In order to prevent individuals from destroying one another, and making social life a jungle or a wilderness, Mill, like Hobbes and Locke, admitted that restraints must be put on their actions.<sup>8</sup> The control can be enforced firstly by physical restraint

in the form of law, and then by moral coercion in the form of public opinion, particularly in those spheres of individual's conduct "which are not fit subjects for the operation of the law." How far these methods can protect a person's freedom without any guiding principle is very doubtful. This tendency was exposed by the state of social affairs in the country at that time. For example, as Mill remarked, "in England, from the peculiar circumstances of..... political history, though the yoke of opinion is perhaps heavier, that of law is lighter, than in most other countries of Europe; and there is considerable jealousy of direct interference, by the legislative or the executive power, with private conduct; not so much from any just regard for the independence of the individual, as from the still subsisting habit of looking on the government as representing an opposite interest to the public..... There is, in fact, no recognised principle by which the propriety or impropriety of government interference is customarily tested. People decide according to their personal preferences."<sup>9</sup> As such, it is necessary to assert a principle which will control the dealings of the society with the individual, whether the methods used in enforcing the restraints are by physical or moral force in the forms of law or public opinion respectively.

This principle demands "that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilised community, against his will, is to prevent harm to others."<sup>10</sup> Mill contended, like Hobbes and Locke, that individuals should have their freedom but this state of freedom should not be confused with the state of licence.<sup>11</sup> An individual has the liberty to do what he wants but has no right to injure others, and in order to prevent this action, the state has the right to interfere. This principle leads to two important maxims.<sup>12</sup>

Firstly, "that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself. Advice, instruction, persuasion, and avoidance by other people if thought necessary by them for their own good, are the only measures by which society can justifiably express its dislike or disapprobation of his conduct. Secondly, that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishment, if society is of opinion that the one or the other is requisite for its protection."<sup>13</sup> The former maxim is generally described as self-regarding action and the latter, other-regarding. Their validity has not only been contested by some modern political thinkers but the maxims themselves have also been the subject of various interpretations and misgivings. For example, the classification of human action has been widely criticized on the grounds that it is impossible to sustain. Professor J.C.Rees argued that the views held by Mill's critics were false and that they derived from a failure to observe the form of words which Mill often employed in the text and to take at its full value his firm assertion that actions regarded as self-regarding type could frequently affect, even harmfully, persons other than the agent.<sup>14</sup> These apart, he endeavoured to show that there is an important difference between saying on the one hand, that an action affects another person, and on the other, that it affects his interest.

Professor Rees was convinced that a person might be affected by another's behaviour without his interest being affected. For example, an individual's interest in literature can undergo a radical change without anything like business, professional or ~~property~~ interests being affected to the slightest extent. In elucidating the difference between interests and effects, Rees concluded that interests depended for their existence on social recognition and were closely connected with prevailing standards about the sort of behaviour a man could legitimately expect from

others. On the other hand, an individual could be affected by the action of another person merely because he was very sensitive and had no claim to have others respect; this nature would be recognised as amounting to an interest. So far, it is true that what an individual is, or does, affects other people, but deciding whether interests are affected is another matter, and Rees stressed that a principle which sought to limit social interference to spheres where interests were involved, could not be attacked because it failed to recognise the fact that individuals are inter-related in society.

Rees cited a few examples to show not only that Mill was aware of the difficulty of separating self-regarding from other-regarding actions, but also his attempts to demarcate the area of conduct for which individuals were to be made responsible to society. On the strength of these examples, Rees claimed that it was "interests", rather than "effects", with which Mill was concerned. He further pointed out that to Mill, interest and rights (constituted rights) had a similar connotation. Thus, by linking interests to rights, Mill exposed the distinction between interests and effects. All in all, he maintained that Mill's principle of self-protection was based on a division of conduct into actions which either did or did not affect the interest of other persons - rather than into conduct having or not having effects on others.

R. Wollheim rejected Rees's suggestion on two counts.<sup>15</sup> Firstly, he pointed out that Rees's views made Mill's principle both "particularistic and conservative" in practice. He argued that if the notion of interest were bound up to some degree or other with social recognition, then it implied that the proper sphere of individual liberty would not only vary markedly from one society to another but would also be possessed of considerable stability over time. Secondly, Wollheim affirmed that Mill's principle as interpreted by Rees was neither derivable from nor even consistent with the principle of utility. He was not convinced that Mill would deviate from that principle in which he was brought up,

and to which he had constantly declared his adherence.

According to the notion of interest held by Rees, an action could be prejudicial to a man, yet not affect his interests and would only affect his interest if the way in which it affected him was one socially identified by the society. He then deduced, that an action A committed by X against Y would result in a net decrease in the pleasure pain coefficient in society by not merely causing pain to Y but by causing more pain to Y than pleasure to X, and yet not affect the interest of Y at all. In such a case, Wollheim concluded that the principle of liberty on Rees's interpretation would clearly place the action outside the sphere of the state. But on the other hand, the principle of utility would place it inside.

Wollheim suggested a different interpretation. He affirmed that the actions which Mill wished to exclude from state interference were not "literally self-regarding action" i.e. actions which in no way affected other people, but they were actions which if they affected other people and affected them prejudicially, did so because of certain beliefs which the people held implying that self-regarding actions are actions which affect either only the agent or other people solely in so far as they believe such actions to be wrong.

Wollheim's interpretation of Mill's self and other regarding actions is more cogent than that of Rees. The actions which Mill regarded as self-regarding were those which affected only the agent or other people because they believe such actions to be wrong. A greater support is given to this view when it is considered that Mill himself pointed out in the Principles of Political Economy that it is desirable to carve out a space in human affairs which should be kept sacred from authoritative interference. This latitude he insisted, should include all that part of a person's life which concerns himself and did not affect the interests of others, or affected them only through the moral influence of example. Wollheim

asserted that Rees's interpretation made Mill's principle both "particularistic and conservative" in practice. Rees was wrong because Mill proclaimed in his autobiography that he was a Radical and Democrat.<sup>16</sup> If Mill had styled himself a Radical, it is very doubtful if he could suddenly change his radical views for conservative ones.

Having aired a few interpretations given to Mill's principle of self-protection, it is desirable to proceed with the idea of freedom. Although freedom of action should be the ideal condition in the society, so long as an agent's action does not affect the interests of others, yet there is nothing like abstract right. The amount of freedom the individual enjoys, depends on the utility of his action. Mill was prepared "...to forego any advantage which could be derived to .....[his] argument from the idea of abstract right, as a thing independent of utility..... [He] regard[ed] utility as the ultimate appeal on all ethical questions, but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being. Those interests, [He] contend[ed] authorise the subjection of individual spontaneity to external control, only in respect to those actions of each, which concern the interest of other people."<sup>17</sup>

Plamenatz pointed out one defect which is debatable in this connection about Mill's attitude towards utilitarianism. According to him, Mill did not show any good reason on utilitarian grounds for non-interference which he advocated but proceeded to determine the limits of the interference which he regarded as permissible.<sup>18</sup> This is not a fair and general remark to make about Mill. In most cases, he gave good reasons on utilitarian grounds for non-interference.<sup>19</sup> What Plamenatz should have asked was - Had Mill the idea of individuality in his mind or the doctrine of the greatest happiness? His trend of argument showed that at times he was prepared to suppress the individual for the greatest happiness of the society. For it can be observed that in some cases when individuality comes in conflict with the canon of greatest

happiness, the former gives way.

I will stop a while to examine Mill's attitude towards the concept of liberty and the doctrine of utility or happiness. Recent views tend to argue that Mill's doctrine did not preach liberty but utility as the proper end of all social action. Cowling, for example, in Mill and Liberalism, after carefully analyzing the text, concluded that Mill did indeed make utility rather than liberty the end of all social action. Accordingly, Mill's idea of freedom is not an end in itself, but just instrumental, a means to promoting mental cultivation and an essential condition for attaining the truth. As the topic under discussion only deals with the first part of Cowling's views, I shall confine my discussion to a study of that part.

"The creed which accepts as the foundation of morals, utility or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness pain and the privation of pleasure."<sup>20</sup> This was Mill's definition of the idea of happiness. He did not stop there, but proceeded to qualify this notion.

He asserted that "it is quite compatible with the principle of utility to recognise the fact, that some kinds of pleasure are more desirable and more valuable than others. It would be absurd that while, in estimating all other things, quality is considered as well as quantity, the estimation of pleasures should be supposed to depend on quantity alone."<sup>21</sup> If the idea of happiness should be taken as he pointed out - i.e. - that there are various kinds of pleasure, some quantitatively superior to others, he is guilty of a wide breach in his father's and Bentham's system. Bentham had assumed that pleasure was the same for every individual.

If happiness and hence pleasure should be as Mill maintained, the ultimate end of human action, freedom, ought to be considered as a means of attaining it. Alternatively, liberty may as

well be an end in itself - Mill sometimes seems to imply this. In relation to the notion of freedom, he promulgated a principle which would guide the state in its interference with individual liberty. According to this principle which has already been stated,<sup>22</sup> the only purpose for which the state can justifiably interfere with an individual's freedom is to prevent harm to others. The individual's good, either physical or moral, is not a sufficient warrant. "...[He] regard[ed] utility as the ultimate appeal on all ethical questions; but it must be utility in the largest sense, grounded on the permanent interests of a man as a progressive being. Those interests, ..... [he] contend[ed], authorise the subjection of individual spontaneity to external control, only in respect to those actions of each which concern the interest of other people."<sup>23</sup>

All forms of restraint, Mill affirmed were evil. Probably because they cause pain or because it is always better to leave people to pursue their own ends freely than to control them. But whatever cause makes restraint bad, Mill tended to hold the idea that it was justifiable to restrict individual liberty for the general good of the community. Does it imply, that he was prepared to subject individuality to the concept of general good ? Can it be regarded as a mere confusion on his side ?

For example, a town council wants to build an arts museum in a town, and in order to do so, has to raise the funds by imposing a tax on the people living in the town. Admittedly, admiring the beauty of arts creates pleasure, and as such is a good in itself. On the grounds of utility, building an arts museum is justifiable because it adds to the pleasure of the community. On the other hand, taxing the people for that purpose causes pain as it restricts their freedom of spending. Some people will prefer to spend their money on pints of beer, or backing horses or on any interest other than paying towards the building of an arts museum. The point one has to determine is whether the quantity of pleasure the people gain by watching the beauty of arts is greater than the pain they suffer by having their spending power restricted, or greater than the pleasure horse racing or beer drinking or pursuing



any other interest may yield them. This will be rather difficult to say as it will depend on the subjective judgement of the individual. If it is accepted that it is always better to leave people to pursue their interests rather than to control them, one will surmise that people may prefer to spend their money freely the way they like rather than being controlled. Accordingly, if the quantity only of pleasure an individual can obtain by freely spending his money on two alternatives, namely, beer drinking and a municipal art gallery is considered, restricting individual liberty of spending for the purpose of building an art's gallery, which the town council feels will add to the general good of the town, may give way to the idea of freedom.

Again if quality of pleasure is taken into consideration, the argument will tend towards supporting to an extent the town council in building the art-gallery. Mill affirmed that in examining differences of quality in pleasures, or what makes one pleasure more valuable than another, two things count - firstly, the pleasure derived from one object being greater than another and secondly, preference derivable from the knowledge of the two pleasures.<sup>24</sup> Under a system of paternalism, the state or in this case the town council will be justified in building an art-gallery because the council feels that the people will derive a greater amount of pleasure from it than beer drinking. On the other hand, if people ought to be free to pursue their interests in their own way, and the people concerned are capable of knowing their interest, the council's action is questionable. Secondly, Mill had stressed the importance of education as a way of improving mankind. Though the majority of people will prefer beer drinking, he would justify the town council building an art-gallery because it would be more preferable as a means of employing "the higher faculties" of the people. In his views, "...it is an unquestionable fact that those who are equally acquainted with, and equally capable of appreciating and enjoying, both, [pleasures derivable from art-gallery and beer drinking] do give a most marked preference to the manner of existence

which employs their higher faculties."<sup>25</sup>

How are the people who have the knowledge of the pleasures to be chosen ? - In other words, who are competent to judge the quality of two pleasures ? \* Mill had this answer to offer - "On a question which is the best worth having of two pleasures, or which of two modes of existence is the most grateful to the feelings, apart from its moral attributes and from its consequences, ..... the judgement of those who are qualified by knowledge of both, ..... must be admitted as final."<sup>26</sup> It is clear that in a town where a majority of the people will protest against being taxed by a town council in order to build an art-gallery, which will imply a reduction on their spending on beer, one will not hesitate to conclude that those people are not art-lovers. Accordingly, knowledge of two pleasures derivable from beer-drinking and art will be confined to the former. This disqualifies them as competent judges and gives a greater support for the councils action;

Concluding, it can be stated that in the illustration just given, two ends can be reached. On the grounds of quantity of pleasure only, the town council will be acting unjustly in restricting the freedom of the people to spend their money on what interests them. On the other hand, if the quality and quantity of pleasure are considered, the town council's action is justified.

Mill regarded trade as a social act. His reasons were - "whoever undertook .... to sell any description of goods to the public, does what affects the interest of other persons, and of society in general, and thus his conduct in principle comes within the jurisdiction of society ....."<sup>27</sup> Although he held this view, he opposed restriction imposed on trade particularly when such a restraint made it impossible or difficult to obtain a particular commodity. His objections were solely based on the restriction of the liberty of the buyer. With the sale of poisons,<sup>28</sup> for example,

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\* This section of the argument is based on the assumption that the town council is composed of beer and art lovers.

Mill advocated the state using precautionary measures to ensure proper use of them rather than imposing restriction on their sale. Was Mill considering this matter on the principles of liberty or utility? It could be said that he tried to preserve individual liberty on the grounds of utility. Admittedly poisonous drugs are dangerous to mankind, and their improper use causes death or pain. If the sale of drugs is considered solely on utilitarian grounds, Mill might have supported complete restriction because they could cause harm if improperly used. But as drugs were more widely used for good purposes than bad,<sup>29</sup> he was ready to preserve the buyer's freedom. Hence he would prefer the state using precautionary measures instead of imposing complete ban.

At times Mill regarded liberty as an end in itself. Take for example, the case of slavery, he opposed it because it infringed the principle of individual liberty. "...an engagement by which a person should sell himself or allow himself to be sold, as a slave, would be null and void; neither enforced by law nor by opinion. The ground for thus limiting his power of voluntary disposing of his own lot in life, is apparent, and is very clearly seen in this extreme case. The reason for not interfering, unless for the sake of others, with a person's voluntary acts, is consideration for his liberty. His voluntary choice is evidence that what he so chooses is desirable, or at least endurable, to him, and his good is on the whole best provided for by allowing him to take his own means of pursuing it. But by selling himself for a slave, he abdicates his liberty; he foregoes any future use of it beyond that single act. He therefore defeats, in his own case, the very purpose which is the justification of allowing him to dispose of himself. He is no longer free; ..... The principle of freedom cannot require that he should be free not to be free."<sup>30</sup>

From the preceding examples, it could be said that Mill at times considered utility as an end, and supported restricting individual freedom for the general good. At other times, he regarded liberty as an end in itself.

Again, if one considered Professor Rees's<sup>31</sup> reminder that ".....Mill specifically affirm[ed] that his argument for liberty is not to be regarded as an appeal to abstract right but derived from [utility in the largest sense grounded in the permanent interests of a man as progressive being]"<sup>32</sup>, it would appear as if Mill did not regard freedom as a means and utility as an end and vice versa, but was only referring to utility as a justification for being free, just as Herbert Spencer would refer to natural scientific laws (particularly biological laws) or divine laws as important justifications for allowing a person his freedom, or Locke would demand liberty for an individual as a natural right. Having examined Mill's stand, I will try to consider what the principle of social interference allows.

Mill postulated an exception to his principle of social interference with people's freedom. As individuals are always competing with one another for the limited supply of the necessities of life, possibility of causing harm is inevitable. Consequently, "....., it must by no means be supposed, because damage or probability of damage, to the interests of others, can alone justify the interference of society, that therefore it always does justify such interference. In many cases, an individual in pursuing a legitimate object, necessarily and therefore legitimately causes pain or loss to others, or intercepts a good which they had a reasonable hope of obtaining. Such oppositions of interest between individuals often arise from bad social institutions, but are unavoidable while those institutions last; and some would be unavoidable under any institution."<sup>33</sup>

The demand he is making here is for society or the state to use its discretion in deciding cases on their merits even when pain has been caused, before limiting a person's freedom of action. The advantages and disadvantages of social interference should be weighed on each occasion before any collective interference. "...the question whether the general welfare will or will not be promoted by interfering with it, becomes open to discussion."<sup>34</sup>

The illustration which he used to explain his views was the unsuccessful candidate in a competitive examination. Others gained at the unsuccessful candidate's expense, but there was nothing the state could do as the examination was competitive. A recent example related to the same topic is the publicity given to the correlation which has been discovered between cigarette smoking and lung cancer. Before any authority will decide whether to limit the individual's freedom of smoking or not, it will be advisable to consider not only the effect of any restraint on the individual smoker but also the economic impact on tobacco firms.

What should then be "the appropriate region of human liberty" ? It comprises firstly of, "the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, ..... Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived."<sup>35</sup> In whatever society these forms of liberty do not exist, irrespective of the type of government, can not be considered as being free. In short, what is recognizable as individual liberty is the granting of freedom to an individual to pursue his own interest in his own way, so long as his action does not prevent others from gaining similar freedom.<sup>36</sup>

"Human nature is not a machine, to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according

to the tendency of the inward forces which make it a living thing."<sup>37</sup> Hence, custom and tradition, should give way to freedom. Liberty enables people to attain such growth and development. This was a notion shared also by most members of natural law school of thought. Spencer held the same view and in fact attributed all evils existing in the society to the ignorance of legislators who misconceived society as a manufacture instead of a growth.<sup>38</sup> Custom and tradition are inhibitory and consequently less desirable because they leave less room for development. Under such a condition, people do not have enough space to develop themselves or act on their own. They do things because others do them. Such ape-like imitation does not add to progress.

Though freedom is desirable, "as much compression as is necessary to prevent the stronger specimens of human nature from encroaching on the rights of others cannot be dispensed with; but for this there is ample compensation even in the point of view of human development."<sup>39</sup> The compensation takes the form of making individuals altruistic, and is expressed in the following quotation. "The means which the individual loses by being prevented from gratifying his inclinations to the injury of others, are chiefly obtained at the expense of the development of other people. And even to himself there is a full equivalent in the better development of the social part of his nature, rendered possible by the restraint put upon the selfish part. To be held to rigid rules of justice for the sake of others, develops the feelings and capacities which have the good of others for their object."<sup>40</sup>

Individuals have different tastes and require different modes of life for their welfare. What an individual requires for a living, or what he likes, will not in all cases suit another individual. Some people can survive in slums while others cannot. As such, it will be wrong to subject them to the same taste and mode of life. Accordingly, diversity is considered as a pre-requisite for the attainment of happiness and for the growth of their "mental, moral and aesthetic stature of which their nature is capable."<sup>41</sup>

Bosanquet affirmed that "...what we have to observe is merely that the demarcation between individuality and society, contrived in defence of the former, has pretty nearly annihilated it."<sup>42</sup> This implies that Mill did not leave any space for the development of individuality in his attempt to draw limits to spheres of free action of the state and the individual. Plamenatz on the other hand, opposed this view. In his words - "As for the criticism that Mill's criterion leaves no liberty to the individual, it is not well founded; for though any kind of action may sometimes injure other people nearly as much as or more than it injures the agent, it does not follow that the actions which injure them not at all, or so little as not to be worth regarding, are few."<sup>43</sup>

Plamenatz's views are more relevant than the former. Mill had asserted that "the most remarkable of those consequences of advancing civilization, which the state of the world is now forcing upon the attention of thinking minds, is this: that power passes more and more from individuals, and small knots of individuals, to masses: that the importance of the masses becomes constantly greater, that of individuals less."<sup>44</sup> He had also expressed his fear of the tyranny of the masses over the few. If he had been moved by these factors to save the individual from being overcome by the mass, whatever or however large the sphere of free action he allotted to the society, he would still reserve some for the individual. It is really a difficult task to draw a straight and fixed line of demarcation in matters relating to human behaviour whether an individual or a group of individuals are involved. So, in essence, just as Mill had done, the line of demarcation should be wavy.

As I pointed out above, freedom of expression was regarded as one of the rights which society should guarantee to the individual.<sup>45</sup> "...the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as

well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging error for truth. If wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error."<sup>46</sup>

Having asserted the evil of denying individuals the freedom to express their opinion, Mill went on to consider two important hypotheses which he deduced from the truthfulness or falsity of an opinion. Firstly, he considered a situation in which an authority tries to silence an opinion which is accepted to be true. To deny individuals the opportunity of discussing such an opinion is "an assumption of infallibility." History of opinion shows that opinion changes with years. An opinion held in one period to be correct can in the future be proved false. By open discussion of opinions which can either be true or false, individuals can adjust their views about a subject to the changing pattern of life. As individuals' actions and opinions are inter-related (that is, one generates the other), it is wise to have their views debated before acting on them. "Complete liberty of contradicting and disproving our opinion is the very condition which justifies us in assuming its truth for purposes of action, and on no other terms can a being with human faculties have any rational assurance of being right."<sup>47</sup>

Secondly, Mill considered a situation where the opinion silenced was wrong but could contain a portion of truth. By discussing the opinion freely, the remainder of the truth can be discovered. If people are to hold an opinion, it will be wise that such an opinion should be fully discussed and learnt by them. This learning justifies them in their challenge of any critic. But, at times, difference of opinion can arise about a subject. In such a case, it is essential that the truth be developed between the two shades of opinion. For example, a school of thought insists that the economy of a country grows faster if it is immune from state interference, while another school maintains that the economy shows



better improvements when controlled by the state than when left free. They should be given freedom to air their views because "..... the truth depends on a balance to be struck between two sets of confronting reasons."<sup>48</sup>

So far, it could be asserted that Mill gave a greater sphere of freedom to individual opinion than action. Could his endorsement for this greater freedom be attributed, as Plamenatz affirmed, to the fact that it is easier to control actions than opinions, and also that it is easier to show that they have pernicious consequences ? If this view were accepted, would it mean that Mill slighted the idea that most people's actions spring from their opinions ? If actions and opinions were inter-related, why should an attempt be made to draw a limit to the fields of actions of individuals and societies without doing the same with opinions ? It is desirable at this point to argue that both have pernicious effects and that if individuality should have its proper sphere of free action, this space should be carved out not only in matters affecting actions but also those related to opinions.

In order to discover the truth, Mill maintained that we must have the freedom to express and discuss opinions. As Cowling remarked, "Mill was addicted to the rhetoric of Freedom as much as to the rhetoric of Truth:....."<sup>49</sup> Allowing this view to hold, did it imply that Mill would grant absolute freedom to a person in as much as the person's opinion was used to discover the truth ? Supposing that this search involved action, would he limit the person's freedom ?

Completely free an individual should be in expressing his opinions, but should there not be a limit as to the manner in which they are expressed ? "Much might be said on the impossibility of fixing where these supposed bounds are to be placed," but if offence should be the criterion for imposing the limit, "experience testifies that this offence is given whenever the attack is telling and powerful....."<sup>50</sup> In other words, offence can not form a good criterion because the manner in which an individual expresses an

opinion, even though it be a true one, can never fail to offend others, particularly when the individual holds a contrasting opinion to others.

Mill admitted that actions should not be as free as opinion. But, the freedom to express and discuss opinion should be limited if it would lead to a positive instigation to some mischievous act.<sup>51</sup> For example, an opinion that coloured immigrants were not welcome in Birmingham should be "unmolested" when expressed in the press, but would incur limitation, and where necessary punishment, when declared to an excited anti-coloured mob assembled in districts where these immigrants lived. On this basis, he established one condition for limiting the liberty to discuss and express opinion - namely, "Acts, of whatever kind, which, without justifiable cause, do harm to others, may be, and in the more important cases absolutely require to be, controlled by the unfavourable sentiments, and, when needful, by the active interference of mankind. The liberty of the individual must be thus far limited; he must not make himself a nuisance to other people."<sup>52</sup>

He did not believe that society was founded on contract but maintained that as far as social obligation was concerned the fact that an individual lived in a society rendered it necessary that he should be bound by some rules of conduct towards the rest. "This conduct consists, first, in not injuring the interests of one another; or rather certain interests, which, either by express legal provision or by tacit understanding, ought to be considered as rights; and secondly, in each person's bearing his share .... of the labours and sacrifices incurred for defending the society or its members from injury and molestation. These conditions society is justified in enforcing, at all costs to those who endeavour to withhold fulfilment."<sup>53</sup> Where his conduct fell short, the society (the public) had the right to punish him by opinion and by law.

Good neighbourliness was an ideal relationship which Mill argued should exist in the society. Individuals have the duty to assist each other "to distinguish the better from the worse, and.....

to choose the former and avoid the latter. They should be for ever stimulating each other to increased exercise of their higher faculties, and increased direction of their feelings and aims towards wise instead of foolish elevating instead of degrading, objects and contemplations."<sup>54</sup> But in a case where an individual is ill-behaved and refuses to avail himself of the assistance or advice given by a friend to improve his behaviour, it will be wrong to increase his suffering in the way of oppression.

The course of treatment, the individual can be subjected to is, firstly that society has the freedom to avoid, though not overtly, the company of the ill-behaved individual, but not to oppress his individuality. Secondly, society has the freedom to warn the individual's associates if it feels that his behaviour is dangerous. Thirdly, if the individual is seeking employment, employers will have the right to give preference to other applications because of his behaviour. This course of treatment, will make the individual suffer at the hands of the society for faults resulting from his self-regarding actions. "That the inconveniences which are strictly inseparable from the unfavourable judgement of others, are the only ones to which a person should ever be subjected for that portion of his conduct and character which concerns his own good, but which does not affect the interest of others in their relations with him."<sup>55</sup>

As an individual is a social being, the harm which the individual does to himself will seriously affect his relations and in a less degree society at large. When by conduct of this nature, the individual neglects his responsibility to other individuals, his action is no longer regarded as self-regarding but is subject to "moral disapprobation." For example, a married man who due to extravagance or vice, becomes unable to fulfil his obligation to his family can be subjected to reprobation and if possible punishment for committing a breach of duty to his family. Similarly, no individual could be punished for being drunk, but a bus conductor or driver should be punished for being drunk on duty. In short,

"whenever....., there is a definite damage, or a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law."<sup>56</sup>

There are cases of personal conduct which ought to be punished but which the principle of liberty precludes the society from punishing or preventing because they are self-regarding. If an individual has the freedom to perform those acts, have not other individuals the freedom to advise or to instigate him to do so? "To give advice or offer inducements to anyone is a social act, and may, therefore, like actions in general which affect others, be supposed amenable to social control."<sup>57</sup> On second thoughts, Mill affirmed that the question under discussion though related to liberty was not strictly within the bounds of the doctrine of individual liberty. Nevertheless, the same principle governing individual liberty affected it. As such, if people ought to be free to act as they like in things which concern them, they must be free to seek advice or consult anybody.

But, "the question is doubtful only when the instigator derives a personal benefit from his advice; when he makes it his occupation, for subsistence or pecuniary gain, to promote what society and the state consider to be an evil. Then, indeed, a new element of complication is introduced; namely, the existence of classes of persons with an interest opposed to what is considered as the public weal, and whose mode of living is grounded on the counteraction of it."<sup>58</sup> Gambling for example should be tolerated but should book-makers be allowed to run betting shops.

Mill admitted that it was a border line case between two principles and accordingly argued both for and against granting this freedom to a book-maker. The fact that a book-maker follows an occupation is not a good enough reason to incriminate him when considered on grounds of toleration. Accordingly, "...the act [gambling] should either be consistently permitted or consistently

prohibited; ....if the principles ....[which] have [been stated].... are true, society has no business, as society to decide anything to be wrong which concerns only the individual; that it cannot go beyond dissuasion, and that one person should be as free to persuade as another to dissuade."<sup>59</sup> Consequently, if gambling is allowed, book-makers have equally the right to keep betting shops.

On the other hand, although the state or public has no right to decide what self-regarding action is good or bad, yet it is justified in assuming that an action is bad. The validity of such an assumption can be challenged if the person concerned thinks that he is being victimized. On these grounds, the state will be acting correctly if it limits the freedom of a book-maker who is not honest to the public - a book-maker whose aim is to cheat the public for his own particular end. For example, a book-maker who is unable to pay a winning client or indulges in altering winning bets or in accepting bets from people whom the society do not accept as individuals fit to manager their own affairs, ought not to be allowed to practice his occupation. Concluding, Mill stressed that what the state should do in self-regarding actions of this nature was to ensure a situation in which people "...shall make their election, either wisely or foolishly, on their own prompting, as free as possible from the arts of persons who stimulate their inclinations for interested purposes of their own."<sup>60</sup>

Trade is a type of social act worth considering.<sup>61</sup>  
"Whoever undertakes to sell any description of goods to the public, does what affects the interest of other persons, and of society in general; and thus his conduct, in principle, comes within the jurisdiction of society."<sup>61</sup> Accordingly, under the regime of protectionism, various states were very much influenced by this view that it was conceived as their duty to regulate prices and production. Restrictions whether on trade or on production are similar to other restraints, "and all restraints, qua restraint, is an evil: but the restraint in question affects only that part of conduct which society

is competent to restrain, and are wrong solely because they do not really produce the results which it is desired to produce by them."<sup>62</sup> For example, it will be wrong to impose a ban on the sale of foreign whisky if individuals can obtain some by illicit means. It is equally wrong to impose a ban which will limit the freedom of buyers to buy whisky from any market while home producers are given perfect freedom of production. Such a ban will not only create artificial monopoly for producers but will also prevent buyers from buying whisky from the cheapest market. A ban, when properly imposed, should affect both buyers and sellers.

But when protectionism was replaced by the regime of free trade, it was realised that both the good quality and cheapness of commodities were secured by granting equal freedom to buyers and sellers. This leads to one of Mill's most valuable contributions to the concept of liberty, namely, the successful divorce of the notion of economic freedom from that of political freedom. This divorce was announced when he stressed that the "doctrine of Free Trade; ...rests on grounds different\* from, though equally solid with, the principle of individual liberty asserted in the Essay."<sup>63</sup>

"As the principle of individual liberty is not involved in the doctrine of Free Trade, so neither is it in most of the question which arise respecting the limits of that doctrine: as for example, what amount of public control is admissible for the prevention of freedom by adulteration; how far sanitary precautions, or arrangements to protect work people employed in dangerous occupations, should be enforced on employers. Such questions involve considerations of liberty, only in so far as leaving people to themselves is always better, caeteris paribus, than controlling them: but that they may be legitimately controlled for these ends is in principle undeniable."<sup>64</sup> On the other hand, the principle of liberty was involved in some cases, for example, the restriction of the sale of poisons, where state interference was aimed at making a particular commodity difficult or impossible to obtain. Such interference was objectionable

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\* My own underlining.

because it limited the freedom of the buyer.

The sale of poisons<sup>65</sup> raises the question - How far can the state limit the individual's freedom of action for the object of preventing crime or accident ? Admittedly, the state has the right to prevent a crime being committed, and in a case where it has been committed, it is the duty of the state to detect and punish it. Accordingly, if poisons are bought or used solely for committing crimes, the state has the right to prohibit their production and sale. But, poisons are not only used for bad purposes but for useful ones as well. Can individuals then, be given the freedom to use poisons for good purposes without subjecting that liberty to abuse ? It is difficult to use this freedom for good purposes only. ".....restrictions cannot be imposed in the one case without operating in the other."<sup>66</sup>

The state can not rightly limit individual freedom with the sole object of preventing crime or accident. The individual can "only be warned\* of the danger; not forcibly\* prevented from exposing himself to it."<sup>67</sup> How can this warning be given, without individual freedom being violated ? Such warning, can take the form of labelling all bottles containing poison with words which show that they are dangerous. It will be difficult to obtain poison even for a legitimate purpose, if the sale is limited to those who can obtain a written authority from a medical practitioner. The next method is Bentham's "preappointed evidence". It involves keeping a register for buyers. Every person who sells poisons keeps a register in which a buyer signs anytime he purchases any poison. This makes it easier to trace any ill use which may take place.

The principle of liberty allows drunkenness so long as the agent does not, under the influence of alcohol, harm others. But, such a conduct does not generally promote the best interest of the agent. Should the state then, while it permits drunkenness,

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\* My own underlining.

nevertheless, limit individual freedom indirectly in that sphere of action by making alcohol more costly, or by limiting the number of "public houses" in order to make it more difficult to get ?

Every increase in the price of beer implies a decrease in individual freedom of not only those who cannot afford to buy a pint of beer due to the increase but also those who will have to spend more in order to buy one. Individuals should be free to choose their pleasures and to spend their income the way that suits them best "after satisfying their legal and moral obligations."<sup>68</sup> On the other hand, ".....taxation for fiscal purposes is absolutely inevitable; that in most countries it is necessary that a considerable part of that taxation should be indirect...."<sup>68</sup> Consequently, the state imposing tax on alcohol is desirable though it implies a reduction in the degree of individual freedom.

"Public houses" should be under the control of the police because offences against society often originate there. The state should therefore confine the sale of alcohol to people of respectable character rather than limit the number of public houses for the sole purpose of making alcohol more difficult to get. "The limitation in number,.....of beer and spirit houses, for the express purpose of rendering them more difficult of access, and diminishing the occasions of temptation, not only exposes all to an inconvenience because there are some by whom the facility would be abused, but is suited only to a taste of society in which the labouring classes are avowedly treated as children or savages, and placed under an education of restraint, to fit them for future admission to the privileges of freedom."<sup>69</sup>

Should the freedom of public officials while acting in their official capacities be limited ? The principle of liberty demands that an individual should be free to pursue his own interests the way which suits him best. In his own concerns but acting for others, he is denied this freedom. Consequently, the state has the right to control over the individual's exercise of any power which it allows him to possess over others.



This view leads to another important issue - state interference with domestic responsibility of the family. "One would almost think that a man's children were supposed to be literally, and not metaphorically, a part of himself, so jealous is opinion of the smallest interference of law with his absolute and exclusive control over them; more jealous than of almost any interference with his own freedom of action: so much less do the generality of mankind value liberty than power."<sup>70</sup> If these are the general reactions of mankind to state interference with domestic responsibility of the individual, with what justification does the state demand that every child in a family should be educated up to a certain standard ?

Admittedly, it is the duty of a father to provide education for his child. But in most cases, fathers neglect this duty and no one ever bothers to compel them to perform it. To bring a child into the world and fail to provide him "with instruction and training for its mind, is a moral crime both against the unfortunate offspring and against society."<sup>71</sup> On the other hand, education is one of those actions which are classified under other-regarding actions and accordingly comes under the jurisdiction of the state. As such, it becomes incumbent on the state to see the duty performed "at the charge, as far as possible, of the parent."<sup>72</sup>

Though the state is justified in enforcing education, it has no right to direct it.<sup>73</sup> Enforcement and direction of education are two different things. When the state undertakes the direction of education, it involves encroaching on the freedom of individuals to act on their own opinions. Individuality of character and diversity in opinions and modes of conduct are lost due to lack of diversity in education. Individuals' characters are moulded to suit the interest of those in power. These apart, freedom should be given to private agencies who wish to build their own educational institutions, particularly in those modern countries where there are qualified and educated people.

As it is a crime to bring a child into the world without adequate means for its welfare, is the state justified in preventing improvident marriages ? Laws passed to prevent such marriages are justified not from the principle of liberty but from their tendency to stop harmful acts. "The laws which, in many countries on the continent, forbid marriages unless the parties can show that they have the means of supporting a family, do not exceed the legitimate powers of the state; and whether such laws be expedient or not .... they are not objectionable as violations of liberty. Such laws are interferences of the state to prohibit a mischievous act - an act injurious to others, which ought to be a subject of reprobation, and social stigma, even when it is not deemed expedient to superadd legal punishment."<sup>74\*</sup> Having thus surveyed Mill's views about individual liberty and their applications, I shall now examine why he advocated it.

Firstly, no one is so competent to conduct a business, or to decide how a business should be conducted as an individual who is interested in it. As such, individuals should be given the freedom to pursue their own interests in the way they like best. Secondly, giving individuals the freedom to cater for their interests serves as a means of educating them. "...though individuals may not do the particular thing so well, on the average, as the officers of government, it is nevertheless desirable that it should be done by them, rather than by the government, as a means of their own mental education - a mode of strengthening their active faculties, exercising their judgement and giving them a familiar knowledge of the subjects with which they are thus left to deal."<sup>75</sup> Thirdly, every increase in the function of the government implies an addition not only to its powers but also to its influence.<sup>76</sup>

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\* In this connection, Mill followed Malthus in thinking that over-population must be checked by preventing imprudent marriages. State interference is legitimate and does not imply invasion of individuals' liberty.

All in all, it can be concluded that Mill feared the evils of democracy and civilization and loved individuality not only because it would break up the existing rigidities in the society but also induce diversity. Consequently, he pressed for freedom in order to enable individuals to attain this end, and also contribute to the greatest happiness of the greatest number.

CHAPTER 4

Herbert Spencer sprang from a family who was "essentially dissenting" and as such opposed to authority. This trait and the Nonconformist training of his youth left an abiding mark in his writings. The Nonconformists he described as, ".....a political body, who profess to act upon principle and not upon expediency, and who avow their intention to follow up sound doctrine whether it may lead to odium or popularity..."<sup>1</sup> At the age of twenty-two, he contributed a series of letters expressing his political views about "The Proper Sphere of Government" to a Nonconformist newspaper. These views later formed the main discourse in the Social Statics. In fact, he admitted that without these contributions and their publication in the Nonconformist newspaper, Social Statics would not even have been thought of.

Social Statics was an attack not only on the doctrine of utility and the expediency - philosophers (to employ Spencer's term for the Utilitarians) but also on their views about government. For Spencer, the state was not a necessary institution in the society. Its existence was only accidental and temporary. Besides civil laws there were natural laws (moral and biological laws) to govern the society. The state and its laws were not the only means of harmonizing peoples' interests because by means of Sympathy, people would respect the rights of others, or, rather tended to be altruistic. He was not very much impressed by the utilitarian justification for state interference. Consequently, he condemned it and tried to develop his own principle which on one hand would determine the degree to which the state ought to interfere and on the other, justified the idea of freedom. While doing this, he frequently referred to evolutionary processes and the law of adaptation. Having developed the principle, he endeavoured to establish certain individual rights; and urged that the form of government which was consistent with this principle was the only acceptable one.

The Expediency - philosophers (to use Spencer's term for the Utilitarians) propagated the idea that the end and justification to social action was to attain the greatest happiness of the greatest number. Spencer accepted the view that happiness ought to be the ultimate end but disagreed with the utilitarians as regards the means of reaching this end - hence his attack.

This was how he started his onslaught on the theory of utility: He pointed out that for a rule, a principle, or an axiom to serve a satisfactory purpose, it must have a definite meaning. In order to be universally accepted, its meaning must be of universal application. These features the doctrine of utility lacked. When the utilitarians accepted the principle of the greatest happiness of the greatest number, as the canon of social morality, Spencer argued that they did not realize that as human beings differ, so do they vary in their definition of the greatest happiness. In other words, what forms the source of happiness for an individual does not in all cases provide happiness for another. For example, "to the wandering gipsy a home is tiresome; whilst a Swiss is miserable without one."<sup>2</sup> Put in other words, a home is a source of happiness to a Swiss but to a wandering gipsy it is not.

Happiness according to Spencer consists in a gratified state of all faculties. In order to satisfy a faculty, it must be freely exercised, and the exercise must be proportionate to the power of the faculty. If it were done in excess, weariness would be caused and if it were insufficiently done, discontent would arise. The degree of greatest happiness one derived depended on the extent to which one could freely exercise these faculties. No two individuals have a similar combination of elements. Their desires differ and hence their methods of satisfying them. The condition necessary for one to secure his happiness cannot in all cases be suitable for another. Consequently, the principle of utility must vary according to the disposition and character of people. It is difficult to determine the degree to which a faculty can be

exercised to produce an expected happiness. When the content of happiness is examined, it is not the same for two people.

As "...an agreement,.....to the meaning of 'greatest happiness' [is] theoretically impossible, .....[and] it is also manifest, that men are at issue upon all topics, which for their determination require defined notions of it. So that in directing us to this 'greatest happiness to the greatest number,' as the object towards which we should steer, our pilot 'keeps the word of promise to our ear and breaks it to our hope'."<sup>3</sup>

Even if the principle of utility has a definite meaning there still remains the question - How can the greatest happiness be achieved ? Spencer pointed out, that as experience daily proved, just as the end to be attained was uncertain, so also was the right means of reaching it, even if, when the end was supposed known. In people's attempts to attain the components of the "grand total"<sup>4</sup> - the greatest happiness, they had hardly been successful, their most promising measures generally turned out as failures. For example, legislative measures taken to check improvident marriages in Bavaria did not yield the expected result, Instead, illegitimate births increased. "When it was enacted in Bavaria that no marriage should be allowed between parties without capital, (unless certain authorities could see a reasonable prospect of the parties being able to provide for their children), it was doubtless intended to advance the public weal by checking improvident unions, and redundant population; a purpose most politicians will consider praiseworthy, and a provision which many will think well adapted to secure it. Nevertheless, this apparently sagacious measure has by no means answered its end, the fact being that in Munich, the capital of the kingdom, half the births are illegitimate ! "<sup>5</sup> \*

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\* Spencer, quite unlike Mill did not accept Malthusian view that over-population could be checked by the state. It is a show of his idea that social evils could not be controlled by artificial means. Hence state interference in affairs of this nature is not justified.

Another feature of expediency - philosophy which Spencer disagreed with was that it implied the continual existence of government. He held that government was a temporary institution in society. "The institution marks a certain stage of civilization - is natural to a particular phase of human development. It is not essential but incidental."<sup>6</sup> He went on to support this view with his own particular conception of liberty which he identified with less government.<sup>7</sup> It can be deduced from his argument that he thought the progress of society from a traditional form to a modern type satisfied his idea of freedom.<sup>8</sup> Probably, he must have been led to this conclusion by his observation of the trend of social and political affairs during his time when parapolitical systems were growing in number and their functions increasing as well. This, he might have felt would result in less government functions.

Spencer proceeded with his attempt to explain why the utilitarians emphasized the necessity of government. Firstly, they held that happiness as an end in itself should be the main justification of all state action.<sup>9</sup> If "expediency" implied the benefit of the masses and not of the individual, it presupposed someone to judge what would be most conducive to that benefit. The need for this judge becomes clearer when it is considered that the views people hold about any legislative measure or its utility are so various. Secondly, if every person should, independent of a state power, seek his own conception of the greatest happiness of the greatest number, society will lapse into chaos. "Clearly, therefore a morality established upon a maxim of which the practical interpretation is questionable, involves the existence of some authority whose decision respecting it shall be final - that is legislature. And without that authority, such a morality must ever remain inoperative."<sup>10</sup>

Nevertheless, the theory of utility was designed by its founder as a code of correct rules for the control of human beings - applicable, for their guidance to perfection. But government, Spencer

argued, originated from the imperfection of mankind. As mankind was imperfect, it followed that an institution derived from it was imperfect. Not only the government but also the notion of utilitarianism is imperfect. Having argued that the state was temporary and imperfect in society, he proceeded to postulate that without civil laws, there were other forms of laws to govern men.

Before going on to discuss this aspect, it is desirable to remark that the trend of events during Spencer's lifetime contradicted his views about the temporary nature of government. Almost every day the power of government tended to intrude upon into individuals sphere of action. For example, in industry, the state had started to regulate hours of labour; individuals were denied, to some extent, the freedom to combine. In educational matters, there was a constant demand for a state aid system for primary education. The state had undertaken to control public health matters. The legislature were passing laws for the care of the poor. With this tidal move towards collectivism, it is difficult to accept the idea that the state was designed to be short-lived, as Spencer made out.

There are some inherent properties in a person which make him behave in one way or the other. Similarly, the characteristics the individual exhibit in the way of social union are natural. Without this inherent property in him to rule and to be ruled, government will be impossible. Most complex socio-political institutions in society are made possible through the aid of this pre-existing endowment. A person behaves in one way or another, not because he is compelled to do so by an external authority but because he is moved by an internal force. These general features of mankind suggest according to Spencer that the moral law of society like other laws of society, originates from some attribute of a human being. It is also a reminder that society cannot be understood, and studied on one hand, and on the other establish laws governing society without understanding and studying the individual.



"Had we no other inducement to eat than that arising from the prospect of certain advantages to be thereby obtained, it is scarcely probable that our bodies would be so well cared for as now. One can quite imagine, that were we deprived of that punctual monitor - appetite, and left to the guidance of some reasoned code of rules, such rules, were they never so philosophical, and the benefits of obeying them never so obvious, would form but a very inefficient substitute."<sup>11</sup> He went on to argue that just as people have the desire to do certain actions (for example, to eat, to sleep) there is also "...a like instrumentality employed in impelling us [people] to that line of conduct in the due observance of which consists what we call morality."<sup>12</sup> This "like instrumentality" or (inherent property in people) will form an efficient substitute for civil laws in guiding the individual to the line of proper conduct. Morality being a feature of mankind, should not be imposed as the expediency philosophers advocated. As this moral law exists independent of the state, it is undesirable that individuals freedom should be limited artificially. Green held a similar view.<sup>13</sup> He maintained that morality had its origin in reason, i.e. in the idea of a possible self-perfection to be attained by the moral agent. As such, the state could not possibly enforce it, though, it could urge external actions (obligations). This was his main reason for opposing paternal government.

State interference is further made unnecessary because, "everything in nature has its laws. Inorganic matter has its dynamical properties, its chemical affinities; organic matter, more complex, more easily destroyed, has also its governing principles. As with matter in its integral form, so with matter in its aggregate; animate beings have their laws, as well as the material, from which they are derived. Man, as an animate being, has functions to perform, and has organs for performing those functions; he has instincts to be obeyed, and the means of obeying those instincts; and, so long as he performs those functions, as he obeys those

instincts as he bends to the laws of his nature, so long does he remain in health. All disobedience to these dictates, all transgression, produces its own punishment. Nature will be obeyed. As with man physically, so with man spiritually. Mind has its laws as well as matter. The mental faculties have their individual spheres of action in the great business of life; and upon their proper development, and the due performance of their duties, depend the moral integrity, and the intellectual health, of the individual. Psychical laws must be obeyed as well as physical ones; and disobedience as surely brings its punishment in the one case, as in the other. As with man individually, so with man socially. Society as certainly has its governing principles as man has. They may not be so easily traced, so readily defined. Their action may be more complicated, and it may be more difficult to obey them, but, nevertheless analogy shows us that they must exist."<sup>14</sup>

This can be regarded as a revival of the law of nature. Spencer clearly stated that every species in the world had its natural law to control it, and maintained like Locke,<sup>15</sup> that this natural law should take precedence over all other laws. Unfortunately, he introduced some confusion in his ideas. He declared that, "as with man individually, so with man socially. Society as certainly has its governing principles as man has." In his Principles of Sociology, he considered society as a fictitious entity,<sup>16</sup> and affirmed that what mattered were the individual units comprising it. But in the above quotation, he argued that man had his principles to guide him, and the society (individuals in aggregate) had its own. This is clearly a confusion for if it is not, it only implies that as people differ, they have various principles to control them. When people are considered in aggregate, nothing but a multifarious system of principles will be seen at work in the society and without one central principle to regulate them, chaos will ultimately follow. Another alternative attributable to this view is that the individual has a greater freedom when acting in isolation which is a universal truth but when he is a social being

his freedom is curtailed to a considerable extent because he is subjected to two principles - firstly to a set of laws controlling him as a man, and secondly to another set of principles regulating his conduct as a member of the society.

Spencer held that the utilitarian pleasure - pain principle was not a correct justification for state interference with individual liberty. Pain is something inevitable, in the life of all living organisms. It is a normal phenomenon of life or organisms in their process of adaptation to conditions of their environment. Individuals suffer pain because their constitutions are not adapted to conditions. The pain is not only limited to human beings but also affects any living organism. But it is ephemeral in nature, and tends to disappear when adaptation to condition is complete. The non-adaptation of an organism to its conditions is continuously being straightened. Modification of the organism or both the organism and the condition continues until the adaptation is complete. "Whatever possesses vitality from the elementary cell up to himself, inclusive, obeys this law. We see it illustrated in the acclimatization of plants, in the altered habits of domesticated animals, in the varying characteristics of our own race..... Man exhibits just the same adaptability."<sup>17</sup> In the words of Bosanquet, Spencer resorts to "story-telling" using evolutionary processes, regulated by law of adaptation to trace the development of society from its simple and primitive nature to its complex and modern condition, thereby incorporating the idea of nature.

What is the purpose of adapting an individual to his conditions ? The sole aim is to fit him to the "Social State". This state is one of perfection. The individual is not adapted to it, because he has not completely given up the features which adapted him to an "antecedent State". His primitive condition required that in the pursuit of his welfare, he should encroach on other people's. Spencer, like Hobbes, before him, regarded war as the Universal Condition of man in the "antecedent state." But the

social state does not require this qualification. What then does the Social State require ? "It requires that each individual shall have such desires only, as may be fully satisfied without trenching upon the ability of other individuals to obtain like satisfaction. If the desires of each are not thus limited, then either all must have certain of their desires ungratified, or some must get gratification for them at the expense of others. Both of which alternative necessitating pain, imply non-adaptation."<sup>18</sup>

If pain is undesirable and further implies non-adaptation, then it means that adaptation is parallel to pleasure, hence happiness. As man is being adapted to the Social State, it follows that the greatest happiness is his immediate aim. It can then be deduced that the concept of greatest happiness is analogous to the law of adaptation. If this view is accepted, it remains to establish conditions by conforming to which this greatest happiness can be attained.

The first condition necessitated by the social state for the achievement of greatest happiness is the ability on the part of the individual to completely obtain happiness within his own sphere of activity without diminishing the spheres of activity required for the same acquisition of happiness by others. This should be the proper course of action as the sphere of activity of each individual is limited by the spheres of activity of other people. Any divergence from this condition entails either a decrease or increase of the degree of happiness of the individual or that of others. The fulfilment of this condition is called "justice".

Without interfering with each individual's sphere of action, individuals can yet behave to one another in such a way as to cause pain. If any individual has feelings which make him do this, it is obvious that the total amount of individual happiness is reduced. Hence it is necessary that individuals should not cause unhappiness to other people either in direct or indirect ways. Conformity to this Supplementary Condition is termed "Negative beneficence". Another supplementary condition is one called

"Positive beneficence". Through it, an individual can receive happiness from that of others. While regardful of the above limitations set out, it is necessary for each individual to do all he can to achieve his own private happiness. "Greatest happiness is obtained only when conformity to them [the above conditions] is spontaneous, seeing that the restraint of desires inciting to trespass implies pain, or deduction from greatest happiness."<sup>19</sup>

Human happiness is willed by God. How is happiness generated ? It is produced when a desire is satisfied, and a desire can only be satisfied by the free exercise of the related faculty. Since happiness is caused by the satisfaction of the desire, it follows that happiness consists in the correct satisfaction of all faculties.

It can then be argued that if it is the Will of God that man should have happiness, and it can only be done by the exercise of the faculties, then it follows, that it is His Will that man should exercise his faculty. It becomes a duty to man to exercise his faculty in order to comply with the Will of God. When an individual neglects this duty, he suffers punishment. But, as it is God's Will that man should enjoy happiness, any line of behaviour which produces unhappiness is contrary to His Will, and non-exercise of the faculties is against His Will. In order to exercise his faculties, the individual requires freedom of action, because he "...cannot exercise his faculties without certain scope."<sup>20</sup> As such, it implies then that the right to exercise his faculties is a natural right derived from God. "God wills men's happiness. Man's happiness could only be produced by the exercise of his faculties. Then God wills that he should exercise his faculties. But to exercise his faculties he must have liberty to do all that his faculties naturally impel him to do. Then God intends that he should have that liberty. Therefore, he has a right to that liberty."<sup>21</sup> How can the term right be defined ? "...what we call rights are merely arbitrary subdivisions of the general liberty to exercise the faculties; and that only can be called an infringement of rights

which actually diminishes this liberty - cuts off a previously existing power to pursue the objects of desire."<sup>22</sup>

This right does not belong to any particular individual but is common to all. All individuals possess faculties, and comply with the Will of God by exercising them. Accordingly, they must all have the freedom to exercise their faculties. In order to carve out a sphere of individual unrestrained activity, "...there necessarily arises a limitation. For if men have like claims to that freedom which is needful for the exercise of their faculties, then must the freedom of each be bounded by the similar freedom of all. When in the pursuit of their respective ends, two individuals clash, the movements of the one remain free only so far as they do not interfere with the like movements of the other. This sphere of existence into which we are thrown not affording room for the unrestrained activity of all, and yet all possessing in virtue of their constitutions similar claims to such unrestrained activity, there is no course but to apportion out the unavoidable restraint equally. Wherefore, we arrive at the general proposition, that every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man."<sup>23</sup>

Spencer turned to consider two formulations of the law of equal freedom - firstly his own as stated at the end of the preceding paragraph (every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man). Secondly, the utilitarians' which affirmed that an individual's right to exercise his faculties could only be limited "...by the proviso that he shall not hurt anyone else - shall not inflict pain on anyone else."<sup>24</sup> His aim was to determine the more acceptable one. Admittedly, the pursuit of happiness can hardly take place without causing pain to people. "It is not, however, that each avoids giving pain by refraining from the full exercise of his faculties; but it is that the faculties of each are such that the full exercise of them offends no one."<sup>25</sup> In practice, the pain individuals suffer under the latter

principle is caused by two factors. Either an abnormally-constituted person causes pain to normally constituted people by his misbehaviour, in which respect, his action is wrong; or the behaviour of a normally constituted individual hurts the abnormal feelings on his neighbours, in which case, it is not the individual but the neighbours character which is wrong. In any of these cases, the exercise of the faculties is correct though it causes pain.

For example, A, an honest man has a friend B, who is a rogue. A is quite convinced that roguery is repugnant, and led by his conviction, he severs connection with B. His action will definitely cause pain to B, but it does not follow that he has transgressed the law. The pain B suffers cannot be attributed to A's action but to his, B's immorality. Hence, in a situation like this, to limit A's freedom of action in order to prevent pain being inflicted on B, will be to stop A's exercising his faculties, for the purpose of allowing improper exercise of B's faculties. On the other hand, if A limits his freedom in order to allow B to exercise his faculties, he does so at the expense of suffering pain himself.

According to the universal law of life, "...the exercise of gratification of faculties strengthens them; whilst, on the contrary, the curbing or inflicting pain upon them, entails a diminution of their power. And hence it follows that when the action of a normal faculty is checked, to prevent pain being given to the abnormal faculties of others, those abnormal faculties remain as active as they were, and the normal one becomes weaker or abnormal. Whereas under converse circumstances the normal ones remain strong, and the abnormal ones are weakened, or made more normal. In the one case, the pain is detrimental, because it retards the approximation to that form of human nature under which the faculties of each may be fully exercised without displeasure to the like faculties of all. In the other case the pain is beneficial, because it aids the approximation to that form."<sup>26</sup> Referring to the above examples, A and B are friends, and each will suffer pain for losing each other's company. But the pain A suffers is beneficial by

freely cutting himself away from B because of his bad behaviour and that which B suffers is detrimental. Accordingly, the latter principle "Limiting the liberty of each by the like liberty of all" is the more acceptable one.

An individual can cause pain to others by exercising his faculties in certain ways without transgressing the law of equal freedom. For example, the individual can behave not only in an unfriendly manner, but can also use harsh language to others; and in so doing diminish the happiness of those people. If the former principle which demands that the individual is free to exercise his faculties so long as he does not inflict pain on others is applied, the above actions of the individual are forbidden. But with the latter principle, they are not, because "...he who exercises his faculties in this way does not hinder others from exercising theirs in the same way, and to the same extent."<sup>27</sup>

But if the law of equal freedom is directed towards the attainment of the greatest happiness, which of the two expressions is more acceptable? It is the latter. "Limiting the liberty of each by the like liberty of all, excludes a wide range of improper actions, but does not exclude certain other improper ones. Limiting the liberty of each by the necessity of not giving pain to the rest, excludes the whole of these improper actions, but excludes along with them many others that are proper. The one does not cut off enough; the other cuts off too much. The one is negatively erroneous; and the other is positively so. Evidently then, we must adopt the negatively erroneous one, seeing that its shortcomings may be made good by a supplementary law."<sup>28</sup>

Is this state of freedom, a state of licence?<sup>29</sup> Spencer insisted like Locke and Mill that it was not. If an individual is free to do all that he wills, provided he does not encroach upon certain specified claims of others, has he the freedom, "then..... to do things that are injurious to himself is [he] free to get drunk, or to commit suicide"?<sup>30</sup> Though the principle forbids



certain classes of actions as immoral, it does not recognize all kinds of immorality. The restriction which the principle puts on the free exercise of the faculties is not the only one and so it can equally be applied to further ones. There is a difficulty attached to these supplementary restrictions.

Firstly, they are inferior to the original law - i.e. "limiting liberty of each by the like liberty of all." Moreover, the original law can be subjected to mathematical deduction. Spencer introduced scientific notion to his principles similarly as Bentham did with the development of felicity calculus. This was the general pattern of thought in the 17th, 18th and 19th centuries among philosophers ever since Newton established the physical laws of gravitation. The limit put to each individual's freedom by the like freedom of every other man, can "...almost [be] possible of exact ascertainment; for let the condition of things be what it may, the respective amounts of freedom men assume can be compared, and the equality or inequality of those amounts be recognised."<sup>31</sup> But the supplementary restrictions cannot, though they can only be straightened into superior forms of expediency. When one tries to draw practical deductions from what a man is free to do and what he is not free to do, he finds himself entangled in a complicated estimate of pleasure and pains, with no definite conclusion. It is difficult to infer from one's action whether its result is good or bad, or whether the good outweighs the bad, or vice versa. One can neither say if the faculties on which pain will be inflicted are in normal or abnormal states.

For example, undoubtedly it is very patent that drunkenness is an injurious exercise of the faculty, because it causes more pain than pleasure. Though the effect of drunkenness can be readily seen, nevertheless, it is difficult to determine the degree of work which is good for the individual and that which is bad. It is also difficult to draw a line between due and undue intellectual activity. It is as well a task to determine the amount of advantage which will justify an individual to migrate from a tropical to a

temperate country, ".....and yet in each of these cases happiness is at stake, and the wrong course is wrong for the same reason that drunkenness is so..... Whilst we are as yet imperfectly adapted to our conditions, pain must inevitably arise from the repression of faculties that are too active, and from the overtasking of those that are not equal to their duties; and, as being needful to the development of the ultimate man, such pain cannot be held damnatory of the actions causing it."<sup>32</sup> As the society is tending towards perfection and so still lacks an ideal man, it is difficult to fix rigid limitations to individuals freedom of action. The greatest happiness is what individuals require. The conditions necessary to its achievement are fixed and before they can be interpreted the human constitution, "bodily and mental" must be perfectly known. This knowledge is lacking and hence the difficulty about the interpretation of the conditions. Since such is the case ".....our course is to regard the law of equal freedom as setting up the only recognisable limit to the exercise of faculties, knowing that the other limits will inevitably make themselves felt, and that in virtue of the law of adaptation, there must eventually arise a complete conformity to them. That on this course being pursued, there will happen a gradual cessation of the detrimentally painful actions, whilst the beneficially painful ones will be continued until they have ceased to be painful....."<sup>33</sup> When complete adaptation between Constitution and Condition has been achieved, a complete classification of actions into essentially injurious and essentially beneficial will be attained as well.

As shown above, man possesses moral sense by the aid of which he can distinguish between the right and wrong exercise of the faculties.<sup>34</sup> This moral sense is analogous to what can be described as an "instinct of personal rights." With its assistance an individual not only claims as great a share of natural rights as is claimed by others but also resists any interference with his "sphere of original freedom". But there is a set of utilitarians who slight the idea of natural rights. They reject the idea and yet they

talk about justice, draw the same line of distinction between law and equity as upholders of natural rights do. They tend to propagate their doctrine from the same platform as the natural right school of thought. "This so solid-looking principle of the greatest happiness to the greatest number, needs but to have a light brought near it, and lo ! it explodes into the astounding assertion that all men have equal rights to happiness....."<sup>35</sup> As the instinct of personal rights is a selfish one, inducing an individual to assert and defend his own freedom of action, how does an individual recognise the rights of others ? This is done by means of sympathy. Sympathy was described by Adam Smith in his "Theory of Moral Sentiment" as that faculty which excited a fellow-feeling for the passion of others."<sup>36</sup> When the sympathetic feelings of the individual are aroused, his instinct of personal rights can be reasonably reduced. In short, individuals become altruistic because of sympathy. This had been a constant controversial issue between the natural law and utilitarians school of thought.

Under the impression that the preservation of the concept of happiness is important, the Utilitarians maintained that such preservation ever required the adoption of majority rule. The question then arises - does this notion of majority rule necessarily imply omnipotence of the majority ? In Spencer's view it does not. There is a limit to their power. This view can be illustrated with a few examples. Supposing that people are worried about over-population, and so the legislature enacts a law that every newborn baby delivered within a period should be killed. Obviously such an enactment should not be entertained. If it is not supported, it indicates that there is a limit to the power of the majority. Supposing that for austerity measures, Mr.H.Wilson (The Prime Minister) announces that no salary in Britain should exceed £1000 a year. Any excess above that amount should be appropriated for public purposes. Can that resolution be justified ? If not,

it shows that there is a limit to the power of the majority, and there is a law above the popular voice of the people. "What then is that law, if not the law of pure equity - the law of equal freedom ? These restraints, which all would put to the will of the majority, are exactly the restraints set up by that law. ....if the will of the many cannot supersede the first principle of morality in these (above) cases, neither can it in any. So that, however insignificant the minority, and however trifling the proposed trespass against their rights, no such trespass is permissible."<sup>37</sup>

The existence of majorities and minorities depicts the immoral state of the society. The moral state of the society demands that individuals should obtain complete happiness without diminishing the happiness of their neighbours. "But the enactment of public arrangements by vote implies a society consisting of men otherwise constituted - implies that the desires of some cannot be satisfied without sacrificing the desires of others - implies that in the pursuit of their happiness, the majority inflict a certain amount of unhappiness on the minority - implies therefore, organic immorality."<sup>38</sup> Similar to Mill and Bagehot, Spencer was not very sure that democracy would secure equal freedom to individuals. Indirectly he maintained like Mill that the power of the majority could be tyrannical. The only difference between them was that Mill looked upon tyranny as an evil attendant on democracy, while Spencer attributed it to immorality of the state.

From the preceding arguments, it can rightly be concluded that the law of right relationship in the society should be - Every man has the freedom to do all that he wills, provided that he infringes not the equal freedom of any other man.<sup>39</sup> Spencer pointed out that critics would object to the above law on the grounds that as it was "an axiomatic truth", it should be recognised by all, but it is not so recognised. If men have not equal rights, it only indicates two alternatives. Either, that men have no rights at all or that they have unequal rights. The first alternative is untenable

because it has already been shown that individuals' rights are derived from God.<sup>40</sup> As regards the second, if people have unequal rights, no conceivable motive can be attributed to it but a desire to ensure the supremacy of the best. Supremacy should not be artificially aided. Individuals who feel that they are superior should exert that superiority without artificial aid. If things are left to take their natural course, people with the ability can display their superiority to their inferiors in proportion to their marked ability.

It is difficult to establish a yard-stick for measuring the relative merits of individuals, and to develop a uniform standard for testing the respective values of various individual abilities, if freedom of action is to be apportioned to individuals according to their merits. Public opinion is not a good criterion either, because it is not uniform in the country, It is a task to find efficient judges over human ability, and to build a scale for marking off the quantity of freedom proper for each individual.

The only form of government consistent with the principle of equal freedom is the "freest form of government". Democracy and Oligarchy are inconsistent with the principle because they involve the tyranny of the majority over the minority and the tyranny of the minority over the majority respectively. Both forms of government imply force and infringement of rights. But comparably, democracy is better than Oligarchy because it trespasses against the rights of the smallest number. Moreover, if according to the concept of individual freedom, every individual has the freedom to do whatever he likes provided he does not infringe the equal freedom of any other man, it then indicates that each has the right to exercise the same authority in legislation as his neighbours. Consequently, ".....a purely democratic government is the only one which is morally admissible - is the only one that is not intrinsically criminal."<sup>41</sup>

What does true democracy mean ? A democracy can be described as a political organisation arranged in accordance with

the law of equal freedom. From this description, one observes that most forms of government including those of ancient Greece and Rome are not democracies. Admittedly, various governments have tried to attain such form of organization though without success. But the fact that they have failed, does not show that the path they took was incorrect. An essential factor one has to consider in the establishment of such an institution is ".....that a high form of government is rendered practicable only by a high type of character - that freedom can increase only as fast as control becomes needless - that the perfect man alone can realize the perfect state. A democracy therefore, being the highest form that a government can assume - indicative, if not of the ultimate phase of civilization, still of the penultimate one - must of necessity fail in the hands of barbarous and semi-barbarous men."<sup>42</sup>

In order to realize a complete democratic state, the moral sense of the people has a large part to play. A popular government is one which puts less restraint on individuals freedom.<sup>43</sup> When the terms civil liberty, free institution, self government are used, they refer to freedom. But external restraint can only be reduced at the same rate as the increase in internal restraint. Conduct can not be left free, it has to be regulated either from without or from within. If the moral sense of the people is not sufficient, there must exist a supplementary rule from without. If, on the other hand, all men are properly controlled by their moral sense, government becomes needless, and all men are perfectly free. As the chief factor of self-rule is the moral sense, the degree of freedom allotted by institutions in the society to every individual will be proportionate to the amount of moral sense diffused among them. It is only when the influence of moral sense is widely felt can democracy be installed. Its supremacy is not only necessary for the stability of democracy, but also important to make individuals watchful of any encroachment on their rights with a determination to resist it and to make those in power respect the rights of individuals.

As equal freedom is the pre-requisite for normal life in society, should women have less freedom than men because of their sex ? Or should both sexes have equal freedom ? The law of equal freedom knows no difference in sex. It applies to both male and female. Several rights claimed by men should equally be claimed by women. If this view is not accepted, two propositions are open. Either that women have no rights at all or that their rights are less than men's.

The first proposition is revolting because such a suggestion indicates that the Creator relegated women to an inferior position to men and doomed them to remain at their mercy. As regards the second proposition, it is rather difficult to establish a scale for allotting varying degrees of rights to men and women according as their superiority and inferiority respectively. If these propositions are untenable, there is no other alternative than to accept the view that the rights of women are equal to those of men.

"The desire to command is essentially a barbarous desire..... Command cannot be otherwise than savage, for it implies an appeal to force, should force be needful.,..... Command is the growl of coercion crouching in ambush..... Command is the foe of peace, for it breeds war of word and feelings - sometime of deeds. It is inconsistent with the first law of morality. It is radically wrong."<sup>44</sup> Command and obedience are identified with despotism and slavery. When command is used on an individual, he is forced to bend his will to the fulfilment of another person's will. For example, a wife who acts according to the instruction or command of her husband, bends her will to the fulfilment of her husband's will. Then, "if every man has freedom to exercise his faculties within specified limits; and if, .....slavery is wrong because it transgresses that freedom, and makes one man use his powers, to satisfy not his own wants, but the wants of another; .....whatsoever involves command, or whatsoever implies obedience, is wrong also; seeing that it too, necessitates

the subserviency of one man's actions to the gratifications of another."<sup>45</sup> Accordingly, as the greatest happiness is the desire of both men and women, and the law of equal freedom is designed for its achievement, individuals should have equal rights irrespective of their sex.

Having asserted the view that women should have equal rights with men, should the same principle apply to children? Just as the adult's happiness is willed by God, so also is that of the child. This apart, he has faculties to be exercised like the adult, and consequently, requires freedom for such exercise. Hence, his claims to freedom are co-extensive with that of the adult. Any objection to this view implies that the law of equal freedom only applies to man. This means that before a man attains the age of manhood, he has no rights. If the child has no rights, it then follows, ".....there is nothing wrong in infanticide....., robbery is justifiable, provided the party robbed be under age.....a child may equitably be enslaved. For, .....murder, theft, and the holding of others in bondage are wrong, simple because they are violations of human rights; and if children have no rights, they cannot become the subjects of these crimes."<sup>46</sup> On the other hand, if children have rights, their rights can not be limited to the above primary ones.

People who indicate that children have no rights are wrong; those who maintain that they have rights but unequal to those of adults, should draw the line, to explain or to define. "They must say what rights are common to children and adults, and why. They must say where the rights of adults exceed those of children, and why. And their answers to these queries must be drawn, not from consideration of expediency, but from the original constitution of things."<sup>47</sup> Hence, children should enjoy similar freedom to adults.

Is Coercive education good for children? It is not. Education is required for the formation of character. Character formation is not best achieved by coercive means. In fact, it retards the formation and it is only suitable as a form of restraint. In



educational institutions, freedom is more desirable than force, and that is one of the reasons why coercive education is becoming unpopular. Those who conceive that the use of force is the best means of educating children will change their views when they visit certain mental hospitals. "Hanwell Asylum for the insane" according to Spencer, provides a good example of an institution where lunatics are cared for without the use of force. The rate of recovery is increasing and the management has changed from "strait-jacket regime" to a more moderate one. If suasion will replace coercion in the treatment of mentally ill, why should children not enjoy similar treatment? A non-coercive treatment is favourable to, and necessitates constant appeals to the higher feelings. By freely exercising those feelings, the character is improved, and the child is accustomed to the condition of freedom in which his manhood should be spent.

The law of equal freedom permits an inventor to keep his invention for his own exclusive use or as his private property. The same principle which justifies the right of property warrants the right of property in ideas as well. An inventor has equal claim over his invention just as a Capitalist has over his capital. Laws like patent laws, law of copyright are passed "...not so much in obedience to the dictates of justice, as in deference to the suggestions to trade policy."<sup>48</sup> Some people will insist that such laws are passed for economic reasons and not merely for the administration of justice. To nurture such a belief shows moral callousness. It is wrong to think that the profits a speculator makes from shares should be recognised as his property but the right of an inventor over his invention which has taken him years of hard work to develop should not be acknowledged. As such, one will deduce that justice has similar bearing on such laws as economic interest.

It is important to remark at this stage that with the insistence of individual rights as a pre-requisite to normal life, that government and freedom must be in inverse proportion to one another. As the society tends towards its state of perfection,

individual

freedom increases and the sphere of state activity decreases. "The once universal despotism was but a manifestation of the extreme necessity of restraint ... The progress from ... [this] is in all cases the same - less government. Constitutional forms mean this. Political freedom means this. Democracy means this. In societies, associations, joint stock companies, we have now agencies occupying fields filled in less advanced times and countries by the state.... the legislature is dwarfed by newer and greater powers - is no longer master but slave.... Thus as civilization advances, does government decay."<sup>49</sup>

As the power of the state is so limited, what should be its proper duties ? The moral law cannot specify what the state ought to do but can only assert what it ought not to do. Moreover, if the relationship between the state and the individual is contractual - testified by the right individuals have to secede from it - there is nothing to distinguish it in the abstract from any other incorporated society. There is nothing to determine its specific function. It becomes then incumbent on individual members to allot the state its duties provided those duties do not break the moral law. "The question is no longer one of pure ethics, and is therefore incapable of solution by any exact methods; Approximate ones only are available."<sup>50</sup> They demand that the state should "not.... regulate commerce; not.... educate the people; not.... teach religion; not.... administer charity; not.... make roads and railways; but simply defend the natural rights of men.... protect person and property .... prevent the aggressions of the powerful upon the weak.... in a word.... administer justice. This is the natural, the original, office of a government. It was not intended to do less; it ought not to be allowed to do more."<sup>51</sup> In carrying out this function, the state should only tender its services; it should not force individuals into accepting them. If it does, it violates that very freedom which it proposes to foster. His views here are extreme compared with those put forward by other members of natural law school of thought. They were quite ready to tolerate state interference besides its police duties provided that it was

advantageous to the society.

In setting out what the state should do, and what it should not do, Spencer has betrayed himself into an error. He forgot that social science is a science of tendency and so cannot work with perfect data as any of the engineering sciences. He should have remembered that every society contains member citizens of varying degrees of character, physique and status, No two of the citizens have the same attributes. While mechanical or geometrical sciences can work with straight lines, these varying attributes of mankind can not form straight lines for social science. It will have logically been possible, if every person has the same features but is impossible when the society is comprised of straight and crooked individuals.

Since there is no satisfactory equitable means of asserting the right of property consistent with the law of equal freedom, Spencer allowed the state to assume the duty of a landlord, while its individual members became lessees. An individual can freely lease from the society without any infringement of the law of equal freedom, a given surface of land, by agreeing to pay in return a stated amount of the produce he obtains from that land. "...in doing this, he does no more than what every other man is equally free with himself to do - that each has the same power with himself to become the tenant - and that the rent he pays accrues alike to all."<sup>52</sup> Having leased a piece of land and cultivated it with the consent of the society, the individual can rightly appropriate to himself that part of the produce of the land left after paying his rent. In playing the part of a lessor, justice is administered by the state in ensuring that every individual has a free access to the use of the land.

Obtaining the consent of the society as Spencer urged in this connection is destructive of his whole theory of natural rights and law of life. As Barker maintained,<sup>53</sup> if a right so elementary as that of property involves social recognition, it is difficult to see how rights can in their nature be independent of social recognition.

The self-contradiction is the more serious, as Spencer definitely asserted that the desire to acquire property was one of the elements of human nature. If the law of nature demanded that a person requires freedom to exercise his faculties - a condition he has a natural right to - why should he obtain the consent of the society before enjoying the benefits of that condition ?<sup>54</sup>

State administration of land will imply employing more executives to control it. Already, Spencer had complained that the state was making steady inroads into the freedom of individuals. By allowing the state to assume the role of a land lessor, was he not encouraging further government intervention with individual freedom leading to an ultimate defeat of the end he (Spencer) was fighting for ?

One observes from the above lists of duties immune from state interference, that the state should not regulate trade. When the state regulates trade in the way of imposing restriction on commercial transaction between two countries, it encroaches upon individual's freedom of action. It has been stressed that the duty of the state consists of securing for every individual the fullest freedom to exercise his faculties, compatible with the like freedom of all others. Trade prohibitions and restrictions deny individuals this freedom. In enforcing them the state exchanges its duty as a "maintainer of rights" for a "violator of rights".

On the other hand, supposing free trade is allowed, can a farmer complain that his rights are infringed by allowing consumers to buy food where its price is lower ? Can he urge that the state is unjust to him by not forcing the manufacturer to pay a high price for a commodity which he can buy at a lower price somewhere else ? The answer to the above question is negative, for justice will not demand such interference. If the state recognises its duty as the administrator of justice, there will be nothing like restrictions being put on trade. Free trade should then be the ideal condition. A similar view was put forward by the classical economists. They agreed that free trade was beneficial to the society.

A government cannot undertake to administer the affairs of

a colony without infringing the rights of the parent society. Any expenditure for the above purpose involves a breach of state duty. To take from individuals property beyond what is necessary for the better securing of their rights, is to encroach on their rights. "Colonial expenditure cannot be met without property being so taken. Colonial expenditure is therefore unjustifiable."<sup>55</sup>

As regards the emigrant, custom demands that he has a claim to protection from the mother country but reason says no. As it is the duty of the state to administer the law of equal freedom, it can not, without reversing its function, tax individuals in the parent country at a higher rate than is needful to protect them, in order to give protection to the emigrant. The extent of protection the mother country should extend to each of its members, is limited by conditions. "Viewed philosophically, a community is a body of men associated together for mutual defence. The members of that community are supposed to occupy a certain territory, and it may be fairly assumed that the privileges conferred are only enjoyed by those residing within that territory. The nation cannot be expected to extend protection to its members wherever they may chance to wander.... The natural inference is that when a man leaves such a community he loses his membership, he forfeits his privileges, and he foregoes all claim to civil assistance. It is presumed that he duly considers, on the one hand, the benefits to be derived by his contemplated emigration, and, on the other, the evils attendant on the loss of citizenship, and that the prospective advantages of exchange have the preponderance."<sup>56</sup>

Colonial government can not be carried on without infringing the rights of the colonists. If the colonists are ruled by authorities sent out from the parent country, then the law of equal freedom will be broken in their persons. If the colonists are permitted to control their own affairs, the parent state retaining only a veto power, there will still be injustice in the assumption of greater freedom by the members of the mother country than is allowed by the colony.

Colonies are a burden to the mother country. The latter not only expend so much to gain so little, but also in some cases, it expends so much for nothing, and in fact achieve a loss. For example, the United States of America was a burden to the mother country, but when she became independent, it was a source of gain. Canada was also a burden. Her commercial advantages did not pay the cost of her management. Neither did the East India Company's statement of accounts show that the balance is in favour of the mother country.

The idea that by monopolizing her colonial trade, the mother country obtains a more extended market for her goods is wrong. It is possible to monopolize her trade from one of two causes. Either the goods sold by the mother country are sold at a lower rate, or the colonists are obliged to buy from the mother country. If the mother country could undersell, she could do so even if the colonies were free. If she could not, it would mean that for any goods sold, an equivalent amount would be paid to the colony for raw materials. As such, the mother country is indirectly causing herself harm by monopolizing her colonies trade. Hence, colonies would do far better if they were set free of the government and protection of the mother country than if they were controlled.

It is important to add that apart from looking at the law of equal freedom as a pre-requisite to the realization of the Divine Will, it can also be seen as a direct deduction from the necessities of existence. Evidently, life depends on the performance of certain actions. If individuals are deprived of their liberty to exercise their faculties, two results will be likely to follow. Either they will die or suffer pain. "...as there must be life before there can be society, this first principle of life must take precedence of the first principle of society - must fix or govern it. ....as liberty to exercise the faculties is the first condition of individual life, the liberty of each, limited only by the like liberty of all, must be the first condition of social life. Derived, therefore, as it is, directly from the Divine Will, and underlying as

it does, the right organization of society, the law of equal freedom is of higher authority than all other laws. The creative purpose demands that everything shall be subordinate to it.

....as surely then as the incidental must bow before the necessary, so surely must all conventional arrangements be subject to the absolute moral law."<sup>57</sup> The idea of morality "is essentially one with a physical truth - is in fact, a species of transcendental physiology."<sup>58</sup> The whole creation is moving towards a final state of affairs ordered by the law of equal freedom. It is a state where the individualities of every one can be manifested without limit, except the like of individualities of others. This final state of affairs is one of perfection. Changes which are observed in mankind while on its pilgrimage to perfection still tend towards a greater development of individuality and can be described as "a tendency to individuation."

"....when the change at present going on is complete - when each possesses an active instinct of freedom, together with an active sympathy - then will all the still existing limitations to individuality, be they governmental restraints, or be they the aggressions of men on one another, cease. Then, none will be hindered from duly unfolding their natures; for whilst every one maintains his own claims, he will respect the like claims of others. Then, there will no longer be legislative restrictions and legislative burden; for by the same process these will have become both needless and impossible. Then for the first time in the history of the world, will there exist beings whose individualities can be expanded to the full in all directions. And thus,.....in the ultimate man perfect morality, perfect individuation, and perfect life will be simultaneously realized."<sup>59</sup> This should be the correct picture of the future state of the society.

This view is contrary to the Malthusian concept of the perfectibility of society. Malthus argued that the society could not attain perfectibility due to inequality between population and subsistence; the constant effort by the law of nature to equalise them. He resorted to the perfectibility of a plant to illustrate

his views. According to him, "the real perfectibility of man may be illustrated by the perfectibility of a plant. The object of the enterprising florist, is, as I conceive, to unite size, symmetry, and beauty of colour. It would surely be presumptuous in the most successful improver to affirm that he possessed a carnation in which these qualities existed in the greatest possible state of perfection. However beautiful his flower may be, other care, other soil, or other suns, might produce one still more beautiful. Yet, although he may be aware of the absurdity of supposing that he has reached perfection; and though he may know by what means he attained that degree of beauty in the flower which he at present possesses, yet he cannot be sure that by pursuing similar means, rather increased in strength, he will obtain a more beautiful blossom.

By endeavouring to improve one quality, he may impair the beauty of another. The richer mould which he would employ to increase the size of his plant, would probably burst the calyx, and destroy at once its symmetry. In a similar manner, the forcing manure used to bring about the French revolution, and to give a greater freedom and energy to the human mind, has burst the calyx of humanity, the restraining bond of all society; and however large the separate petals have grown; however strongly or even beautifully a few of them have been marked; the whole is at present a loose, deformed, disjointed mass, without union, symmetry, or harmony of colouring."<sup>60</sup>

Spencer's views can best be described as merely utopian. From the events of our own time, there are no signs of attaining perfection yet. If he should conceive metamorphosis as a social phenomena,<sup>61</sup> it is surprising to find him holding to the notion that a state of perfection would eventually be reached and thence, less government. The growth of societies will ever continue, and every such increase has its own problem to be met by the society. As this change goes on, no man will be satisfied with his position.



Every person will always be fighting to improve himself with the result that no one observes when this state of perfection is reached. The matter is made more difficult by lack of a proper definition of the term perfection, and how to measure it. It is seen that as years go past, so do state powers increase. Instead of having less government, we tend to have more, and ever since, Spencer wrote, there has not been any decrease in governmental function.<sup>62</sup>

Before summing up the chapter, it is desirable to consider an issue on which most modern writers hold varying views. The question is - was Spencer a utilitarian in his politics? Barker for example, argued that "it is true, .... that while he [Spencer] attacked what he called the [expediency philosophy] of Bentham, he was a utilitarian in his politics."<sup>63</sup> Sabine maintained that "...all of Spencer's important ethical and political ideas were derived from utilitarianism and had no close logical dependence on either biology or evolution."<sup>64</sup> Bowle, on the other hand pointed out that "...he wrote in the Benthamite jargon which seldom left him, though he was never Bentham's disciple ...."<sup>65</sup> Spencer could be considered a utilitarian though he disagreed with Bentham and most utilitarians on the method which they taught by which the ultimate end - happiness - could be attained. In fact, he objected to being considered an anti-utilitarianism.<sup>66</sup> He regarded happiness as the ultimate end of morality and stressed that the end is partially attainable by empirical generalizations from the observed results of conduct, and completely attainable by deducing ".....from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness and what kinds to produce unhappiness."<sup>67</sup>

This was what he had to say in a private letter to J. S. Mill. "...I have never regarded myself as an anti-utilitarian. My dissent from the doctrine of utility as commonly understood, concerns not the object to be reached by man, but the method of reaching it. While I admit that happiness is the ultimate end to be

contemplated, I do not admit that it should be the proximate end. The expediency - Philosophy having concluded that happiness is the thing to be achieved, assumes that morality has no other business than empirically to generalize the results of conduct, and to supply for the guidance of conduct nothing more than its empirical generalizations.

But the view for which I contend is, that morality properly so-called - the science of right conduct - has for its objects to determine how and why certain modes of conduct are detrimental, and certain other modes beneficial. These good and bad results cannot be accidental, but must be necessary consequences of the constitution of things; and I conceive it to be the business of moral science to deduce, from the laws of life and the conditions of existence, what kinds of action necessarily tend to produce happiness and what kinds to unhappiness. Having done this, its deductions are to be recognized as laws of conduct; and are to be conformed to irrespective of a direct estimation of happiness or misery."<sup>68</sup> Spencer could be said to be a Utilitarian in the sense that he accepted happiness as the ultimate end of human endeavour.

All in all, Spencer has expressed two important aspects of 19th century thought; firstly, non-conformist radical individualism and the primitive science of the idea of evolution. With a combination of ideas about biology, the concept of evolution and the notion of natural rights, he had fought to safeguard the largest possible sphere of individual freedom whilst de-limiting that of the state.

CHAPTER 5.

The doctrine of social organism, the kingpost of sociological principles permeates Spencer's Principles of Sociology. This work can be regarded as an attempt to revive the organic theory of the state. What does the term society mean? Spencer provided a definition but did not stop there. To him, it was analogous to an organism. Thus convinced, he proceeded to compare and contrast animal organism with society. This analogy was followed by an examination of the evolution of society, inculcating the degree of liberty, people enjoy at any particular stage.

Society can be defined as a collective name for a number of individuals, and can be regarded as an entity formed of discrete units.<sup>1</sup> If society is an entity, with what can it be closely compared? "Between a society and anything else, the only conceivable resemblance must be one due to parallelism of principle in the arrangement of components. There are two great classes of aggregates with which the social aggregate may be compared - the inorganic and the organic."<sup>2</sup> Society and inorganic aggregate are incompatible because the latter is lifeless. As such, society can only be compared with the organic aggregate, and is described as being marked by a growth.<sup>3</sup> This trait is common with organic aggregates, but is lacking with inanimate bodies. "Many organisms grow throughout their lives; and the rest grow throughout considerable parts of their lives. Social growth usually continues either up to times when the societies divide, or up to times when they are overwhelmed."<sup>4</sup>

In order to justify his comparison between an animal and social organism, Spencer went on to consider briefly the analogy drawn between a living body and body politic by other organic philosophers, pointing out where they went wrong. Plato asserted that - the states are as men are; they grow out of human characters -

This platonic view about the state is similar to Spencer's but differs in the sense that Plato nurtured "...the belief that these states, with characters thus determined, can yet determine the characters of their citizens."<sup>5</sup> Plato further differed by an erroneous analogy drawn between the individual and the state. He compared the individual's reason, passion and desire on one hand with the state's counsellors, auxiliaries, and traders on the other. Spencer's observed that the error was the comparison drawn between the co-operating parts of the mind and the mutually dependent parts of the political organization.

Hobbes, "like Plato.... regards social organization not as natural but as factitious; propounding the notion of a social contract as originating governmental institutions, and as endowing the sovereign power with irrevocable authority."<sup>6</sup> The analogy drawn between man and the state was expressed in these words by Hobbes - For by art is created that great LEVIATHAN called a COMMONWEALTH, or STATE, in Latin CIVITAS, which is but an artificial man; though of greater stature and strength than the natural, for whose protection and defence it was intended; and in which the sovereignty is an artificial soul, as giving life and motion to the whole body; the magistrates, and other officers of judicature, artificial joints; reward and punishment, by which fastened to the seat of the sovereignty every joint and member is moved to perform his duty, are the nerves, that do the same in the body natural -. <sup>7</sup> The error as Spencer saw it, was the comparison between the organization of a human being and the organization of a society.

Because of these erroneous analogies, Spencer insisted that it was important to point out that no analogy existed between the living body and the body politic besides that necessitated by that mutual dependence of parts which they exhibited in common. All living kinds of animals are similar in so far as each indicates co-operation among its components for the benefit of the whole. This trait common to animals, is also common to communities. The

degree of this co-operation measures the degree of evolution both in individual and social organisms.

It was pointed out above<sup>8</sup> that life depended upon the performance of certain actions. If man were deprived entirely of the freedom to exercise his faculties, death would result; and if deprived partially, he would suffer pain or partial death.<sup>9</sup> Society was defined on the other hand as a collective name for a number of individuals, and shared one common trait - growth - with other living bodies.<sup>10</sup> As freedom is a pre-requisite to life, so is it with growth. Moreover, it was deduced that the similarity existing between the living body and the body politic was that necessitated by that mutual dependence of parts which they exhibited in common. Division of labour is a phenomenon subsisting both in the society and in other living bodies, and through its processes, the society or the living body can be made a living whole. This co-operation can not be carried out for the sustenance of life without giving freedom to the various parts of the society or the living body performing their specialised function. The importance of this freedom is clearly shown in the following quotation:

".....we see that in a mammal, arresting the lungs quickly brings the heart to a stand; .....if the stomach fails absolutely in its office all other parts by-and-by cease to act; .....paralysis of its limbs entails on the body at large death from want of food or inability to escape; .....loss of even such small organs as the eyes, deprives the rest of a service essential to their preservation; .....in a society, we see that the workers in iron stop if the miners do not supply materials; .....makers of clothes cannot carry on their business in the absence of those who spin and weave textiles fabrics; .....the manufacturing community will cease to act unless the food-producing and food-distributing agencies are acting; .....the controlling powers, governments, bureaux, judicial officers, police, must fail to keep order when the necessaries of life are not supplied to keep them by the parts kept in order; ....."<sup>11</sup> This example shows how essential freedom is

both to individuals and other living organism. Can it not be concluded that Spencer's idea of liberty is no more than that enjoyed by living organism ?

It is desirable to add that Spencer is guilty of using the idea of freedom in a very odd sense here. Carrying his views a bit further, it can be shown that freedom can have the same result as non-freedom. For illustration purposes, I will use iron-miners and iron-workers. It can be argued that if the former are free to work, surely they must also be free not to work - i.e. to strike. If they go on strike, they will eventually stop the iron-workers working for want of raw material. Clearly, the effect will be similar to a situation in which armed forces seize the mines and preventing miners from entering. Iron workers will still stop working because of lack of raw material. Similarly, this example can be used to show the importance of control rather than liberty. As coal must be mined to keep iron-workers busy, coal miners must not have the freedom to strike but must work under control to ensure that iron-workers have their raw materials for production.

It was asserted above<sup>12</sup> that the degree of co-operation measured the degree of evolution both in individual and social organisms. There are three types of evolutions - inorganic, organic and super-organic. As the social organism is associated with super-organic evolution, I will only limit my consideration to it, examining also the extent of co-operation among human beings at this stage of evolution.

Super-organic evolution is said to commence ".....only when there arises something more than the combined efforts of parents. There can of course be no absolute separation. If there has been evolution, that form of it here distinguished as super-organic must have arisen by insensible steps out of the organic. But we may conveniently mark it off as including all those processes and products which imply the co-ordinated actions of many which achieve results exceeding in extent and complexity

those achievable by individual actions."<sup>13</sup> The following features can be said to mark super-organic evolution. It is a form of evolution marked not only by greater individual freedom but also a tendency to complete individuation. It is a state of equality with an absence of a superior authority, and any industrial activity carried out is performed by voluntary co-operation, with every man performing a specific function. The relation existing among men before this stage is adjusted to suit the greater tendency towards complete individuation and activities. These characteristics demonstrate the degree of co-operation among individuals in an ideal social state.

"It scarcely needs to particularize these truths, as shown us by bees and wasps. All know that these form ..... communities - communities such that the units and the aggregates stand in very definite relations. Between the individual organization of the hive-bee and the organization of the hive as an orderly aggregate of individuals with a regularly-formed habitation, there exists a fixed connexion. Just as the germ of a wasp evolves into a complete individual, so does the adult queen-wasp, the germ of a wasp-society, evolve into a multitude of individuals with definitely-adjusted arrangements and activities."<sup>14</sup>

What are the similarities between a living and social organism ? Mutual dependence of parts is an essential characteristic common to both organisms. Another common feature is shown by the relation between the life of the units and the life of the aggregate. A big catastrophe may destroy the life of the aggregate without immediately destroying the life of all the units. But if nothing occurs to destroy the life of the aggregate, it tends to out-live the individual units. Both organisms show certain fundamental traits of evolution. They start their lives as germs and by processes of integration, attain a size bigger than the original one. There is an increasing tendency towards coherence. The growth in aggregates of different classes are extremely various. Increase in mass is followed by increase of structure in

both organisms. Along with integration, both organisms show differentiation. Differentiation is followed by heterogeneity.

Contrary to his views in Social Statics<sup>15</sup>, Spencer now realises that the first social differentiation is the establishment of a ruling agency. In the Social Statics, he rejected or slighted the importance of social institutions, but in the Principles of Sociology he accepted that such institutions had relative justification. This may be simple or compound. In the early stages of the social mass, when there is little or no association among its component parts, there is nothing like organization. As the social mass advances, some form of organization is established, and marked by a head. When the ruling agency has been formed, the tendency is to separate the regulative from the operative parts. As heterogeneity displaces differentiation, not only developing parts of co-ordinating agencies show unlikeness, but the agencies co-ordinated do the same. They have producing, distributing and restraining agencies.

In what way does a living organism contrast with a social organism ? The living organism differs from the social in this manner - "The parts of an animal form a concrete whole; but the parts of a society form a whole that is discrete. While the living units composing the one are bound together in close contact, the living units composing the other are free, not in contact, and more or less widely dispersed."<sup>16</sup> Another difference springs from the fact "....., that there is a mode of social growth to which organic growth affords no parallel - that caused by the migration of units from one society to another."<sup>17</sup> This is the result of the concreteness of an individual organism and the discreteness of a social organism. Units forming the body-politic are not fixed in their habitats, they move about quite unlike those forming the individual organism. "But as members of the body politic, though having stationary habitations and working places, are themselves locomotive, it results that the process of distribution is affected partly in this way and partly by their own agency."<sup>18</sup>



There is also a difference between the way in which motion is given to the circulating currents in the two organisms. The body politic lacks physical cohesion, and the required metamorphosis of units, consequently, "...cannot have its currents of commodities thus moved; though remotely produced by other forces, their motion has to be proximately produced by forces with the currents themselves."<sup>19</sup>

Where parts of an organism are little differentiated, every part can with comparative ease, freely perform any other part's function, but where they contrast with each other to a great extent, such freedom is limited. If an organization is so constructed that its parts can carry on mutually-dependent actions, then, as the organization is small in size, the parts must be comparatively independent of one another and hence greater freedom. On the other hand, if the organization is great, every part becomes dependent on the rest leading to a limitation of freedom.

Societies can be grouped into two - primary and secondary. In the primary group, societies are arranged according to their degrees of composition - simple, compound, doubly compound, trebly compound. In secondary grouping, societies are mainly militant and industrial. Militancy characterises defence while industrial features production for maintaining the society.

In militant societies, the freedom of individuals is very limited. This form of society can be best described as "... one in which the army is the nation mobilized, while the nation is the quiescent army and which, therefore, acquires a structure common to army and nation."<sup>20</sup> Every aspect of its organization is centrally controlled. Activities are carried on according to prescribed laws. Besides activities, life is subjected to kindred discipline. The theory of government concerning the relation between the individual and the state, takes this form. - "This structure which adapts a society for combined action against other

societies, is associated with the belief that its members exist for the benefit of the whole and not the whole for the benefit of its members. As in an army the liberty of the soldier is denied and only his duty as a member of the mass insisted on; ....the laws recognised no personal interests, but patriotic ones only; so in the militant type throughout, the claims of the unit are nothing and the claims of the aggregate everything. Absolute subjection to authority is the supreme virtue and resistance to it a crime."<sup>21</sup> The individual is a mere puppet of the state. He has no freedom except that allowed him by the state. These apart, he is forced into activity. His freedom of choice is very much limited. The co-operation by which life of the militant society is maintained, is compulsory co-operation.<sup>22</sup> Every individual's will in either private or public transaction is overruled by that of the state.

Spencer's utopian ideal of perfectibility is observed in industrial societies. They present a different picture "from the primitive predatory conditions under which the master maintains slaves to work for him, there is a transition through stages of increasing freedom to a condition like our own, in which all who work and employ, buy and sell are entirely independent; and in which there is an unchecked power of forming associations that rule themselves on democratic principles."<sup>23</sup> Quite unlike in the militant society, where coherence limited freedom, here, coherence and freedom develop side by side. Many objects are achieved by free actions of an individual or a combination of individuals governed representatively. It becomes a tendency to this type of organization that for every proposed end, the proposed means is an agglomeration of people ruled by an elected committee headed by an elected chairman.

Every stage in the process of evolution is followed by greater individual freedom. The theory of proper relation between the individual and the state takes a different form in the industrial society. The will of the individual is supreme and the state exists merely to carry out his will. "Thus subordinated in

authority, the regulating power is also restricted in range. Instead of having an authority extending over actions of all kinds, it is shut out from large classes of actions."<sup>24</sup> Similar to Locke, Spencer pointed out that individuals had the right to resist irresponsible government, and also to resist a responsible one when it exceeds its limits. "There arises a tendency in minorities to disobey even the legislature deputed by the majority, when it interferes in certain ways; and their oppositions to laws they condemn as inequitable, from time to time cause abolition of them."<sup>25</sup> Activities - social, economic or otherwise - are carried on under voluntary co-operation.<sup>26</sup> The position of women compared with what it was in a militant society. They enjoy greater freedom and receive better treatment from men.

It is really difficult to accept Spencer's view that increased voluntary co-operation, and every stage in the process of evolution is followed by greater individual freedom. Increased voluntary co-operation will, in fact, invite more state interference either between master and man, or between master and master, and hence a great extension of state powers. Government will have to keep pace with industrial growth, and will have to solve many problems arising by various legislative acts. Every stage in the process of evolution makes one more of a social being than what he was. He comes more in contact with people and as evolutionary processes involve a greater co-operation among various units comprising the society, such contact also implies a greater surrender of individual freedom for the benefit of all.

Why should increased voluntary co-operation invite more state interference ? Robinson Crusoe for example had no need for a state because he was alone and his action or behaviour did not interact with anyone else's. Neither was his economic world governed on the principle of voluntary-co-operation. In such a society, there was no need for state interference. But a government becomes essential in a society bigger than that in which Robinson Crusoe lived in because such society contains many individuals.

Its interference (the government's) is necessary in order to ensure that no individual encroaches on the rights of his neighbour. In the economic field, we are told that the demand for goods,<sup>27</sup> is greater than the supply. Consequently, there is a tendency for people to compete for the scarce goods. Though according to the principle of voluntary co-operation, the relation between man and men is established by contract,<sup>28</sup> the possibility of some people evading the terms of the contract in order to gain a better position in which to compete for the scarce goods cannot be ruled out. Accordingly, state interference is necessary to ensure that every person keeps the terms of his contract. In addition, when the current economic affairs of most countries experiencing industrialism is considered, one does not observe less government interference.<sup>29</sup>

In industrial societies, freedom-economic, personal - increases during peace, and diminishes during war. An example is provided by the situation in Britain. "...during the previous peaceful period, when individual liberty was extended by abolishing religious disabilities, establishing free trade, removing impediments from the press etc., since the reversion began the party which affected these changes has vied with the opposite party in multiplying state-administration which diminish individual liberty. How far the principles of free government have been disregarded, and how directly this change is sequent upon the feeling which militant action fosters, is conclusively shown by the Suez Canal business."<sup>30</sup>

Despite his revival of the organic concept of the state during this period, Spencer contributed a lot to the history of political thought in an attempt to develop the evolutionary process of political society. While some natural right philosophers held to the view, or postulated the development of civil society from the state of nature, he was convinced that society was at the outset militant and later changed to industrial.

In 1882, Spencer visited America. Immediately after his return to England, he started upon a crusade against the political movement which was then tending towards an increase in State function and activities as opposed to the individual. In 1884, he wrote four articles on the subject which were published in the "Contemporary Review". Later, they were bound together and issued under the title of The Man versus The State. The book can be better described as an impress of natural rights. In emphasizing the doctrine of natural rights, he mentioned the science of life not only in support of the doctrine, but also as its source.

Spencer started the book with a trenchant attack on the Liberals, and in fact on the grounds of their coercive legislative acts, he described them as "Tories of a new type". In order to justify this view, he had to show the difference between the intrinsic natures of Toryism and Liberalism. On this score, he took up the ideas about compulsory and voluntary co-operation left in the Principles of Sociology. Toryism was identified with the regime of status which marked compulsory co-operation and Liberalism was considered as the regime of contract which characterized voluntary co-operation.<sup>31</sup> How did their various traits relate to their activities ?

On one hand, the Tories upheld the monarchy as of Divine origin. On the other, the Whigs not only began by resisting the monarchy (Charles II) and his cabal, in the latter's attempts to re-establish unchecked monarchical power, but also regarded the monarchy, as a civil institution built by the nation for the benefit of all its citizens. These contrasting views about the monarchy involved the two beliefs, firstly that the subjection of the citizen to ruler was unconditional, and secondly ~~that~~ that it was conditional. In short, while Toryism directed its efforts to increasing the power of the ruler, Liberalism was determined to reduce it. This distinction in their aims, was shown by their early activities. For example, the Whigs passed, among many other acts, aimed at increasing individual freedom, the Habeas Corpus Act which

ensured a fair trial of the citizen before he was punished by the State. Their efforts were, in fact, concentrated on weakening the principle of Compulsory Co-operation throughout social life and on strengthening the principle of Voluntary Co-operation.

Having done these in the past, the Liberals of the present (about 1884) have changed, and have to an increasing extent adopted the policy of dictating the actions of citizens, and as a result, diminishing the sphere of their free action. How is this change in attitude to be explained? Liberal policy had been abolishing those grievances which people suffered most, because they were regarded "...as hindrances to happiness. And since, in the minds of most, a rectified evil is equivalent to an achieved good, these measures came to be thought of as so many positive benefits; and the welfare of the many came to be conceived alike by Liberal statesmen and Liberal voters as the aim of Liberalism. Hence the confusion. The gaining of a popular good, being the external conspicuous trait common to Liberal measures in earlier days [then in each case gained by a relaxation of restraints], it has happened that popular good has come to be sought by Liberals, not as an end to be indirectly gained by relaxations of restraints, but as the end to be directly gained. And seeking to gain it directly, they have used methods intrinsically opposed to those originally used."<sup>32</sup> A general consideration of legislations characteristic of this period shows that "every one of these involves further coercion - restricts still more the freedom of the citizen."<sup>33</sup>

As the regime of Status was marked by coercive rule with the effect of diminishing individual freedom, and the regime of Contract is characterised by spontaneous free action of every citizen, the analogy which Spencer was drawing between Toryism and the regime of Status on one hand, and Liberalism and Contract on the other, was to show that so long as Liberalism applied coercive measures in its government, it had failed in its mission and had as such, changed its true Liberalism for Toryism.

Is a particular form of government a security for individual freedom? It is not because "...the liberty which a

citizen enjoys is to be measured, not by the nature of the governmental machinery he lives under, whether representative or other, but by the relative paucity of the restraints it imposes on him; and that, whether this machinery is, or is not, one that he has shared in making, its actions are not of the kind proper to Liberalism if they increase such restraints beyond those which are needful for preventing him from directly or indirectly aggressing on his fellows - needful, that is, for maintaining the liberties of his fellows against his invasions of them; restraints which are, therefore, to be distinguished as negatively coercive, not positively coercive."<sup>34</sup> Quite unlike Bentham, James Mill, and to an extent John Stuart Mill, Spencer was not convinced that representative government was a sufficient guarantee for individual freedom, even if it allowed a person the liberty to participate in the development of laws by which he was governed. What about the welfare state ? - does it encourage spontaneous action of individuals or expose people to regular interference of government ?

Spencer held the view that welfare state animated interference by government. Apart from this, it is not a remedy for Social evils. In Malthusian terms, Spencer asserted that people were aware that misery or pain was a general result of misconduct; they go together and should not be separated. Yet, some argued that social evil was removable, and it was the duty of some one to remove it. They forget that "to separate pain from ill-doing is to fight against the constitution of things, and will be followed by far more pain." Saving men from the natural penalties of dissolute living, eventually necessitates the infliction of artificial penalties in solitary cells, on tread-wheels and by the lash."<sup>35</sup> Accordingly, the state was looked upon as the correct agent to remove the evil. The consequences of which was that poor laws passed to alleviate the sufferings of the poor, instead of fulfilling their mission, produced an appalling amount of demoralization. Besides this, the state was also considered as the saviour of the poor.

The tendency is that a legislator will always look out for means of improving the condition of the people. In searching

for this means, he gathers "political momentum". When legislation is set working, "...instead of diminishing or remaining constant, it increases. The theory on which he daily proceeds is that the change caused by his measure will stop where he intends it to stop."<sup>36</sup> The general tendency results in regular legislative enactments. Legislators pass acts for certain purposes without due consideration of their effects on freedom. For example, "Legislators who in 1833 voted £20,000 a year to aid in building school-houses, never supposed that the step they then took would lead to forced contributions, local and general, now amounting to £6,000,000. They did not intend to establish the principle that A should be made responsible for educating B's offspring; they did not dream of a compulsion which would deprive poor widows of the help of their elder children; and still less did they dream that their successors, by requiring impoverished parents to apply to Boards of Guardians to pay the fees which School Boards would not remit, would initiate a habit of applying to Boards of Guardians and so cause pauperization."<sup>37</sup> The State having done one thing, will always ask itself, why can it not do the other? For example, the state having enacted a law for "...inspecting lodging houses to limit the number of occupants and enforce sanitary conditions, it goes on ..... to inspecting all houses below a certain rent in which there are members of more than one family, and are now passing to a kindred inspection of all small houses."<sup>38</sup> By so doing, the state tends to pass more legislation hostile to liberty.

Not only precedent necessitates the spread of legislative action, but also the urge to fight or supplement ineffective acts of parliament and to deal with evils arising from them. For quite long in the past, laws have been passed to check intemperance, much improvement has not been noticed, now those ineffective laws are being supplemented by restrictions on the sale of alcoholic liquors, and to deal with the evils of drunkenness, laws are passed to prevent the sale altogether locally. The extension of such policy by the state gives the impression that it should step in



wherever anything is faulty in the society. "Every extension of the regulative policy involves an addition to the regulative agents - a further growth of officialism and an increasing power of the organisation formed of officials."<sup>39</sup>

As their number increases, it becomes harder for the citizens to resist them. The power of resistance of the regulated part decreases in a geometrical ratio as the regulating part increases. What is meant by the power of the regulated part decreasing in geometrical ratio? It implies that the weight of small body of officials is greater than that of an individual. It is clear that "a comparatively small body of officials, coherent, having common interest, and acting under central authority, has an immense advantage over an incoherent public which has no settled policy, and can be brought to act unitedly only under strong provocation."<sup>40</sup> The sentences of transportation passed on the Tolpuddle Martyrs in 1834 for taking a public oath of loyalty to their trade union provides a good example of this view. The strength of state officials was stronger than those of the martyrs and that was why resistance was impossible.

Besides the decrease in geometrical ratio of the power of resistance of the regulated power, the private interests of many in the regulated part itself, makes the change of ratio still more rapid. The introduction of competitive examination for the Civil Service is a good illustration of this view. When it became a rule for people to take an examination before employment, parents wanted their sons educated in such a way as to pass the examination. Its good prospects made people who had objected, accept it with some tolerance because it offered the best jobs for their dependents. "Any one who remembers the numbers of upper-class and middle-class families anxious to place their children, will see that no small encouragement to the spread of legislative control is now coming from those who, but for the personal interests thus arising, would be hostile to it."<sup>41</sup> Those on the lower grades of the social ladder tend to support such state schemes because of the assistance the state agency will give them. Any public assistance promised or

given by the state, nourishes the hope that it will give more and hence the support those people on the lower social scale give to such schemes. Influences of these nature tend to increase corporate action and to decrease individual action.

This increase of state activities tends towards enslaving individuals. The state is continuously narrowing the field of individual free action by constant legislative actions. Measures used include, for example, housing legislation supported by the industrial dwellings act; land nationalisation and state-ownership of the railways.<sup>42</sup> From these, Spencer observed that "evidently then, the changes made, the changes in progress, and the changes urged will carry us not only towards state-ownership of land, and dwellings and means of communication, all to be administered and worked by state agents; but towards state usurpation of all industries: the private forms of which disadvantaged more and more in competition with the state, which can arrange everything for its own convenience, will more and more die away; just as many voluntary schools, in presence of Board schools."<sup>43</sup> The ultimate picture, if unchecked, will portray a state of affairs where every activity in the society is centrally controlled. This condition is akin to state socialism. Socialism is not desirable because it involves slavery, and as such limits the freedom of individuals.

Spencer foresaw the evils of centralized social democracy and the general pattern of political thought during that period was against socialism. Adam Smith asserted that central authority was incompetent to decide on a proper distribution of resources. He described the mistake which Colbert - the famous minister of Louis XIV - made in his (Colbert's) attempt to direct the industry of France in support of his declamatory views against socialism. In his words, "that minister had unfortunately embraced all the prejudices of the mercantile system, in its nature and essence a system of restraint and regulation, and such as could scarce fail to be agreeable to a labourious and plodding man of business, who had been accustomed to regulate the different departments of public offices, and to

establish the necessary checks and controls for confining each to its proper sphere. The industry and commerce of a great country he endeavoured to regulate upon the same model as the departments of a public office; and instead of allowing every man to pursue his own interest his own way, upon the liberal plan of equality, liberty and justice, he bestowed upon certain branches of industry, extraordinary privileges, while he laid others under an extraordinary restraints."<sup>44</sup> Such a minister, Adam Smith pointed out as assuming, "...an authority which could safely be trusted not only to no single person, but to no council or senate whatever, and which would no where be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it."<sup>45</sup> In a similar fashion Bentham, Malthus, Ricardo and Nassau Senior all opposed this system of centralised social administration.

Summing up, Spencer insisted that the miseries people suffered under the present social organization could not be remedied by artificial aids. Exposing individuals to the assistance of the welfare state entailed substituting one kind of evil for another. People tended to surrender their liberty in proportion to the kind of material welfare they received from the state. Any form of co-operation planned to provide welfare would entail some regulation and further involve submission to the regulating body. For the regulation to be efficient, it should be strict, and such a device might explode into a condition where the relation between the individual and the state was similar to one between slave and master.

Does a democratic set-up not exist, where the ruling body is elected by individuals ? If it does, is it not a guarantee against slavery ? Being thus elected, one may argue that the control of the ruling body will not exceed what is needful for the individuals. Nevertheless this slave-like control will still exist. Firstly, as every individual has a share in electing the regulating body, it shows that every individual will be a slave to the society as a whole. Such a relation existed in militant societies, and under "quasi-popular forms of government." "In ancient Greece the accepted principle was that the citizen

belonged neither to himself nor to his family, but belonged to his city - the city being with the Greek equivalent to the community. And this doctrine, proper to a state of constant warfare, is a doctrine which socialism unawares re-introduces into a state intended to be purely industrial."<sup>46</sup> The services of every individual belonged to all, and the labourer was rewarded not according to his labour but according as the state thought fit. This device was not a guarantee but tantamount to slavery.

Moreover, the administration designed will not work the way it is planned, since it is to be based on the nature of individuals in the society. The defects of human beings will not fail to show themselves. "The love of power, the selfishness, the injustice, the untruthfulness which often in comparatively short time, bring private organisations to disaster, will inevitably, where their effects accumulate from generation to generation, work evils far greater and less remediable; since, vast and complex and possessed of all the resources, the administrative organisation once developed and consolidated, must become irresistible."<sup>49</sup>

Against these ideas, which claim that socialism limited individual freedom, Hyndman<sup>48</sup> argued that it did not enslave the individual as Spencer asserted but yielded "full and never ending freedom". Taking into consideration the existing inequalities coupled with social effects of industrialization, he did not agree firstly with Spencer's individualistic ideas about leaving things to the free play of "supply and demand" in the market and secondly his notions of "Survival of the fittest". Hyndman stressed that capitalists' exploitation of the masses would continue so long as producers were given the liberty to control either collectively or individually the means of production; so long as the mass of labourers were obliged to sell their labour to another class in order merely to subsist; so long as social and economic affairs were left entirely to be controlled by the iron law of competition. Accordingly, he urged a greater increase in state interference in order to protect the liberty of the masses.

Contrary to Spencer's views, his thesis affirmed that the misery and idleness that the poor suffered, were no fault of their own but a consequence of industrialization and economic depression. It was a phenomenon not only limited to Britain but which could be observed in other industrialized societies. He did not see anything wrong in the regular legislative interference with social affairs which Spencer felt was hostile to liberty. Such interference, he emphasized, was well intended for the general good of the community. It was planned "to check the frightful tyranny of a profit making class.", and not "disastrous" to freedom as Spencer conceived. He pointed out further, that the "corporate action" Spencer ought to fear was not that of the state but that arising from large corporations like the railways, gas and water companies which were often outside popular control. All in all, he perceived that state control and employment - when the state itself was an organized democracy and class distinctions ceased - need not imply slavery but liberty.

Having discussed Hyndman's reply to Spencer's criticism of socialism and its effects, I will go on to review Spencer's ideas about the unlimited authority of parliament. Most supporters of unconditional subordination of the citizen to a ruler, are still influenced by the old superstitious beliefs held when the rights of a ruler were considered to originate from God. "The great political superstition of the past was the divine right of kings. The great superstition of the present is the divine right of parliaments i.e. of majorities."<sup>49</sup> Some people while forsaking the old theory relating to the source of state-authority, still believe in that unlimited extent of state-authority which properly followed the old theory, but does not rightly accompany the new one. Unrestricted power over subjects allotted to the ruler, when he was held to be God-sent, is now ascribed to the ruler when he is no longer regarded as God-sent. In Spencer's views, this view about the unlimited authority of parliament considered under modern ideas, is baseless. Similar to Locke, Spencer opposed the absolute power of the sovereign.

Examining the notion of sovereignty as maintained by those who did not support the supernatural origin of sovereignty, Spencer felt, required a review of Hobbes's argument. Hobbes postulated that - during the time men live without a common power to keep them all in awe, they are in that condition which is called war ..... of every man against every man .....<sup>50</sup> - For Spencer, this plea was untrue because there were some small uncivilised societies in which without any ruler, maintain peace and harmony better than they were kept in societies where such a power existed. However, accepting this view for purposes of argument together with Hobbes's idea of the pact by which people surrendered their primitive freedom of action, surrendered themselves to the will of the ruling power on one hand, and on the other consenting also to the view that such a pact once made was eternally binding, he proceeded to consider the conclusion reached by Hobbes.

Hobbes judged that-for where no covenant hath preceded, there hath no right been transferred, and everyman has right to everything; and consequently, no action can be unjust. But when a covenant is made, then to break it is unjust: and the definition of injustice, is no other than the not performance of covenant.... Therefore before the names of just and unjust can have place, there must be come coercive power, to compel men equally to performances of their covenants, by the terror of some punishment, greater than the benefit they expect by the breach of their covenant<sup>51</sup>. From Hobbes's postulate, he observed two significant implications. "One is that state-authority as thus derived, is a means to an end, and has no validity save as subserving that end: if the end is not subserved, the authority, by the hypothesis, does not exist. The other is that the end for which the authority exists, as thus specified, is the enforcement of justice - the maintenance of equitable relations."<sup>52</sup> It could then be deduced that the state had no warrant to coerce its citizens besides that which was required for preventing direct and indirect aggressions and for

protecting against external enemies.

There is another general notion held by many people. This notion declared that "the divine right of parliament means the divine right of majorities."<sup>53</sup> The assumption here as Spencer conceived is that the majority has an unlimited power. He went on to refute this idea. Reducing the society to an incorporated body for illustration purposes, he saw from its organization that<sup>54</sup> members of such a body bent their will to the will of the majority in all matters related to the fulfilment of the objects for which they were incorporated; but in no others. This illustration demonstrates that the power of the incorporated body and hence the state is limited. Supposing this view is objected to, on the basis that as there is no such deed by which the members of a society are bound, hence there is no specification of purposes for which the body is formed, hence no limits exist, it only follows that the unlimited power of the government is justified. Nevertheless, the doctrine of social contract as expressed by Hobbes was baseless because if there had been such a contract, it would not be binding eternally.

The question is, what makes the minority yield to the wishes of the majority besides the latter's superior force ? ".....we have to find, not a physical justification, but a moral justification, for the supposed absolute power of the majority."<sup>55</sup> There must necessarily be a fundamental agreement of some kind, from which the powers and obligations of the majority and minority can be derived. But on what questions do they fundamentally agree ? In his views, they co-operate in order to resist aggression or invasion, i.e. in a sense, to provide protection for people and their property. Besides co-operation for protection, they would also unite for the proper use of the territory they lived in. Whatever the system of land ownership, whether owned on the old primitive communal pattern, or in private ownership, the decisions of the majority prevail.

Spencer's argument about natural rights carried him into the doctrine of a social contract. In Social Statics he regarded the

state as a joint-stock concern, which every citizen had the right to ignore, if the citizen desired.<sup>56</sup> This view indirectly introduces the idea that there is an agreement tacitly entered into between the state and its members. Similarly, in Man versus the State, contrary to Bentham's view, he resorted to moral justification for the institution of sovereignty and its limitation. While Bentham affirmed that people obey the sovereign power because what they would gain by obeying was greater than what they would suffer by disobeying,<sup>57</sup> Spencer insisted that the minority obeyed the majority not because of physical strength of the majority but because it was in accordance with morality.<sup>58</sup> Hobbes and Locke argued that it was in the interest of the people to obey civil laws and honour their pact as failure to do so would oppose the end for which the pact was made.<sup>59</sup> Besides morality, there must be an agreement between the majority and the minority. Practically, they all will agree to co-operate in defending their territory against external aggression and in protecting their persons and property against internal violence and fraud. To this extent, then, the submission of the minority is valid and legitimate; beyond this point such submission is unjust and illegitimate.

Spencer was prepared to accept that the will of parliament did in fact represent the will of the majority, although because of the limited nature of the franchise when he wrote, this was very far from being the case. He was more concerned to argue that, no matter how large the majority in whose name parliament speaks, there were still limits to its authority.

Having thus set limits (to his own satisfaction) "to show the proper sphere of government", he went on to revive what he called "a dormant controversy" - that concerning natural rights. While a whole school of legists in the Continent held to the belief that individuals have natural rights, some English philosophers held a contrary view. Professor Jevons, in his work - The State in Relation to Labour, asserted that - the first step must be to rid our minds of the idea that there are any such things in social matters as abstract rights -.<sup>60</sup> Similarly, Mr. Mathew Arnold, in an



article, averred that - An author has no natural right to a property in his production. But then neither has he a natural right to anything whatever which he may produce or acquire -. <sup>61</sup> Bentham affirmed "...that government fulfils its office [by creating rights which it confers upon individuals; rights of personal security, rights of protection for honour, rights of proerty; etc.] <sup>62</sup>

Spencer argued that Bentham's propositions were difficult to sustain on the following grounds. Firstly, they were difficult to sustain because of their fantastic nature. "The sovereign people jointly appoint representatives, and so created a government; the government thus created, creates rights; and then, having created rights, it confers them on the separate members of the sovereign people by which it was itself created ! " <sup>63</sup> Secondly, Bentham asserted that government fulfilled its office by creating rights. Spencer pointed out that two meanings were deducible from the word creating. Either it meant the production of something out of nothing, or it implied giving form and structure to something which already existed. The first meaning was unacceptable because it was beyond the power of the government to create something out of nothing. On the other hand, if the government shaped something pre-existing according to the second meaning, what was that something which it shaped ? It was still difficult to determine.

Assuming that Bentham meant that a group of individuals, "... , who severally wish to satisfy their desires, and have as an aggregate, possession of all the sources of satisfaction, as well as power over all individual actions, appoint a government, which declares the ways in which, and the conditions under which, <sup>64</sup> individual actions may be carried on and the satisfactions obtained." It implies that each man exists in dual capacity. In his private capacity, he is subject to the state, i.e. he is one of those who receive rights from the state, and in his public capacity, he is one of the sovereign people who appoint the state, i.e. he participates through the government which he in conjunction with

other people appoint, in giving rights. For illustration purposes, "Let the community consist of a million men, who, by the hypothesis, are not only joint possessors of the inhabited region, but joint possessors of all liberties of action and appropriation: the only right recognised being that of the aggregate to everything. What follows ? ....As the government, in Bentham's view, is but an agent; the rights it confers are the rights given to it in trust by the sovereign people. If so, such rights must be possessed en bloc by the sovereign people before the government, in fulfilment of its trust, confers them on individuals; and if so, each individual has a millionth portion of these rights in his public capacity, while he has no rights in his private capacity. These he gets only when all the rest of the million join to endow him with them; while he joins to endow with them every other member of the million ! "65

Spencer argued that Bentham's view could only be dismissed as absurd while it was insisted that individuals had natural rights. There were various social phenomena which could be cited to support this view. Anthropological studies show that before government existed, people's conduct was regulated by custom, "...and when government arises, its power is limited by them [customs]"66 These customs not only limited the power of rulers but were said also to respect rights - but only in private property. "Now, among the customs which we thus find to be pre-governmental, and which subordinate governmental power when it is established, are those which recognise certain individual rights - rights to act in certain ways and possess certain things."67 Comparative sociology discloses as well, that "along with social progress it becomes in an increasing degree the business of the state, not only to give formal sanction to men's rights, but also to defend them against aggressors."68 These apart, comparative government indicates uniformity in the rights conferred by different governments.

History shows that "...along with increase of industrial activities, and implied substitution of the regime of contract for the regime of status, and growth of associated sentiments, there

went .... a decrease of meddling with people's doings. Legislation gradually ceased to regulate the cropping of fields, or dictate the ratio of cattle to acreage, or specify modes of manufacture and materials to be used, or fix wages and prices, or interfere with dresses and games [except where there was gambling], or put bounties and penalties on imports or exports, or prescribe men's beliefs, religious or political, or prevent them from combining as they pleased, or travelling where they liked. That is to say, throughout a large range of conduct, the right of the citizen to uncontrolled action has been made good against the pretensions of the state to control him. While the ruling agency has increasingly helped him to exclude intruders from that private sphere in which he pursues the object of life, it has itself retreated from that sphere; or, in other words - decreased its intrusions."<sup>69</sup> Common law recognises the law of nature as the source of all laws. With all these facts at hand, it could be concluded that individuals had natural rights.

He moved on to reinforce the doctrine of liberty biologically. Having tried this question in the "court of politics" it is desirable to try it as well in the "court of science - the science of life" before complete acquittal. "Animal life involves waste; waste must be met by repair; repair implies nutrition. Again, nutrition pre-supposes obtainment of food; food cannot be got without powers of prehension, and, usually of locomotion; and that these powers may achieve their ends, there must be freedom to move about."<sup>70</sup> Again, if it is generally accepted that life brings more pleasure than pain, i.e. if it is worth living, then the actions by which life is maintained are justified. Accordingly, freedom is required for those actions. "Those who hold that life is valuable, hold, by implications, that men ought not to be prevented from carrying on life-sustaining activities. In other words, it is said to be [right] that they should carry them on, then, by permutation, we get the assertion that they "have a right" to carry them on. Clearly the conception of [natural rights] originates in recognition

of the truth that life is justifiable, there must be a justification for the performance of acts essential to its preservation; and therefore, a justification for those liberties and claims which make such acts possible."<sup>71</sup>

What obtains in the life of the individual, applies to that of the society. The main prompter which makes people live in groups is advantages to be derived from co-operation.<sup>72</sup> By its medium people can always get what they lack. The possibility of its working well, depends on the fulfilment of contracts tacit or overt. This form of co-operation exists in any form of social organization. It is then desirable to leave them free but enforce their fulfilment. Enforcement of contracts entered upon implies enforcement of rights, as a breach of it can be regarded as an indirect aggression. For example, supposing a man goes to a shop to buy a packet of tea. He is given the tea and instead of paying for it, he walks away with it (maybe unnoticed by the shopkeeper). Definitely, such a person has broken the contract entered with the shopkeeper. The seller on the other hand, is injured because he is deprived of something which he possesses, without receiving the equivalent bargained for. "It results then that to recognize and enforce the rights of individuals is at the same time to recognize and enforce the conditions to a normal social life."<sup>73</sup>

Spencer pointed out like Mill, that society was a growth and not "an artefact".<sup>74</sup> He was convinced that the conception of the society as a manufacture was responsible for the sins of legislators, because it set them manufacturing, and in most cases with bad results. Just as Adam Smith maintained that the relation between capital and production could not be improved by artificial means, Spencer strongly urged the vital connexion between institutions and national character. The point which he was striving to make here is that no legislation can do any more with institutions than national character allows. Whatever institutions are established, natural

rights have their precedence over them.

All in all, Spencer had in fact, painted the true picture of various inroads the state was making into people's freedom during the period he was writing. He held the same view like other political philosophers of this age about the tyrannical power of the majority which if left unchecked would delimit the sphere of individual action. To crown all his contributions towards the history of political thought, he had expressed vividly in Locke's terms, the supremacy of natural rights over all social institutions, and tersely opposed the utilitarian ideas about the sovereign power being absolute.

In his essay on - From Liberty to Bondage - Spencer discussed the following points. Firstly, he considered the historical changes people had undergone in their struggle for freedom in social affairs, and observed that the more things improve the louder were exclamations about their badness. Secondly, he asserted that democracy was not a sufficient guarantee for individual freedom because the power of the majority could increase and become tyrannical and thirdly, opposed the idea of socialism on the grounds that it limited individual freedom.

Spencer affirmed that the degree of freedom, an individual enjoyed depended on the amount of coercion he was subjected to. "When he is under the impersonal coercion of nature, we say that he is free; and when he is under the personal coercion of someone above him, we call him, according to the degree of his dependence, a slave, a serf, or a vassal."<sup>75</sup> People work together in a society under either of these two forms of control. In some cases, these forms of control are mixed, while in others they are separated. On this basis, he deduced that social life must be carried on on the basis of either voluntary or compulsory co-operation, or what Sir Henry Maine described as the Systems of Contract or of Status respectively.

What are the features of these systems ? In the system of voluntary co-operation, "...the individual is left to do the best

he can by his spontaneous efforts and get success or failure according to his efficiency....."<sup>76</sup> In every modern society, industry is carried on by voluntary co-operation. Instead of forcing people to work for a living, a contract is entered upon both by employers and employees. This necessitates working together by consent. There is no one to force terms of to force acceptance of those terms. Though people work according to contract, this system is not devoid of social stratification. Employers and employees are still arranged according to their grades.

As regards the system of compulsory co-operation, every individual has his appointed place; his share of food, clothing, shelter and works under coercive rules. It is marked by absolute obedience of an inferior grade to a superior one. The individual has no freedom except that given by an authority. Social stratification is not lacking, but it is quite unlike the social gradation in the system of voluntary co-operation. This form of co-operation was in the past prevalent in various societies, due to incessant wars they had to wage. In order to fight such wars successfully, the structure of societies was militant.

Compulsory co-operation relaxed as societies advanced and was replaced by a system of voluntary co-operation. The social structure produced by war and appropriate to it changed slowly to suit that produced by industrial life. When the number of people engaged in offensive and defensive activities decreased, those employed for production and distribution increased. The latter settled mainly in towns where the influence of the militant class was less and carried on industrial production under voluntary co-operation. Coercion lost most of its importance and was gradually replaced by exchange and free contract. These features spread throughout the community, and money became the medium of exchange. Divisions of rank became less rigid and class power diminished.

No one measure of control is permanently engrafted to the society. It is subject to change and very often alternates between systems of voluntary and compulsory co-operation. This desire to change is not only common with societies but with individuals as well. At the outset, society is controlled by the regime of status. Having emancipated itself from the hard discipline of such a regime, it settles under the regime of contract. But not for ever: "as fast as voluntary co-operation is abandoned compulsory co-operation must be substituted."<sup>77</sup> Labour must always have a type of organization. Either it is given the freedom to work uncoerced, or its freedom of action is regulated by authority.

Contrary to his earlier views, Spencer conceived that "regulative apparatus" was an important feature of all advancing organizations. This was important to hold various parts of the organization together, and in order to do its work effectively, it must be extensive, elaborate and powerful. In a democracy, it is required for carrying on national defence, maintaining public order and personal safety, but in socialism, besides the above functions, it controls all factors of production and distribution. Under the former institution, with its free contracts, production and distribution are left to - "demand and supply, and the desire of each man to gain a living by supplying the needs of his fellows."<sup>78</sup> If this system were to be "...replaced by a regime of industrial obedience, enforced by public officials,"<sup>79</sup> it would involve a vast machinery of administration and control to the extent of limiting individual freedom of action.

From experience of small social organizations, he observed that the executive power could be tyrannical as it increased in power. This was a common day to day experience in society. "The truth that the regulative structure always tends to increase in power, is illustrated by every established body of men."<sup>80</sup> The organization of social institutions showed how officials of such institutions, directed their affairs with but little resistance,

even when most members of the society disapproved. Joint-stock companies particularly the management of railway companies provide a good example. "The plans of a board of directors are usually authorized with little or no discussion; and if there is any considerable opposition, this is forthwith crushed by an overwhelming number of proxies sent by those who always support the existing administration. Only when the misconduct is extreme does the resistance of shareholders suffice to displace the ruling body."<sup>81</sup> Trade union organization is another example. In this, too, the "regulative apparatus" is very powerful. Members who disagree with the policy of the union officials, ultimately yield to the authorities they have set up. They yield because seceding from the union will mean making enemies of their fellow workers and often losing their employment. This view points out the evils attending James Mill's idea<sup>82</sup> - namely that individuals could best secure the greatest possible quantity of the produce of their labour by combining and delegating to a small number the power necessary for protecting them.\*

This official tyranny is not only limited to social and economic organizations but can be observed as well in political ones. The Liberal party had relinquished "...the original conception of a leader as a mouthpiece for a known and accepted policy, thinks itself bound to accept a policy which its leader springs upon it without consent or warning - a party so utterly without the feeling and idea implied by liberalism, as not to resent this trampling on the right of private judgement which constitutes the root of liberalism - ..... a party which

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\* Though this small number was for James Mill, a government, I am treating trade unionism or joint stock companies as a micro-society and the small body of people controlling either as a micro-state. Accordingly, the evils observed in these micro-societies can be experienced in macro-societies.



vilifies as renegade liberals, those of its members who refuse to surrender their independence."<sup>83</sup> "If then, this supremacy of the regulators is seen in bodies of quite modern origin, formed of men who have, in many of the cases instanced, unhindered powers of asserting their independence, what will the supremacy of the regulators become in long-established bodies, in bodies which have grown vast and highly organized and in bodies which instead of controlling only a small part of the unit's life, control the whole of his life?"<sup>84</sup> Tyrannical officialism develops because people are not endowed with those sentiments needed to prevent its growth.

Direct proofs of tyranny are also furnished by those who pledge themselves to socialistic ideas, and who undertook to fight the cause of the operative classes. They show passive interests in the affairs of the classes. These passive interests take the form of imposing regulations which limit the numbers of the latter being admitted in a trade. Such regulations do not show any sign of altruism which marked socialism. Instead of practising actual socialism, they are carried away by the pursuit of private interest.

With passive disregard of other people's claim went active encroachment on them. For example, in trade union organization, where members in order "that they may conquer in the struggle they surrender their individual liberties and individual judgements, and show no resentment however dictatorial may be the rule exercised over them."<sup>85</sup> If this tendency towards socialism were left unchecked, the individual stood a good chance of being subjected to the vigorous rule of official oligarchy. Society might tend to retrogress instead of progressing with such a leaning towards socialism.

Spencer did not think that certain parapolitical systems such as trade unionism, joint-stock companies which people created partly to protect their rights and partly to improve themselves

with, were able to cure the social evils\* they (the people) suffered in the process of adapting themselves from an ante-social to an ideal state.

Can there be an immediate cure for social evils? "It is possible to remove causes, which intensify the evils; it is possible to change the evils from one form into another; and it is possible, and very common, to exacerbate the evils by the efforts made to prevent them; but anything like immediate cure is impossible."<sup>86</sup> Mankind lives in a civilized state where his regular needs are satisfied by continuous labour. The nature required for this state is quite different from that needed for the ante-social state. Consequently long continued pains are inevitable in changing from one social state to another. What mankind actually requires for a well-ordered social action is the sentiment of justice. This sentiment "...insists on personal freedom and is solicitous for the like freedom of others; and there at present exists but a very inadequate amount of this sentiment."<sup>87</sup> Consequently, there is the need for subjecting mankind to a social law which makes them altruistic. This social principle requires every individual to carry on his activities with due regard to similar claims of others to carry on theirs, and which requires every individual to suffer any evil arising either from his social activity or inactivity.

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\* Vide p. 139 above. Here he argued that even the state as a political system could not cure social evils by legislation. The state he affirmed was antagonistic to Liberty.

CONCLUSION.

This thesis started with an analysis of various traditional ideas about freedom and the social condition of the people which could have formed the background to the writings of John Stuart Mill and Herbert Spencer. This was followed by an analysis of their main works showing their ideas of liberty. In this concluding chapter, a discussion will be made firstly about: what Mill and Spencer conceived to be threats to individuals' freedom which urged them to develop principles which would justify any artificial interference with individuals' liberty. If the state and society were threats to freedom, did other thinkers of the same era perceive those bodies as threats also? If they did not, how much did their political leanings influence their views? Secondly, what criticisms could be lodged against Mill and Spencer? What did other critics say? Thirdly, admittedly their views are of historical importance, but what are their relevance to contemporary Britain? Fourthly, what are the relationships between law (state) and liberty on one hand, and freedom and society on the other? Could they be reconciled? Finally, either Mill and Spencer were advocating freedom, or, having surveyed the condition of the working classes, were pleading in the name of liberty that these classes ought to be recognised as groups of individuals with some equal personal rights - such as rights to self-independence, freedom - by the privileged classes.

Threats to Freedom. Mill and Spencer observed from the manner government functions were growing on one hand, and on the other, the influence public opinion and feeling were having on the masses, that the sphere of free action of the individual was narrowing whilst that of the state was increasing. T.H.Green, writing during the later part of the 19th century saw this phenomenon with a difference. He perceived that the conditions under which people lived, particularly the working class, did not allow a free exercise of their faculties because of less protection given them by laws.

Consequently, whilst Mill and Spencer agreed that an individual's freedom would suffer if state function and activities increased unchecked, Green argued that an individual's freedom would be limited if the state did not interfere to maintain an environment without which a free exercise of his faculties was impossible. Though Spencer thought non-interference on the part of the state necessary and invariable, Mill could allow some growth of state functions. While Mill perceived two threats to individual liberty, Spencer on the other hand, recognised one,

Mill discerned two threats originating from the society and the state respectively. ".....there are, in our own day, gross usurpations upon the liberty of private life actually practiced, and still greater ones threatened with some expectation of success, and opinions propounded which assert an unlimited right in the public not only to prohibit by law every one which it thinks wrong, but, in order to get at what it thinks wrong, to prohibit a number of things which it admits to be innocent."<sup>1</sup> Spencer beheld the state as the only massive threat against individual freedom. Hence, he maintained that "every extension of the regulative policy involves an addition to the regulative agents - a further growth of officialism and an increasing power of the organization formed of officials."<sup>2</sup> It must not be forgotten that most thinkers thought at this time that the greater the quantity of power allowed an individual or a group of individuals in power, the greater would be the chances of their abusing it. Such a growth of officialdom, and increased centralization may tend to subject the individual to the rigorous rule of official oligarchy. Hence, Spencer tried to devise a principle which would form a law of right relationship<sup>3</sup> in the society and it was the duty of the state to ensure that it was honoured, though it would be remarked that Spencer at a later stage of his life came to see some danger in voluntary associations.<sup>4</sup>

Mill reasserted the claims of individual personality against the new leviathan of excessive government authority and of the prospective tyranny of mass opinion demanding conformity and

uniformity in an industrialised society. He argued that if these claims were to be preserved, there should be a limit to the legitimate interference of collective opinion with individual independence. To mark off that limit led to the endeavour to divide a person's action into two - self and other - regarding actions. His views suggest that the legitimate interference of collective opinion or government ought to be limited to other-regarding actions of an individual.<sup>5</sup>

In contrast to Mill and Spencer, Green did not perceive government nor society, as a threat to individual's freedom, though he did not observe as Mill did that the interests of government could be different from those of the society. He regarded civil laws "as the deliberate voice of society" and it was essential that they should be exercised to ensure every person his freedom of making the best of himself. But why was such interference necessary? Green pointed out that people had not reached a stage where their welfare should be left to "the spontaneous action of individuals". "Until such a condition of society is reached, it is the business of the state to take the best security it can for the young citizens' growing up in such health and with so much knowledge as is necessary for their real freedom."<sup>6</sup>

How could the various reactions on the part of these thinkers to these threats be explained? They could be interpreted in the light of these factors: firstly, the trend of social affairs when they were writing, and secondly, their particular conception of liberty and how each tried to derive it. Mill and Spencer began their championship of freedom before the middle of the 19th century when the liberty of the mass to participate in the regular process of government was very much limited. Green on the other hand wrote during the later part of the 19th century, when regular participation of that class in legislative processes had been enhanced. He was convinced that in attaining such a freedom, any restraint an individual imposed on himself was no restraint as such because he willed it. The freedom a person had, did not

take the shape of one which a master allotted his servant or slave but one in which the former and the latter gave themselves as equals.

Hence, Green pointed out that "the danger of legislation, either in the interest of a privileged class or for the promotion of particular religious opinions, we may fairly assume to be over. The popular jealousy of law, once justifiable enough, is therefore out of date. The citizens of England now make its law."<sup>7</sup>

Both Mill and Spencer defined liberty as that process by which a man pursued his own good in his own way so long as his actions did not attempt to deprive others of the same privilege. This was their conception of freedom, and they also regarded it as an end in itself. Green gave a peculiar and different definition,<sup>8</sup> and did not accept their meaning of freedom as an end in itself but as a means. Liberty as an end, ought to be directed towards the liberation of the powers of all men equally for the contribution to a common good. A consideration of Mill's and Spencer's conception of freedom suggests that state interference is not encouraged. The state can only exist as an umpire to ensure that no body's action causes harm to others. Green's idea of liberty on the other hand supports government interference in order to make certain that every person has the freedom to contribute to the common good.

Mill on one hand was prepared to show that a person's freedom did not belong to him as an abstract right but was derived from utility,<sup>9</sup> and as such was willing to encourage some growth of state functions provided those functions were directed towards the permanent interests of mankind as progressive beings. On the other hand, Spencer argued that a person's liberty belonged to him as a natural right, and consequently, no state could justifiably interfere with it.<sup>10</sup> Green held quite a different view. He gave the impression that a person owed his freedom as a right to the society. If liberty were derived from the society, civil laws (and hence the state which is "a deliberate voice of society") could justifiably

interfere or increase their functions.

Mill and Spencer versus Green.

T.H.Green is generally heralded as marking a distinctive break with the traditional idea of liberty. Does he really provide a new idea about freedom ? How does he compare and contrast with Mill and Spencer ?

T.H.Green considered freedom as "a positive power or capacity of doing or enjoying something worth doing or enjoying, and that something that we do enjoy with others."<sup>11</sup> Freedom is a positive thing and does not merely imply an absence of restraint. Hence, he could argue that a savage could not be counted as being free because he was not subjected to any restraint imposed by society but that of nature. Accordingly, restraint imposed by society formed an essential feature towards the realization of freedom, and to submit to these restraints became the first step in true freedom because it was the first step towards the full exercise of the faculties with which man was endowed.

Applying this idea of liberty to the notion of contract, he observed that freedom of contract, liberty, in all the forms of doing what a person will with a person's own, was valuable only as a means to an end. That end was what he considered as freedom in the positive sense. Put in other words, he regarded it as the liberation of the powers of all men equally for contribution to a "common good".<sup>12</sup> He insisted that no person, in whatever social or economic function the person was engaged, had a right to contravene this end. The person would not be tempted to go against this end, if he realised that the means of pursuing his interest were guaranteed him by the society. This guarantee, he asserted, was built on the idea of common interest. "Everyone has an interest in securing to everyone else the free use and enjoyment and disposal of his possessions, so long as that freedom on the part of one does not interfere with a like freedom on the part of others, because such freedom contributes to that equal development of the

faculties of all which is the highest good of all."<sup>13</sup>

Green's views would tend to indicate that any artificial hindrance to a person's ability to contribute to the common good would form a general sanction for state interference. But this was not the case as Richter<sup>14</sup> observed. It was not what Green meant. He did not in fact maintain a steady principle but tended to waver between early 19th century traditional individualism and collectivism so long as either led to the development of character. Neither did he seem to establish any principle for marking off justifiable limits of state interference.

Weinstein,<sup>15</sup> and Richter have both shown how much Green failed in giving freedom a cogent definition. Holding these criticisms valid, how far did Green's views compare or contrast with those held by Mill and Spencer? Spencer for example allotted a supervisory post to the state and would encourage it to administer justice when a person interfered with the equal freedom of his neighbour. Freedom to him was essential for the exercise of an individual's faculties, in short the development of the individual. It was observed that Green asserted that liberty ought to be given people for the development of their faculties which enabled them contribute generally towards the common good. He argued that it was the duty of government to maintain conditions without which a free exercise of the human faculties was impossible. A view similar to what Spencer insisted should be the duty of the state, though while Green would go further to encourage state interference by legislation, Spencer would not.

One wonders whether both men were not preaching the same doctrine from different texts. If it were the duty of the state to ensure that every person pursues his interests within his sphere of action, as Spencer stated, was it not maintaining a condition which would enable the individual to exercise his faculties? If it did, was it not the same duty Green allocated to the state? One might say that Spencer was more interested in the improvement of the individual and Green was keener on



enabling the person to contribute towards the common good. But on the other hand, close examination shows that they all come to the same thing. Spencer had earlier told us that society was a fictitious body<sup>16</sup> that what counted was the mass of people composing it. If this were the case, when an individual improved himself, or made a new discovery, would such discovery not serve the purpose of all ?

It is to an extent doubtful whether Green actually departed from the individualist tradition of liberalism. Like Bentham and Spencer, he admitted that an individual formed an important unit of the society, and the latter depended on him for the general good. Any impediment the individual suffered inhibited his powers of contributing to the common good. Society then, suffers a loss. Society is made up of different important units, and the general good of the society depends on these units. When Green affirmed that it was the duty of the state to maintain conditions favourable to the free exercise of a person's faculties in order to enable him to contribute to the common good, was he not repeating the doctrine of individuality which early liberalism preached, though earmarking it with the notion of common good.

As it was pointed out before,<sup>17</sup> Green asserted that a person owed his right to freedom to society. Implying that an individual's freedom depends on social and legal rights and obligations. A view which was shared by Bentham but which Mill did not explicitly state. For Mill, a person's liberty is derived from utility.<sup>18</sup> Hence, Green in his definition of liberty stressed or described freedom as "...a power which each exercises through the help or security given him by his fellow-men, and which he in turn helps to secure for them."<sup>19</sup> As regards freedom of contract, both Mill and Green tended to encourage state interference because there were certain contracts which for the interest of public good should not be executed.

Behind the idea of early liberalism lay the desire to diminish coercion, probably because of the conviction that the

greatest amount of freedom coincides with absence of legislation. Mill observed that an individual's liberty was being subjected to two forms of coercion - one legal, i.e. arising from the state, and the other non-legal, i.e. arising from the society. He admitted that restraints were bad but not to a degree which would necessitate their nullification. Consequently he tried, while allowing a measure of coercion, to develop a principle which would determine the scope of individual freedom. Green tried to meet this issue with his theory of "positive freedom" probably on the assumption that since individual liberty depends on social and legal rights and obligation, it was the duty of a government to secure every person his appropriate sphere of free action. Spencer in line with early liberal thought, regarded the state as a serious threat to the freedom, and would not encourage any extensive interference by the state with individual liberty. Convinced that freedom was a natural right, he argued that the state - an artificial body - would be doing wrong if it interfered with it. All the state should do, was to make certain that no person exceeded his natural limits.

Mill and Green appeared to tackle reality better than Spencer did. Obviously, there was much inequality in society in the 19th century. Without state interference as Mill and Green showed, most people would find that their liberty to pursue their own interest in their own way, or make the most of themselves, was useless. A father, for example, would be behaving foolishly if he bought a car for his son and gave him the freedom to drive the car anytime he wished to do so without ensuring that the son could drive. Spencer, influenced by his ideas of "survival of the fittest", and his particular concept of natural law did not seem to realize this fact.

Criticism:- The political propositions for which Mill is ever remembered are - delimiting the interference of government with individuals' freedom, and asserting the need to maintain a high

degree of individual liberty. But a close examination of Mill's set of doctrines on education tends to oppose his principle of liberty. It does in fact suggest that he was not liberating but advocating domination of the mass or "the mediocre" by the elite. The individuality which he was preaching was one which should be allowed a free scope within the limits fixed by a rational social consensus of higher or elevated minds.

Mill made certain interesting observations on individuality but appeared to make them unattractive by encouraging state interference. Unattractive in the sense that state interference limited the freedom he advocated, and tended to frustrate the individuality he fought for. "...society, ....[he said] has now fairly got the better of individuality and the danger which threatens human nature is not the excess, but the deficiency, of personal impulses and preferences. Things are vastly changed since the passions of those who were strong by station or by personal endowment were in a state of habitual rebellion against laws and ordinances, and required to be rigorously chained up to enable the persons within their reach to enjoy any particle of security. ...[He did] not mean that they choose what is customary in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary. Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds, they exercise choice only among things commonly done: peculiarity of taste, eccentricity of conduct, are shunned equally with crimes: until by dint of not following their own nature they have no nature to follow; their human capacities are withered and starved; they become incapable of any strong wishes or native pleasures, and are generally without either opinions or feelings of home growth or properly their own."<sup>20</sup>

"To give any fair play to the nature of each, it is essential that different persons should be allowed to lead different lives. In proportion as this latitude has been exercised

in any age, has that age been noteworthy to posterity. Even despotism does not produce its worst effects, so long as individuality exists under it; and whatever crushes individuality is despotism by whatever name it may be called..<sup>21</sup>

Mill condemned custom as has been pointed out before,<sup>22</sup> because it limited individual's freedom of choice. "...it is the privilege and proper condition of a human being, arrived at the maturity of his faculties, to use and interpret experience in his own way,"<sup>23</sup> but customs prevented this. Individuals gained no experience in choosing what was best for them because their attempt was inhibited by custom. On this basis, he warned that "human nature is not a machine to be built after a model, and set to do exactly the work prescribed for it, but a tree, which requires to grow and develop itself on all sides, according to the tendency of the inward forces which make it a living thing."<sup>24</sup>

These were not only his observations about individuality, He gathered also from the ideas of Von Humboldt that the two requisites to individuality of power and development were freedom and variety of situations. In order to preserve these requisites, he urged that "...free scope should be given to varieties of character, short of injury to others; and that the worth of different modes of life should be proved practically, when any one thinks fit to try them. It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principle ingredients of human happiness, and quite the chief ingredient of individual and social progress."<sup>25</sup>

Having made these assertions, he proceeded to blur them by encouraging state interference or rather subjecting the individual to the domination of the elite. He would delimit state functions partly because individuals were the best judges of their interests and partly as governments assumed greater functions,

their powers tended to increase. But in matters of education, he would encourage state interference because education being one of "...those things which are chiefly useful as tending to raise the character of human beings. The uncultivated cannot be competent judges of cultivation. Those who most need to be made wiser and better, usually desire it least, and, if they desired it, would be incapable of finding the way to it by their own lights."<sup>26</sup>

In short, "in the matter of education, the intervention of government is justifiable, because the case is not one in which the interest and judgement of the consumer are a sufficient security for the goodness of the commodity."<sup>27</sup>

Realizing that "the primary and perennial sources of all social evil, are ignorance and want of culture,"<sup>28</sup> he warned that they could not be eliminated from the society "by the best contrived system of political checks, necessary as such checks are [designed] for other purposes."<sup>28</sup> Instead, they could be exterminated by "...the unremitting exertions of the more instructed and cultivated, whether in the position of the government or in a private station, to awaken in their minds a consciousness of this want, and to facilitate to them the means of supplying it."<sup>28</sup>

Convinced that a civilized government ought to include the most educated in the society, Mill was led to allocate the function of education to them. Being the best, these elites ought "...therefore be capable of offering better education and better instruction to the people, than the greater number of them would spontaneously demand."<sup>29</sup> The individuality, he was preaching appears to be clamped down to the consensus of opinion formed by the elevated minds in the society.

This view is further substantiated by another of Mill's views. In trying to tell us what he meant by difference of quality in pleasures, or what makes one pleasure greater in amount than another, Mill affirmed that it was the preference of a person who had the knowledge of the two pleasures which really counted, and not what any individual freely thought of them. "Of two pleasures,

if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure. If one of the two is, by those who are competently acquainted with both, placed so far above the other that they prefer it, even though knowing it to be attended with a greater amount of discontent, and would not resign it for any quantity of the other pleasure which their nature is capable of, we are justified in ascribing to the preferred enjoyment a superiority in quality, so far outweighing quantity as to render it, in comparison, of small account."<sup>30</sup> Judging from the condition of the mass in the 19th century, it is disputable whether Mill was really advocating freedom for them to pursue their own interests or pleasure in their own way or to follow the decisions of these elevated minds because they appear the only group which can afford to experience different types of pleasure.

It is in fact difficult to reconcile Mill's set of doctrines on education and his principles of individuality. Perhaps the individuality which he was preaching was only meant for those elites, and not for the mass. As he pointed out: "It does seem, however, that when the opinions of masses of merely average men are every where become or becoming the dominant power, the counterpoise and corrective to that tendency would be the more and more pronounced individuality of those who stand on the higher eminences of thought. It is in these circumstances most especially, that exceptional individuals, instead of being deterred, should be encouraged in acting differently from the mass."<sup>31</sup> Alternatively, his endeavour might be to build a society based on enlightened self-interest and not on diversified mediocrity.

Though this criticism has been passed on Mill, it also explains the difficulty in which most thinkers including Mill himself found themselves. They all admitted that liberty was good and ought to be an end in itself. The problem most of them had to solve was how - firstly, to maximize the scope of individual

freedom and secondly to make it a valuable end. Hobbes and Locke argued that people had by nature equal rights to freedom.<sup>32</sup> Besides having these rights, Hobbes pointed out that they were also self-seeking by nature. Without the existence of a state to control them, there was a tendency for some individuals to encroach on the rights of their neighbours.<sup>33</sup> In order to ensure that every person sought his own interests in his sphere of liberty, it was necessary to create a state. Bentham accepted the necessity of a state though he did not agree that people had natural rights to freedom.<sup>34</sup> In other words, it can be stated that Hobbes, Locke, Bentham held that the solution to the difficulty was provided by creating a government on one hand, and by individuals on the other, obeying the laws of the state.

Mill perceived that the answer to the difficulty involved something more than mere creation of a state. His reason was that the state could be tyrannical to individual liberty. In fact, he observed also, that not only the state but society could be tyrannical. From his particular observation, he saw that ".....in the stage of progress into which the more civilised portions of the species have now entered, it [the idea of freedom] presents itself under new conditions, and requires a different and more fundamental treatment."<sup>35</sup> Accordingly, he endeavoured to supplement the solution offered by his predecessors by developing his self and other-regarding principle. The individual, the state and society have their own spheres of action respectively. Their relationship is rather defined. The latter (the state and society) now has been informed when to justifiably interfere with the scope of individual liberty. In short, the sphere of individual freedom has been maximized (that is in relation to the principle). In Millian sense, this sphere relates to all that concerns the individual. It must be added that he was very cautious about this; hence he did not encourage coercion or any legal sanction in those things which affect a person alone. What the society ought to do is to advise and persuade the person.<sup>36</sup>

How can this scope be made valuable - How can this long-sought for object (freedom) be put in proper use ? Clearly, this object can be made less valuable if misused. The deduction made from Mill's views, namely, subjecting the masses to the consensus of opinion of the elevated minds, suggests that he might have conceived it as the best way of rendering the sphere valuable. This view is substantiated by the fact that Mill was writing during the transitional period - an era of progress. This period according to him was marked by these two features. Firstly, it was a period when traditional beliefs were dying away. Secondly, men required new beliefs and ideas to replace old ones with. In his words: "...this is a feature belonging to periods of transition, when old notions and feelings have been unsettled, and no new doctrines have yet succeeded to their ascendancy. At such times people of any mental activity, having given up their old beliefs, and not feeling quite sure that those they still retain can stand unmodified, listen eagerly to new opinions."<sup>37</sup> It is unlikely that the masses who have had their minds darkened by custom and tradition will have any new ideas or beliefs to propagate in society. The most they will have to offer are the old beliefs and ideas entrenched by custom. It is clear then that in order to learn new ideas and beliefs, these masses require the guidance of the few enlightened individuals. With such an assistance available, they (the masses) will be able to make their scope of liberty valuable.

Due to the growth of social equality and of government by public opinion at this period, he observed that those whose opinions were heard of as the state, were the "Collective mediocrity". Government by such people could only produce a mediocre state and in order to raise the state above mediocrity, it was essential to entrust the state to one or few talented and educated people.

This was how he put it.: "At present individuals are lost in the crowd. In politics it is almost a triviality to say that



public opinion now rules the world. The only power deserving the name is that of masses, and of governments while they make themselves the organ of the tendencies and instincts of masses ..... Those whose opinions go by the name of public opinion are not always the same sort of public..... But they are always a mass, that is to say, collective mediocrity. And what is a still greater novelty, the mass do not now take their opinions from dignitaries in..... state, from ostensible leaders, or from books. Their thinking is done for them by men much like themselves, addressing them or speaking in their name, on the spur of the moment, through the newspapers..... But that does not hinder the government of mediocrity from being mediocre government. No government by a democracy or a numerous aristocracy, either in its political acts or in the opinions, qualities, and tone of mind which it fosters, ever did or could rise above mediocrity, except in so far as the sovereign. Many have let themselves be guided..... by the counsels and influence of a more highly gifted and instructed One or Few. The initiation of all wise or noble things comes and must come from individuals; generally at first from some one individual. The honour and glory of the average man is that he is capable of following that initiative; that he can respond internally to wise and noble things, and be led to them with his eyes open."<sup>38</sup>

The same idea Mill was repeating on his thesis on - The Extension Of The Suffrage.<sup>39</sup> Here, though, he accepted the enfranchisement of the masses as a desirable feature of democracy, he did not only advocate limiting this liberty by certain qualifications necessary for voting but also argued that it was desirable to entrust matters of government to people with superior intelligence.<sup>40</sup>

It is not only <sup>in</sup> Mill that one observes this conflict between individuality and another set of doctrine. It can also be seen in Spencer. Tension tends to appear between society as an organism and Spencer's individualistic views. Drawing his analogy between a social and an animal organism this was what Spencer had to say of society as an organism. "When we say that growth is

common to social aggregates and organic aggregates, we do not thus entirely exclude community with organic aggregates:.... Nevertheless, compared with things we call inanimate, living bodies and societies so conspicuously exhibit augmentation of mass, that we may fairly regard this as characteristic of them both. Many organisms grow throughout their lives; and the rest grow throughout considerable parts of their lives. Social growth usually continues either up to times when the societies divide, or up to times when they are overwhelmed."<sup>41</sup>

He asserted that the principle which should govern the right relationship between people in the society was - "Every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man."<sup>42</sup> Holding this view as the cornerstone of his political discourse, he opposed the idea of national system of education, poor relief because they involved taking money from a person for the benefit of another and hence infringing the rights of the former. In his words - "in as much as the taking away by government, of more of a man's property than is needful for maintaining his rights, is an infringement of his rights, and therefore a reversal of the government's function towards him, and in as much as the taking away of his property to educate his own or other people's children is not needful for the maintaining of his rights, the taking away of his property for such a purpose is wrong."<sup>43</sup>

In his analogy between an animal and a social organism, he showed that the latter depended for its life on mutual-dependence of its constituent parts. How could this mutual dependence be valid if it were wrong for the state to take away part of a unit's property to assist another? If A and B were mutually dependent, and required each other's co-operation, would A leave B to degenerate into a condition in which he would be of no effective assistance to A because C (a state official) had interfered to make the assistance systematic and well organized? Would it not pay A to assist B out of his inferior situation in order to ensure that

their inter-dependence was useful ? Did Spencer condemn such an altruistic act because an authority had interfered for the benefit of its constituent parts ? What would he say if such mutual assistance were left to the spontaneous voluntary action of the parts of the organism ? He had affirmed that mutually-dependent parts constituted the life of the whole, and the life of this whole was produced by the units. Holding this view, it was wrong for him to argue that the whole would be more efficiently maintained by leaving its life to be catered for by the voluntary action of its parts rather than by ensuring that every unit played its role.

In his autobiography<sup>44</sup>, he remarked in an article entitled - Honesty is the best policy - that the life and health of a society were the life and health of one creature. The same vitality existed throughout the whole mass. One part could not suffer without the rest being ultimately injured. These views contradicted his individualistic principle. Realizing that a part of the society could not suffer without the rest being ultimately injured, there was no point in opposing the state in its interference to provide a national system of education, poor-relief or rather delimiting state functions on the basis of that principle.

Again, he told us that a person had the right to ignore the state.<sup>45</sup> Could a unit or a cell ignore the whole mass by way of not performing its function ? If it did would the body function properly ? Considering the last question in the light of his joint-stock theory,<sup>46</sup> it is doubtful if the body would function, when an important cell or cells refused to join the body. These are all tensions, which Spencer's organic theory produce when related to his individualistic ideas.

Spencer turned to admit that "co-operation being in either case [i.e. social and animal organism] impossible without ; appliances by which the co-operating parts shall have their actions adjusted, it inevitably happens that in the body politic, as in the living body, there arises a regulating system, and within itself this differentiates as the sets of organs evolve."<sup>47</sup> Here, he is

stressing the importance of a regulating apparatus for ensuring an effective co-operation among various parts of the body politic. All in all, Spencer at times made statements which tend to render his argument about individualism empty.

On considering his ideas about state and society, it appears that he was not consistent in his concepts of rights. The notion of social contract shows itself at different parts of his writings. For example, he affirmed that the state could be regarded as a joint-stock concern to which people had the right to join or not and the directors of the concern had no other rules to abide by than those set down by its members. Next, he asserted that an individual had a right to ignore the state.

In his words: "If every man has freedom to do all that he wills, provided he infringes not the equal freedom of any other man, then he is free to drop connection with the state - to relinquish its protection, and to refuse paying towards its support. It is self-evident that in so behaving he in no way trenches upon the liberty of others; for his position is a passive one; and whilst passive he cannot become an aggressor. It is equally self-evident that he cannot be compelled to continue one of a political corporation without a breach of the moral law, seeing that citizenship involves payment of taxes, and the taking away of a man's property against his will, is an infringement of his rights. Government being simply an agent employed in common by a number of individuals to secure to them certain advantages, the very nature of the connection implies that it is for each to say whether he will employ such an agent or not."<sup>48</sup> If society as he tended to show were a contract, it followed that rights were inherent in the individual and were absolute and inalienable. But these views appear to contradict the notion of rights when society is regarded as an organism.

Spencer had shown that society was comparable to an animal organism. Apart from this, he affirmed that the essential characteristic which these organisms depict was mutual dependence of its constituent parts and the life of the whole being produced

by its parts. It is deducible from this view, that rights here are relative and derivable from the general welfare.

Again, he asserted that land belonged to the society,<sup>49</sup> and the mere mixing of a person's labour with part of it, did not make the person the owner of the part as Locke maintained. The mere mixing of labour can give the person a better right to the property than any other person and not a sole right unless he can prove that by contributing such a labour, "...he has made his right to... [the property] greater than the pre-existing rights of all other men put together."<sup>49</sup>

Satisfied that he had made a case, Spencer turned to set down a principle consistent with the law of equal freedom which justified an individual claiming a right over a property. This principle demanded "...that, without any infraction of the law of equal freedom, an individual may lease from society a given surface of soil, by agreeing to pay in return a stated amount of the produce he obtains from that soil...., in doing this, he does no more than what every other man is equally free with himself to do - that each has the same power with himself to become the tenant and that the rent he pays accrues alike to all."<sup>50</sup>

Having hired a tract of land under specified terms from the society, the individual, after paying his rent, had a right to claim what the land yields as his property. This, he claimed was justified by the law of equal freedom, and had a claim to the produce of the land as a right, "...because he obtained the consent of the society before expending his labour, and having fulfilled the condition which society imposed in giving that consent - the payment of rent - society, to fulfil its part of the agreement, must acknowledge his title to that surplus which remains after the rent has been paid."<sup>51</sup> In this case, rights are not absolute but tend to be derived from the society. All in all, there is a contradiction. At times, Spencer claimed that rights were absolute and at other times that they were relative.

Influenced by his organic theory, Spencer considered

society a natural phenomenon with natural laws assigned to regulate most aspects of life. The duty of government was accordingly minimal: it extended only to the securing of a free field for the operation of natural laws. Being thus engrossed by this idea, he appeared to underrate the impact of economic and social status of the individual in his advocacy for equal freedom.<sup>52</sup> He felt that any inequality people suffered socially or economically was their own fault and should not be alleviated by the state. He will be prepared to argue according to his particular principle of equal freedom that it is desirable to give any child the liberty to go to a public school - whether he is the son of a doctor, or a professor or an unskilled labourer - independent of the fact that the son of the labourer will or will not fit in socially, academically in the school; irrespective of the fact that the labourer's son can or can not afford to pay the fees of a public school. Where the labourer's son can fit in but can not afford to pay the fees, his situation is made difficult because the law of equal freedom will not permit the state to pay his fees for him.

The question Spencer did not stop to consider was - why give people equal freedom, if the means of making that liberty valuable was not available to every person? If it were not available, how could it be remedied? Mill on the contrary perceived this problem<sup>53</sup> and in most occasions, tried to suggest a solution to it.

He pointed out for example, that the system of natural laws which his predecessors thought practicable in the economic sphere, was only applicable in production and not in distribution of the wealth of the society. Hence, he opposed entails and other economic institutions which fostered the welfare of the upper class at the expense of the lower.<sup>54</sup> As Mill pointed out :- "The laws and conditions of the production of wealth partake of the character of physical truths. There is nothing optional or arbitrary in them. What ever mankind produce, must be produced in the modes, and under the conditions, imposed by the constitution of external things, and by the inherent properties of their own bodily

and mental structure..... It is not so with the distribution of wealth. That is a matter of human institution solely. The things once there, mankind, individually or collectively, can do with them as they like..... The distribution of wealth, therefore, depends on the laws and customs of society. The rulers by which it is determined are what the opinions and feelings of the ruling portion of the community make them, and are very different in different ages, countries; and might be still more different, if mankind so chose."<sup>55</sup>

Taking the social and economic handicap confronting people similar to the labourer's son,<sup>he</sup> urged that the state should provide them with such an education "either gratuitously or at a trifling expense."

One wonders how valuable Spencer's notion of freedom is, particularly when applied to the situation in 19th century Britain. Clearly there was a marked inequality in the social and economic status of individuals. The situation was such that it might be difficult to attach value to the idea of equal freedom as postulated by Spencer without any levelling proposition in the social and economic sphere.

What do other critics say about Mill and Spencer ? Barker pointed out that according to Spencer, the development of society could be conceived as the result of a tendency to individuate and become a thing. Then he accused Spencer of failing to explain "...how the state can tend to become a thing, and how an individual supposed to be utterly and entirely opposed to it, can tend to become a thing within, at one and the same time."<sup>56</sup> I will suggest an explanation of Spencer's views.

He considered society as a collective name for a number of individuals.<sup>57</sup> In such circumstances the existence of society was only nominal. What actually counted were the individuals forming it. The idea of society was recognised because of the permanent relationship which existed among the various units forming the whole. It was this permanence of relationship which constituted the individuality of the whole as distinguished from the individualities

of its parts. The general problem which most political thinkers of Spencer's era and before him were trying to solve, was how to secure an identity of interests between the rulers and the ruled. If a similarity of interests could be secured, the state would no longer look distinctive from the mass or the individual it was ruling. When this identity is secured, both the rulers and ruled will no longer have opposing interests but will tend to become one, and to use Spencer's term, would tend to become a thing.

Anschutz accused Mill of disagreeing with Bentham on two grounds. He affirmed that Bentham believed in letting people alone to pursue their interests in their own way, because he (Bentham) held that they were then most likely to promote the general interest. Secondly, Bentham admitted that the power of the state was indefinite except where it was limited by the law. Accordingly, he accused Mill of a double disagreement with Bentham. On one hand, Mill asserted the propriety of some sorts of governmental interference in the interests of the subject. Bentham would have whole-heartedly opposed this.<sup>58</sup> The point Anschutz is making is quite different from the correct situation. Mill's views as far as state interference is concerned is consistent with Bentham's. Bentham's laissez-nous-faire principle does not mean a total rejection of state interference. The government is allowed to interfere in social welfare provided it is justified by the principle of expediency. This notion is what Mill applied in most welfare matters though his version of the doctrine of utility implied more than Bentham propagated.

Anschutz said that Mill departed even further from orthodoxy, asserted the absolute impropriety of other sorts of interference, and in fact, spoke in precisely the way that Bentham condemned as an abuse of language. To an extent, this is true, but it must be pointed out that Mill was afraid of the tyranny of the majority and as such would not grant absolute power to the state. From his observation of events following the period of transition, he was convinced that the individual was not only losing importance



but also was getting lost in the crowd.<sup>59</sup> Masses became more important than the individual and so he assumed the duty of a Messiah called upon to save the individual. Bentham himself showed the same feeling in his constitutional code. He argued that unequal distribution of power was a constitutional evil because the greater the power an individual or a group of people had, the greater the tendency to abuse it. Consequently, it is an unfair statement to say that Mill disagreed with Bentham on these grounds.

Durkheim<sup>60</sup> disagreed with Spencer's ideas about the individual and his freedom both in the militant and industrial types of society. The kind of social solidarity existing in these types of societies, Durkheim described as mechanical and organic. Spencer had maintained that centralization and militarism as experienced in a militant type of society submerged the individual who only regained his freedom through industrialism. Durkheim held an opposite view and suggested that the individual was most absorbed in society when militarism and centralization were absent. He asserted that it was in the most primitive society, where differentiation hardly existed, that the individual was so completely a part of his group that he had no separate individuality. Centralization was necessary if individuality were to emerge.

Spencer observed on one hand, that a militant type of society was marked by status, while contract was the feature of the industrial type. On the other hand, social solidarity and cohesiveness of the social group was maintained by force or coercive measures in the former and in the latter by contract. The individual had to depend on his labour for a living. His success or failure hung on his efficiency. In other words, as Adam Smith insisted, that social harmony could be naturally attained if people were left to freely exchange the fruits of their labour. The same view, Durkheim interpreted to mean that social solidarity and cohesiveness of the social group in organic society remained through the process of the division of labour. This process made the units of society functionally dependent on each other and this was

associated with new social ties in the organic society which replaced those in the mechanical.

Spencer postulated firstly, that social harmony and cohesiveness of the social group was maintained by contract. Secondly, as affairs of the society were settled by contract, that the functions of the state became negative. Durkheim was very sceptical about this. He argued that if it were interest only which related men, the stability of societies would be very doubtful. His reason was that interests were temporary things and could not last very long. It could only give rise to "transcient relations and passing associations". "It can create only an external link between them [individuals]. In the fact of exchange, the various agents remain outside of each other, and when the business has been completed, each one retires and is left entirely on his own. Consciences are only superficially in contact; they neither penetrate each other, nor do they adhere. If we look further into the matter, we shall see that this total harmony of interests conceals a latent or deferred conflict. For where interest is the only ruling force each individual finds himself in a state of war with every other since nothing comes to mollify the egos, and any truce in this eternal antagonism would not be of long duration."<sup>60</sup>

The view that in industrial society state functions are negative to the advantage of the individual and his freedom, Durkheim completely rejected. Citing instances to support this view as Spencer did, was not enough. History shows that state functions do not diminish but tend to increase and to become more and more complex. Establishing laws does not result in making the sphere of individual activity smaller. Durkheim affirmed that where there was more regulation in life, there was more life in general. There was no sign that social discipline has been relaxing. If repressive law which was prevalent in a mechanical type of society was losing ground, in the industrial type of society, restitutive law, which did not exist at all before, kept growing. If society did not any longer impose certain uniform practices upon people, it

now took greater care to define and regulate the relation existing between different social functions.

When we turn to the sphere of administrative law - a law which Durkheim described as "... the totality of rules which determine, first, the functions of the central organ and their relations; then, the functions of the organs which are immediately subordinate to the first, their relations with the first and with the diffuse functions of society"<sup>61</sup> - there is no sign of any decrease in its enactment. History shows rather that it tends to be more developed as societies approach a more elevated type. The early history of societies is, the more rudimentary is this type of law. On this basis, he remarked that "the ideal state of Spencer is really the primitive form of the state."<sup>62</sup>

As societies advance, state duties increase and become more varied. Various social institutions grow, with a specific role to play. Later, these functions which were diffuse become concentrated in the hands of the state. This can be seen clearly in various national programmes - for example, national system of education, health, insurance and benefit. "It is thus contrary to all method to regard the present dimensions of the governmental organ as a symptom of social illness, due to a concourse of accidental circumstances. Everything forces us to see in it a normal phenomenon, which holds even of the structure of higher societies, since it progresses in a perfectly continuous way, as societies tend to approach this type."<sup>63</sup>

History and recent experience show that government functions are not decreasing. Rather they tend to increase as society develops, and interfere in most social and economic institutions. To this extent, Durkheim's criticism is acceptable. As Rumney<sup>64</sup> pointed out, since Spencer died, there has been a growth of economic imperialism, or correctly described as a combination of industrialism and militarism. Secondly, there has been an increase of the socialized state where in government and centralization

take a part in the regulation of industry. The struggle for markets and the growth of capitalism tend to make every society a highly organized industrial unit which at the same time bears marks of militancy.

How far Durkheim and Spencer are both wrong or correct in their views can be further demonstrated by considering the Nuer of Sudan<sup>65</sup> which represents a modern example of people living in the state of nature and then Great Britain or the United States of America or other advanced countries which can be regarded as experiencing industrialism. I use the state of nature here because there is some similarity between that state as shown by Hobbes and Locke with Spencer's ante-social state in his ethical theory. The similarity is drawn from the nature of man while in that state. Hobbes told us that it was a state of war<sup>66</sup> and both himself and Locke affirmed that it was marked by insecurity and fear, Insecurity and fear are logical deductions anybody will expect in any society where peace is non-existent.

Similarly, in Spencer's treatment of the evolutionary process of society, he stressed in his ethics, that the nature of man in the ante-social state was one which tended to invade other people's rights. This signifies a state of war. He emphasized that man was not adapted to the social state because "...he yet partially retains the characteristics that adapted him for an antecedent state. The respects in which he is not fitted to society are the respects in which he is fitted for his original predatory life. His primitive circumstances required that he should sacrifice the welfare of other beings to his own; his present circumstances require that he should not do so; and in as far as his old attribute still clings to him, in so far as he is unfit for the social state."<sup>67</sup>

The Nuer of Sudan forms a close modern example of people living in this state. Lucy Mair<sup>68</sup> told us that as regards a recognised form of government, they have little or none of it as any other human society. What they have is a certain social

convention which demands for example that certain actions are offences. As there is no government, it follows that there are no civil laws. It only implies that people's freedom is not restricted by any civil authority. It may be regulated by custom or convention but as there is no civil or legal sanction attached, it is disputable how much a person's freedom is coerced unless it can be proved that civil or legal sanctions have the same impact as those applied to custom or convention. One wonders in fact whether the ideal state Spencer described as being marked by little or no government is not this type of society, as Durkheim suggested.

The social state which replaces the "antecedent state" in Spencer's ethical theory, or the industrial which succeeds the militant type in his sociology is similar to most advanced industrialized countries like Britain or the United States of America. One observes the trend of affairs in these societies, that government functions are increasing and not decreasing as Spencer thought. Civil laws appear to be growing steadily at a rapid rate, and individuals' freedom seems to be determined by these laws. Though they are infractions of liberty, they are essential to avoid chaos. Spencer's contention has not been substantiated by historical facts, unless one can be permitted to say in his favour that the condition of mankind in these societies is not perfect enough to warrant less government.

On the other hand, if Spencer were considering his Militant type and industrial society from the economic point of view, the fact that a society is industrialized does not mean less government if individuals' freedom is to be preserved. Admittedly, in a feudal society, the serfs were dependent on their lords for their existence. This gave these lords a large sway over them to the extent of having their liberty regulated. 18th and 19th century Britain tended to portray the same picture. With industrialization the fate of the working class would have been the same, were it not for regular state interference. The captains of industry were still ready to exploit their labourers or exercise the same coercive rule

as the feudal lords did.

But state interference, protecting individuals' freedom, made it possible to create an atmosphere consistent with the principle of "voluntary co-operation" in which purchase and sale became the law for all kinds of services as well as for all kinds of goods. Again, history or the trend of economic affairs in any country experiencing industrialism has not shown that industrialism implies less government or allocating negative functions to the state. Having reviewed various criticisms, it is desirable to examine whether Mill and Spencer's views are of any relevance to contemporary Britain or are just of historical importance.

Relevance of their views to contemporary Britain.

The basic need of establishing a government, we are told, was for self-preservation - the desire to preserve life. Should the state on that basis interfere with the sale of drugs and poisons ? Spencer would argue that the state should not interfere with the sale of drugs and poisons. In his views, any individual could buy drugs from whoever he liked. In fact, he maintained that "men's rights are infringed by these as much as by all other trade interferences. The invalid is at liberty to buy medicine and advice from whomsoever he pleases; .....on no pretext whatever can a barrier be set up between them without the law of equal freedom being broken, and least of all may the government, whose office it is to uphold that law, become a transgressor of it."<sup>68</sup>

Mill would insist that the state should control the sale of drugs and poisons because "it is one of the undisputed functions of government to take precautions against crime before it has been committed...."<sup>69</sup> The aim of the control is not to prevent people from obtaining them but to make it easy to detect any improper use of it which is detrimental to life. He observed that drugs and poisons were used not only for useful purposes but for bad ones, and was quite prepared to stop its illegal uses. The only

difficulty which he apprehended was that freedom could not be granted to people for buying drugs for useful purposes without their abusing it. This is an accepted fact and regular instances of such abuses are common nowadays. He conceived that the state was justified in restricting the sale of drugs but was afraid that it could not successfully impose restriction on their bad uses.<sup>70</sup>

Sidgwick described this type of interference as paternal<sup>71</sup> and argued that not all paternal intervention should be rejected without consideration. This form of state control can be opposed on the grounds that individuals are the best guardians of their own welfare. But, when it is remembered that such a maxim is not a universal truth, nor practicable in all aspects of human life, the state will be given a chance to intervene particularly in the interests of those who have not the sufficient knowledge to be the guardians of their own welfare. Moreover, when it is proved by experience that people are largely liable to ruin themselves by having free access to drugs and poisons, it will be unreasonable to allow these practices to go on without interference, merely on account of the established general notion of *laissez-faire*. It can be observed that when the government intervenes, it aims at protecting its subjects from evils incurred through ignorance, and this course of action is a legitimate function of the state which both the Natural right and Utilitarian philosophers allot to the state.

According to the laws of life, freedom is desirable to a person to carry on life-sustaining activities. This view has been justified by the court of politics and of science. An individual requires his freedom to live but not to kill himself. When the government controls the sale of drugs and poisons, there is no intention of reducing freedom but of preventing its abuse, though the state may not succeed in curbing total abuse. Accordingly, from whatever point of view it is considered, this interference is lawful particularly as it tends towards self-preservation.

Spencer can be excused to an extent on the grounds that despite all attempts on the part of the state to control the sale of drugs, there are still instances of their abuse. Though admittedly, their abuse would have been greater were there no government control. This coincides with Spencer's views that social evils cannot be entirely cured or prevented by the state. Furthermore, his views can be allowed when it is considered that he was writing for his period. At that time, the state of knowledge was not advanced as it is now. In the 19th century, the supply of drugs was limited, but in our own age, not only the range, but also the quantity imported and synthesized are so great that it is necessary that the freedom of individuals to buy drugs should be limited. As much state action in this case must be positive, and is well justified to be, as Mill and Sidgwick maintained.

Housing has for some time been a problem for a good part of the population in the country. The state steps in not only to protect the interest of tenants against the exploitation of landlords but also to build houses and subsidize rents. Rent-fixing is a social act which involves the tenant and landlord; besides this, the supply and demand for houses affect rents. If this is the case, is the state justified either to control rents or to improve housing conditions? Spencer would insist that neither improving housing conditions nor controlling rents should be included among state duties. Instead of allotting either to the government, he would advocate thrusting them upon the natural forces in the market. The supply and demand for houses in his views will establish an equilibrium price which will appeal both to the tenant and landlord. In fact, he had repeatedly accused the state of making unsuccessful attempts to improve housing conditions. These ventures, instead of improving, tended to worsen the situation. In support, he affirmed that "the New Building Act was to have given the people of London better homes, whereas, as we lately saw, it has made worse the homes that most wanted improving."<sup>72</sup>

On the other hand, according to Mill, trade is a social act. Any person who undertakes to sell any forms of commodity to the



public, does what affects the interest of other people, and as such his conduct should justifiably be regulated by the state. Purchase and hiring of houses are virtually commercial transactions and accordingly, can be controlled by the government, particularly as two opposing interests - landlord and tenants - are concerned. On this basis, Mill would support state interference with housing problems, though Spencer would oppose it.

Mill's contemporary - N. Senior - very much used his views to justify state intervention in housing problems. Senior maintained that the government performed it's duty when it legislated on housing. He argued that "in the first place, it is in the power of a government considerably to palliate the evils of defective habitation. It cannot, of course, enact that every family shall have five well-built, well-ventilated rooms, any more than it can enact that every family shall live on roast beef, but it can prohibit the erection of houses without drainage, or in courts, or back to back. It can require streets to be paved, it can regulate their width and the thickness of the walls. In short, it can provide prospectively against the erection of new seats of disease and vice..... No one denies the right in the state to interfere to prevent a man from injuring others. It exercises this right when it forbids him to build a row of undrained cottages."<sup>73</sup>

In matters affecting public health, it is evident that if every family, or group of families, were left to provide its own health services, not all could afford them because the cost of maintaining such services is rather too great. Besides the cost, they require some knowledge which many individuals lack. Thirdly, good health is seen both as a pre-requisite for the success of the individual and society and moreover, as a necessary condition for the enjoyment and exploitation of success. Fourthly, the standard of life of the society is not only the individual's concern but the state's. On these grounds, should health services be included in one of those essentials of life which people should provide for themselves, or should they be provided by the state ?

Spencer had opposed sanitary supervision by the state and his argument against state intervention was so unduly severe that it seems unlikely that he would approve of state provision of health services. As regards sanitary supervision, he preferred leaving it to private companies instead of the state as they would provide them at a lower cost than what people pay in the form of taxes. His other reason for opposing State supervision was that as regards efficiency, every private company would like to maintain its reputation, and as such it would tend to lead to greater efficiency compared with state services. He had shown constant distrust in legislation as a way of curbing social evils. He would not hesitate to support his view with the assertion that "the measures enjoined by the Vaccination Act of 1840 were to have exterminated smallpox; yet the Registrar-General's report shows that the deaths from smallpox have been increasing."<sup>74</sup>

In fact, if there were no compulsory sanitary inspection, he would not mind people living in insanitary conditions. He would allow a man's ignorance or stubbornness to stand in the way of his protection, and would endeavour to argue that what people suffer was the penalty nature has imposed on them for being ignorant. "Of the suffering consequent upon unrestrained empiricism, it may safely be said that they are not so great as is represented; and that in as far as they do exist; they are amongst the penalties which nature has attached to ignorance or imbecility, and which cannot be disassociated from it without ultimately entailing much greater sufferings. [He would further show] .....that even could the hoped for advantages be fully realised [from national health services] they would be purchased at too great a cost seeing that they could be obtained only by an equivalent retardation in some still more important department of social progress."<sup>75</sup>

In contrast to this view, Adam Smith would insist in a similar vein to Senior that public health, "...would.....deserve the most serious attention of government, in the same manner as it would deserve its most serious attention to prevent a leprosy or any

other loathsome and offensive disease, though neither mortal nor dangerous, from spreading itself among them; though perhaps, no other public good might result from such attention besides the prevention of so great a public evil."<sup>76</sup> Similarly, Mill would approve of state intervention in matters affecting public health.

"Education, therefore, is one of those things which it is admissible in principle that a government should provide for the people. The case is one to which the reasons of the non-interference principle do not necessarily or universally extend."<sup>77</sup> This was how Mill summed up his justification for state interference in education. In his views, the state of knowledge at the period when he was writing was not sufficient to qualify people as judges of knowledge. Consequently, he did not very much favour trusting the choice of education entirely to people.

Spencer held quite a contrary view. He asserted that this alleged incompetency on the part of the people has been the reason assigned for all state interferences. These interferences, according to him, were increasing and would continue until "...in the desire to have all processes of production duly inspected, we approach a condition somewhat like that of the Slave States, in which, as they say [one-half of the community is occupied in seeing that the other does its duty]. And for each additional interference the plea may be, as it always has been, that [the interest and judgement of the consumer are not sufficient security for the goodness of the community.]"<sup>78</sup> In his view, education should be left to the choice of the consumer.

He further opposed national education on the grounds that it was wrong for the state to take away a person's property in order to provide education for other people's children. Such an act on the part of the state implied infringing the law of equal freedom. "In as much as the taking away, by government, of more of a man's property than is needful for maintaining his rights, and therefore a reversal of the government's function towards him, and in as much as the taking away of his property to educate his own or

other people's children is not needful for the maintaining of his rights, the taking away of his property for such a purpose is wrong."<sup>79</sup>

He had already argued that the state, and the family have their duties respectively. Admittedly, it is the duty of the family to provide education for its own children. According to him, there is a distinction between family and social ethics, and if the state attempted paternal government by providing a system of national education, it would be introducing family ethics into a domain to which they did not belong, and in which they could do untold harm. He accused legislators of fostering this intrusion of family ethics into the ethics of the state, and of regarding it as an efficient means of social benefit instead of something wrong. "The intrusion of family ethics into the ethics of the state, instead of being as socially injurious, is more and more demanded as the only efficient means to social benefit."<sup>80</sup>

Green stressed that it was a moral duty for a person to educate his children.<sup>81</sup> This duty could not be compared with those duties like that of paying debts, of which the neglect directly interfered with the rights of some other person. Accordingly, it was a duty with which positive law and hence the state should have nothing to do. On the other hand, the neglect of it on the part of parents tended to prevent the growth of the capacity for beneficially exercising rights on the part of the children whose education was lost sight of, and it was on this basis, not as a purely moral duty on the part of a parent, but as the prevention of a hindrance to the capacity for rights on the part of the children, that education should be provided by the state.

Similarly, Sidgwick justified state intervention in educational matters in these words. "It is evident that, so far as public funds spent on education tend to make labourers more efficient, though the labourers will be thereby enabled to earn more wages, the employers of labour and the consumers of its products

will, generally speaking, share in the gain resulting from the increased efficiency; so that we may regard such expenditure as primarily designed to benefit the community as a whole by improving its production, though much of it has also an important tendency to mitigate the inequalities in the distribution of wealth. It may perhaps be objected that if this expenditure were really profitable to the community, it would be remunerative to individuals to undertake it, and it might therefore be left to private enterprise. But this does not necessarily follow; since the labourers in question or their parents may be unable to provide the requisite means, while the difficulty of making effectual contracts with the labourers or their parents, and the trouble and expense of enforcing such contracts, may suffice to render the provision of such means as undesirable speculation for other private individuals."<sup>82</sup>

This apart, he observed that state provision for education was held to be in the interest of the society at large and that public funds should be employed in the moral and intellectual improvement of its members generally. In fact, he described this type of interference involving education, and public health, as socialistic.\*

According to Spencer's organic theory, the society is considered as an organism whose efficient functioning depends to a considerable extent on the degree of co-operation among its parts. The fitness of this social organisation, in a measure, depends on the fulfilment of some function in which the unit takes part, and the happiness of each unit depends also on the normal action of every organ in the social body.

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\* This should not be confused with the notion of socialism. Sidgwick employed it there to differentiate it from paternal intervention and to show that the aim of the interference is not the welfare of a particular individual but the whole society.

After setting out these ideas, he turns to oppose state interference in welfare matters. It is really unreasonable because, if the social organism as a unit should secure the co-operation, happiness, and efficiency of its parts, those parts should be healthy, receive good education and live in good houses. When the state intervenes to provide these things, no reduction of freedom is involved, and if it is, it will not be as serious as it will be if they are left unprovided for. Spencer must have been carried away by the law of adaptation and the doctrine of survival of the fittest to an ultimate defeat of the laws of life which he propagated. These laws demand that people should be given the freedom to carry on life-sustaining activities. The state, by providing these amenities, assists the people to achieve their end, and make their liberty more valuable.

People's freedom is determined according to the extent to which they are interfered with by other people or to the measure to which their wishes are frustrated by other people. Hence, a person lacks political liberty only if he is prevented from attaining his goals by other individuals. If it is in the economic or social field, he is said to suffer economic or social slavery respectively. For liberty to be meaningful, it must be valuable. No individual will claim that his access to medical treatment in a case where fees are paid, is valuable if he cannot pay for the cost of the treatment. There is no difference between letting a poor man who scrapes a living go to the hospital for treatment when he is sick, subject to his ability to pay for the treatment, and imposing a ban that people who earn less than five pounds a week should not go to hospitals for treatment. They all mean the same thing in the sense that a person's freedom is limited because of his low income. In the one, his freedom is valueless since he cannot afford to pay for the treatment, and in the other, his liberty is limited because of his low wages.

There are certain basic necessities of life which a person requires for the free exercise of his faculties. It is important that every person has these, if his freedom is to be valuable. The most important of these necessities are good living conditions,

health and adequate education. The cost of producing or providing them is in most cases too high for an individual to acquire, or the demand may be greater than the supply with the result that if the individual is left to provide himself with these necessities unassisted, he thus finds it difficult to a considerable extent to exercise his faculties, though he has the freedom to provide himself with them. The concept of liberty is not violated by the state when it provides most of these necessities at the general expense of the society and allows every individual equal freedom to use them. Accordingly, if the spontaneous development of personality or individuality are the main purpose of demanding individual liberty, this is better achieved by the state providing those necessities whose cost is rather too high for the individual or group of people to provide for themselves. This is not depriving people of their freedom, but making it more valuable to them.

From this premise, it could be argued that Mill had set out ideal conditions necessary for the development of personality. On the other hand, Spencer had carried his individualistic view to extremes, thus making the idea of freedom worthless. If according to his views, freedom is a necessary condition for social and individual life, is it more or less valuable when many people live and work under poor conditions of health, housing and education ? Liberty, under this condition is valueless and leads to social retardation instead of progress.

It is clear on these grounds that in contemporary Britain, Mill's views are more relevant than Spencer's. Spencer on the other hand, greatly exaggerated his case and seriously under-estimated the ability of the state to play a constructive part in social change. Nevertheless, his insistence that social systems will not be radically changed by mere legislation remains to the point. If state interference were desirable for the social welfare of individuals, how far can freedom be reconciled with law ?

Law and Liberty:- It is essential to indicate what kind of law, reference is made to in this connection, because not every law is inimical to freedom. For example, Common Law, quite unlike statute law, is not traditionally regarded as forming an obstacle to natural freedom. It is generally accepted as a guardian of liberty. It is unwritten and does not derive its authority from any express declaration of the will of the legislature or government. It depends for its authority upon the recognition given by the courts to principles, customs and rules of conduct previously existing among the people. Liberty in its conventional use, is traditionally considered as a human right, and accordingly, instead of forming an impediment, to it, common law fosters it. On the other hand, statute law is an edict of the legislature, an act of parliament, an instrument by which the state governs. This is the law people regard as an infraction of their liberty. As the difference between the state and this law is rather subtle, any reference to the law in this section, pertains mainly to the state and vice versa.

Though this law is an evil, it is a necessary evil and essential for the enhancement of individual liberty. If people's freedom were an end, how could it co-exist with law ? Obviously, law cannot be done away with as it is necessary for the preservation of liberty.

Both Mill and Spencer conceived the state and public opinion as potential threats to individual freedom. The individual, as they saw the matter, was being so submerged in the society that he tended to lose his sphere of free action. It was their desire to preserve elbow room for individual free activity, which should be immune from the prevailing tyranny of the state, public opinion and feeling; in addition instead of increasing state functions to delimit them. Spencer with his usual attitude of marked abhorrence of the state was prepared to assign negative duties to it. State or no state did not bother him much. All he wanted to see maintained was a system of natural liberty.



Mill realized that representative government was not in itself a guarantee to individual freedom. Government by majority could be as tyrannical as that by an individual or as that by a few people. He therefore endeavoured to secure a sphere of free action sacred to the individual. Within that sphere the state has no right to interfere with the person's action as it only affects him. But with other actions which he described as other-regarding, the state could rightly interfere if the person's action would cause injury or harm to others. Though in his attempt to demarcate one sphere of action from another, many inroads were allowed the state into a person's space of action. Here, law can be reconciled with freedom if the person concerned tries to refrain from engaging himself in those actions which cause injury to others. If it is in a case where laws are enacted to protect people, an individual would have his freedom unimpaired, if he obeyed the laws.

Spencer considered the state as a serious threat to freedom. He was one of the eccentrics who would not identify liberty with any political appliance established to maintain freedom. He believed implicitly in a natural system of liberty. Probably he was convinced that as there were natural laws guiding people, it would be superfluous developing civil laws to control them. Accordingly, he would only allot the function of administering justice to the state. To him, "freedom in its absolute form is the absence of all external checks to whatever actions the will prompts, and freedom in its socially-restricted form is the absence of any other external checks than those arising from the presence of other men who have claims to do what their wills prompt. The mutual checks hence resulting are the only checks which freedom in the true sense of the word, permits."<sup>83</sup> So long as the individual is rational and does not infringe the equal sphere of free action of other people, the state does not tamper with him.

Hobbes and then Locke tried to solve the problem by means of social contract. This contract made the authority of the state dependent on the individuals. Its power was not absolute, and

could not do whatever it likes a phenomenon which Spencer tried to explain with his joint-stock theory. As long as the individual is guaranteed sufficient security, he is obliged to obey the civil laws. When the state fails in its duty about assuring the individual of his security, he is not obliged to obey. It is clear then that so long as the state does not fail in its duty, individual freedom can be reconciled with law by obedience on the part of the individual.

Bentham also attempted to provide a solution by arguing that freedom and obligation are inter-related. Liberty is a creation of the state and is followed by subsequent obligation. Liberty and law could be reconciled according to Bentham's views if the individual could obey. A person is guaranteed his freedom by the state, and the person on his side is obliged to obey the state. All in all, it has been shown that law, hence the state, is not inimical to freedom. If it is an evil, it is a necessary evil. To reconcile both, it is essential that the individual obeys the civil laws of the society.

If civil laws and hence the state were essential to liberty, what about society - should liberty be guarded against its interference ? Before examining liberty and society, it is necessary to discuss a trait of Spencer's which showed a marked hatred for government. He was not only ready to delimit its functions but also to oppose positive remedial social legislation against social evils of his time. How could this attitude be explained ?

Professor Barnes tried to attribute this reactionary attitude to the development of the evolutionary hypothesis, which provided a new "naturalism". It was generally believed that the highly organized forms of animal life emerged from lower types in an automatic and independent manner. Spencer, convinced that there was a direct similarity between organic and social evolution, could contend that social evolution was a perfectly spontaneous process which artificial human interference could in no way quicken but might fatally impede or direct.

Admittedly, Professor Barnes's estimate of the impact of the idea of "naturalism" and natural scientific laws on him is justifiable. His reliance on these laws is shown in his autobiography,<sup>84</sup> - where he asserted that the laws of society were of such a type that natural evils would rectify themselves by virtue of a "self-adjusting principle". In his words: "Then comes the corollary that those people are absurd who suppose that "every thing will go wrong unless they are continually interfering ..... they ought to know that the laws of society are of such a character that natural evils will rectify themselves "by virtue of a "self-adjusting principle". There follows the inference that it is needful only to maintain order - that the function of government is "simply to defend the natural rights of man - to protect person and property - to prevent the aggressions of the powerful upon the weak - in a word, to administer justice."<sup>85</sup> But there is another point which needs consideration. This is the element of his personal experience. It is quite difficult to say which of the two - personal experience and the impact of "naturalism" - had a stronger hold of him in his advocacy for a natural system of liberty.

Spencer remarked in his autobiography that he came from a dissenting family and was reared in that atmosphere. His father, he noticed, showed signs of disrespect for authority. He affirmed as well that the same moral trait existed in him. This was the first problem his uncle had to battle with when he was at Hinton. An important point the uncle wrote about in his letter to Spencer's father. "The grand deficiency in Herbert's natural character is in the principle of fear. And it is only so far as his residence with me has supplied that principle in a degree unusual to him, that after a few struggles he entirely surrendered himself to obey me with a promptness and alacrity that would have given you pleasure to witness, and the more obedient I have observed him the more I have refrained from exercising authority."<sup>86</sup>

With such a deficiency, except for the brief period he was at Hinton, he was allowed to grow in an atmosphere of unrestrained freedom. From his personal experience, he must have

always identified freedom with a less degree or absence of authority. In the society, the only legitimate and accepted authority is the state. As he had a disregard for authority, would it not be the same feeling he was projecting to the state ? Hence, he was quite prepared to identify freedom with less government. He had experienced life both in an atmosphere emptied of artificial restraint while at home, and had been subject to some social discipline while living with his uncle. He preferred the former and that was why he ran away once from his uncle to return home. Would this experience or the effect of social discipline not make him prefer people to live under a system of natural liberty than under a restrained one ?

Liberty and Society:- At the outset, we must clear our minds as to what society means. As it has been shown before,<sup>87</sup> both Mill and Spencer described it as a fictitious body - a mere entity. "It may be said that a society is but a collective name for a number of individuals. Carrying the controversy between nominalism and realism into another sphere, a nominalist might affirm that just as there exist only the members of a species, while the species considered apart from them has no existence; so the units of a society alone exist, while the existence of the society is but verbal. Instancing a lecturer's audience as an aggregate which by disappearing at the close of the lecture, proves itself to be not a thing but only a certain arrangement of persons, he might argue that the like holds of the citizens forming a nation..... Thus we consistently regard a society as an entity...."<sup>88</sup> Thus, when reference is made to society it implies the individuals who compose it.

It has been further established that the justification for the existence of laws is that it saves the individual from being interfered with by other individuals who are more powerful than himself. In so far, therefore, as the state substitutes ordered and reasonable interference for the arbitrary interference

of individuals, it increases freedom. The workman receives more freedom under a trade union act which forbids contracting out than when he is subject to the will of the individual employed; he may have more real liberty by the collective bargaining of a trade union than if he has to bargain for himself.

Real liberty is possible not in a society where we have no relations with others (as Robinson Crusoe had) but where our relations with them are the expression of reason. But not every individual is rational, and it is against these irrational beings that freedom needs protecting. It is out of fear of these beings that most thinkers have been advocating the limitation of individuals' natural freedom in order that the scope left them can be properly made use of.

Hobbes for example, affirmed that "the finall cause, End or Designe of men (who naturally love liberty, and Dominion over others) in the introduction of that restraint upon themselves, ....is the foresight of their own preservation, and of a more contented live thereby, that is to say, of getting themselves out from that miserable condition of Warre, which is necessarily consequent..... to the naturall Passions of men, when there is no visible Power to keep them in awe, and tye them by feare of punishment to the performance of their covenants, and observation of those lawes of nature....."<sup>89</sup> What these laws of nature are, I have already discussed.<sup>90</sup> A person cannot freely pursue his own interest in his own way when there is no security that other people will obey these laws. Because of insecurity, it has been necessary to erect an authority though at the risk of limiting individual's freedom, with power to keep obstacles out of people's way. Accordingly, the relation between liberty and society is such that although a person is part of society, for his freedom to be valuable, or to be saved from regular interference of irrational people, the society needs controlling by an authority. The establishment of this regulating apparatus involves reducing the person's natural freedom but on the balance he is better off having

it curtailed in order to enjoy the scope left him without any further obstruction.

Mill professed to have discovered a principle which should enable people to decide what interference impaired the spirit of liberty. He admitted that without the state and without considerable state interference, freedom was impossible, but for the individuality of a person to exist in a society, it was essential to draw limits to which his freedom would be left unimpaired either by the state or society. Examining the relationship between society and an individual, he emphasized that "each will receive its proper share, if each has that which more particularly concerns it. To individuality should belong the part of life in which it is chiefly the individual that is interested; to society, the part which chiefly interests society."<sup>91</sup> The society should only concern itself with those actions of the individual which affected it. The degree to which he supported this view was shown in his reluctance to encourage any legal sanction to those actions which are self-regarding and did not involve any risk of life. Maintaining the "negative" notion of freedom, Mill's just conception of the relationship between liberty and society was one in which the latter abstained from interfering with the former, provided that liberty did not produce actions which affected its interests.

Spencer took a different view from Mill. He established a principle which would justify interference with a person's freedom,<sup>92</sup> but differed from Mill in that (probably influenced by his idea of "survival of the fittest") so long as an individual was acting within his limits of free action; the society ought not to interfere with his freedom whether or not that liberty was producing actions which affect the interest of the society.

Liberty or Status ? There is yet another point which needs mentioning before ending this chapter. Taking the social condition of the mass in the 19th century, and various liberal legislation, could it not be said that what Mill, to an extent Spencer and other

liberal thinkers were striving for in the name of freedom was, social recognition or status ? Does the lack of freedom or denial of individuals' rights not amount to lack of recognition on the part of the privileged classes that the working classes are entitled to some rights ? Without much argument, it is clear that the psychological impact of such a treatment will make the working classes or their sympathizers feel that they are being alienated from the society. In other words, they will feel that they do not belong to the society.

For a person to feel that he is an Englishman or a Nigerian, he must be recognised by his group or the community that he is what he claims to be, and has the same rights or the same amount of liberty as any other person in the same society. The hankering after his freedom by an individual can be interpreted as fighting against being ignored or despised, or not being treated as a being or person. His desire is for a condition in which he can feel that he is a person, because he is treated as a responsible agent, whose will is taken into consideration as any other person in the community as being entitled to this or that right,

The definition of freedom offered by Mill and Spencer has been reviewed. The principles which the former endeavoured to establish for justifying interference leaves a lot of inroads for the state or any authority to interfere with the individual. Mill's effort for example to mark off the distinction between self and other-regarding actions breaks down under examination. The state has still some grounds for interfering with the self-regarding actions, though his stand is excusable in the sense that some one in his capacity dealing with some social science cannot demarcate actions as rigidly as a natural scientist. Again Spencer was putting the case about individual limits. How these limits can be drawn in a society is still difficult to determine.

However, a consideration of Mill's chapter in The Principles of Political Economy on the probable future of the labouring classes tends to substantiate the view that the demand for freedom implies a claim for social recognition or status. As regards their

welfare, two conflicting theories have been propagated. The one is called the theory of dependence and protection and the other that of self-dependence.

According to the first theory, all that concerns the working classes should be regulated for them and not by them. "They should not be required, or encouraged, to think for themselves, or give to their own reflection or forecast an influential voice in the determination of their destiny."<sup>93</sup> Mill observed from the way these classes were treated that "all privileged and powerful classes, as such, have used their power in the interest of their own selfishness, and have indulged their self-importance in despising, and not in lovingly caring for those who were, in their estimation, degraded, by being under the necessity of working for their benefit."<sup>94</sup> It is this lack of social recognition of these classes by the privileged classes which requires remedying. The way of remedying or alleviating it is by curbing the power of the wealthy class. Mill did "not affirm that what has always been must always be, or that human improvement has no tendency to correct the intensely selfish feelings engendered by power; but though the evil may be lessened, it cannot be eradicated until the power itself is withdrawn."<sup>95</sup>

"As the idea is essentially repulsive of a society only held together by the relations and feelings arising out of pecuniary interests, so there is something naturally attractive in a form of society abounding in strong personal attachments and disinterested self-devotion."<sup>96</sup> How can this feeling of personal attachment and disinterested self-devotion be kindled? A sense of belongingness to a society may not be the best way of arousing it, but comparably it may be one of the best ways. It is when a Nigerian is recognised by his fellow countrymen as belonging to them and treated as having equal rights with them, can he wholeheartedly devote his services to his country.



The need for protection may be felt by individuals, when they are frequently exposed to internal or external danger and where there is no established means of offering it. ".....the feelings between protector and protected, whether between Kings and subjects, rich and poor, or men and women, can no longer have this beautiful and endearing character where there are no longer any serious dangers from which to protect."<sup>97</sup> Even where dangers exist, the individual has "the laws to protect them". These go to show that the idea of protection or dependence is obsolete. It is time people are recognized as individuals and given the right of self-determination.

Mill added a greater light to this desire of self-dependence and recognition by affirming that "it is on a far other basis that the well-being and well-doing of the labouring people must henceforth rest. The poor have come out of leading-strings, and cannot any longer be governed or treated like children. To their own qualities must now be commended the care of their destiny..... The theory of dependence attempts to dispense with the necessity of these qualities in the dependent classes. But now, when even in position they are becoming less and less dependent and their minds less and less acquiescent in the degree of dependence which remains, the virtues of independence are those which they stand in need of. What ever advice, exhortation, or guidance is held out to the labouring classes, must henceforth be tendered to them as equals, and accepted by them with their eyes open."<sup>98</sup>

The desire of the working classes for self-government and having their will respected can make it "....quite possible that they may demand, in many cases, the intervention of the legislature in their affairs, and the regulation by law of various things which concern them, often under very mistaken ideas of their interest. Still, it is their own will, their own ideas and suggestions, to which they will demand that effect should be given, and not rules laid down for them by other people."<sup>99</sup> These views tend to suggest that the demand for liberty is another way of

asserting that these working classes require social recognition as human beings with some rights.

This plea for social recognition or status which was being made in the name of liberty was brought out by Mill in these words - he pointed out that "very different is the state of the human faculties where a human being feels himself under no other external restraint than the necessities of nature, or mandates of society which he has his share in imposing, . . . it is a great additional stimulus to any one's self-help and self-reliance when he starts from even ground, and has not to feel that his success depends on the impression he can make upon the sentiments and dispositions of a body of whom he is not one. It is a great discouragement to an individual, and a still greater one to a class, to be left out of the constitution; to be reduced to plead from outside the door to the arbiters of their destiny, not taken into consultation within. The maximum of the invigorating effect of freedom upon the character is only obtained when the person acted on either is, or is looking forward to becoming, a citizen as fully privileged as any other".<sup>100</sup>

In dealing with political, economic and social liberty, both Mill and Spencer strove for similar ends. This end can best be conceived as the preservation of individualism. The individual is considered vital in the society and if he were to play his part effectively

in the move towards progress his freedom of action must not be infringed upon. This freedom of action should not be an unlimited one. If every person in the society should claim the same freedom, it means that individuality should have its proper sphere of action. In order to ensure that the individual acts within his own field of action, government institution is deemed necessary and its duty should be merely that of safeguarding individual rights.

What actually separated them in their struggle was the approach. While Mill wavered between individualism and collectivism, Spencer kept to extreme individualism. To him, the best means of preserving individualism was by leaving a person's field of action free from state interference or any other external authority. Mill, on the other hand, argued that it could be done not by abandoning state interference completely but by reserving a large area of action for the individual which neither the state nor any other external authority should be allowed to trespass upon. The state could only interfere when its action was justified by the principle of expediency.

But as it is the end which justifies the means, the differences in their respective approaches can be over-looked while stress is laid on the end, and to a large extent both men had endeavoured to safeguard a large sphere of free action for the individual.

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