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NORMAN ELLWOOD

The Victorian Idea of Liberty

M. A. Thesis
University of Durham
Politics Department 1976

The Victorian Idea of Liberty: A study of the concept of liberty in the work of J.S. Mill, J.F. Stephen, W. Bagehot, J. Acton, T.H. Green, H. Spencer, F. Montague, H. Maine, H. Sidgwick and W.E.H. Lecky.

M.A. THESIS

by

Norman Ellwood

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ABSTRACT OF THESIS

This thesis confines itself to an exposition of the ideas of liberty of a number of representative Nineteenth Century liberal theorists, a general appraisal of these ideas and a discussion of the fundamental aspects of the concept of liberty in the light of some recent thinking on the subject.

The Nineteenth Century is referred to as the age of liberty, but no agreed ideology of liberty existed. The concept meant different things to different theorists. Earlier views of liberty emphasized the importance of individualism and a more negative application of the concept; while later views defended collectivism and a more positive interpretation of its use. There were also considerable differences of opinion about the advantages and disadvantages of the related ideas: democracy, equality and laissez-faire.

Although the authors tended to believe in the idea of human progress, there was wide disagreement as to the best means of achieving it. For some, individual liberty was the way forward, while for others increasing regulation by government was desirable.

The Victorian idea of liberty changed with the changing circumstances of the times, the later liberals seeing themselves as correcting and enlarging the earlier notion to meet the requirements of a new age.

This study suggests that the political understanding of liberty is not something which can remain constant. It is inevitably subject to fluctuations intelligible only in the appropriate historical context.

INTRODUCTION: LIBERALISM

Ideas always play an important part in social and political evolution, and consequently, it is not surprising that during periods of rapid and gradual change the promotion and criticism of ideals constitutes a debate more intense and widespread than in the absence of crisis. The Nineteenth Century provided the occasion for numerous ideological disputes. One, however, persisted throughout the debate on liberty. This idea was a fundamental principle in the ideology of liberalism - the dominant political theory of the age. It is this political theory that we must consider if we are to understand what the Victorians understood by the concept.

The development of liberal theory in the Nineteenth Century is a continuation of earlier radical thought as propounded in doctrines with so various an appeal as those of Thomas Paine, Joseph Priestly, and Adam Smith. In spite of their differences, all three were firmly against all forms of unlimited authority which could provide the opportunity for arbitrary government. They spoke for civil and religious freedom, and freedom for private enterprise. Theirs is the protestant tradition from which liberalism derives its moral conscience and political commitment.

It has been held by some thinkers that the Victorians firmly believed in the economic doctrine which became known as laissez-faire. Evidence has been furnished which shows this proposition to be false, at least as far as the major political and social thinkers of the period are concerned. In liberal thinking the state always had a degree of responsibility for the welfare of its subjects. Extreme

laissez-faire theory was not even universal amongst the Eighteenth Century Physiocrats. Certainly, it was the tendency in this era to attempt to separate politics from economics; each man, it was held, is the best judge of his own interests, and the function of government was to reduce restrictions on individual enterprise and limit legislation on economic matters to the necessary minimum. But this view, based on the belief that there exists certain natural economic laws that govern human actions in the economic sphere, did not preclude government help for those who could not help themselves. The belief that to obstruct or tamper with nature is harmful, therefore, economic forces are to be left alone for they will inexorably lead to prosperity and harmony between the different classes engaged in trade, was alluded to only in so far as it appeared that it pointed the way to greater prosperity.

It is claimed that Adam Smith expressed laissez-faire ideas in his "Wealth of Nations", when he pointed out the advantages of division of labour and free trade. Malthus is also said to have expounded laissez-faire ideas in forebodings about what would happen if attempts were made to ameliorate the lot of the working classes as a whole. This kind of interference he said would lead to greater population, which in turn would mean more food being required. To obtain this food, poor land would have to be cultivated, prices would then rise, and so more poverty would be the outcome. Similarly, Ricardo argued that any improvement in wages above what the capitalist is able to give and still make a profit, would upset the law of supply and demand to the detriment of the interests of all. It would only create unemployment.

No one was committed to laissez-faire as a revealed truth as distinct from a probably advantageous policy. It is true these writers advocated a measure of freedom of trade and were suspicious of too much interference by government in economic matters, but even in this they were unable to bind those they inspired. At no time did laissez-faire become a liberal orthodoxy. George Watson even goes so far as to say in his chapter on this in his book, "The English Ideology":

"No political party in Nineteenth Century England can be shown to have believed in it or to have attempted to practice it. To that extent this chapter is the history of a myth."¹

Even the late Eighteen Century writers referred to above are claimed by Watson not to have been propagators of laissez-faire economics. He soundly chastises Carlyle for linking Adam Smith with laissez-faire and calling it "Donothengism". Carlyle must "not have read," or "accurately remembered" 'The Wealth of Nations', says Watson, and goes on to say that Smith was in favour of a large measure of state functioning in the areas of defence, protection of the individual from coercion by others and in the establishment and maintenance of public enterprises which would present too formidable a task for private individuals. According to Watson, the term "laissez-faire" is not mentioned in "The Wealth of Nations", nor do the other writers, Malthus and Ricardo refer to it in their publications. More will be said later about this question of laissez-faire and its relation to liberty; it is sufficient at this stage to emphasize that this doctrine should not be seen as quintessential to the ideology of liberalism.

1. G. Watson, "The English Ideology". Studies in the Language of Victorian Politics, pages 68-69.

Liberal theory in the Nineteenth Century, also owes a great deal to the Philosophical Radicals, notably Jeremy Bentham, James Mill, and John Stuart Mill. The principle of "the greatest happiness of the greatest number" formed the basis of Philosophical Radicalism. What this school of thought proffered, was a programme of reform in the legal, economic and political spheres justified by reference to this basic principle. Both in private morals and public policy, this principle was said to provide a rational guide.

It is in Bentham's earliest work, 'The Fragment of Government' (1776) that the utilitarian principle is first presented at length. By attacking Blackstone's 'Commentaries', Bentham challenged the Whig conception of law and government. Jurisprudence ought to be "censorial", not expository, as Blackstone had seen it. To bring about improvements in the law required a critique. The law must be subject to a standard of value, and this is the function of the utilitarian principle. "It is the greatest happiness of the greatest number that is the measure of right and wrong".¹ It is not contract but human need and its satisfactions which is the basis of good government. There can be no contractual limitations on a government, basing its policies squarely on the principle of utility. "Legal power by its very nature cannot be legally limited, and somewhere in every political society authority must head up in some person or persons whom others are accustomed to obey."² This is the case in any form of government, free or despotic. Here then is the cornerstone of Philosophical Radicalism. Actions of government measured

1. G.H. Sabine, "A History of Political Theory", 3rd Edition page 568.

2. G.H. Sabine, "A History of Political Thought, page 568.

by the greatest happiness principle, and reform of the Legislative process dependent on the assumption of Legal Sovereignty.

In "The Introduction to the Principles of Morals and Legislation,"¹ Bentham argued, as Helvetius had done, for a unification of psychology, ethics and jurisprudence. The standard of value for censorical jurisprudence was quite simply that of pain and pleasure which alone motivate man and enable the legislator to control his behaviour:

"Nature has placed mankind under the governance of two sovereign masters pain and pleasure. It is for them alone to point out what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects are fastened to their throne."²

Bentham assumed that pains and pleasures can be summed, like material objects - a sort of "Calculus of pleasure". So, all the social psychologist has to do is classify human experience into quantities of pleasure and pain, and from this calculus, plan for the greatest happiness. Perhaps Bentham actually believed that human beings reacted in this mechanical way governed by the forces of pain and pleasure, or perhaps he saw the need for this assumption as a necessary fiction, "a postulation without the allowance of which all political reasoning is at a stand."³ He was in fact much influenced, as were other liberal thinkers, by Newtonian physics, to the extent that he tried to place his ethical standard on a scientific foundation. But despite the crudities of Bentham's psychology, and the fact that there is no logical justification for connecting the utilitarian maxim to the psychology axiom, the principle of utility held sufficient cogency to inspire the reforming zeal of a number of liberal thinkers.

1. G. H. Sabine, "A History of Political Thought", page 568 quoted from Chapter I Section 1 of, "The Introduction to the Principles and Morals of Legislation", (1789).
2. G. H. Sabine, "A History of Political Thought", page 569.
3. G. H. Sabine, "A History of Political Thought", page 569.

James Mill faithfully followed Bentham. Mill was hostile towards the small ruling minority, mostly of landowners and certain moneyed interests. To rid government of such privileged class bias he proposed the remedy, (of which he had convinced Bentham) of extending representation to the citizens, especially to those who belonged to the industrial middle class. Following Bentham, James Mill held that man is an entirely selfish animal, and that this was a "law of human nature" characterised by love of liberty for himself and lust for power over others. It can then only be along utilitarian lines that a government can be established which will guarantee life, liberty and happiness. At the same time, those who form a government being mere men, are also subject to the "law of human nature", and will be motivated by the same desire for power, at the expense of the liberties of others. The remedy for this weakness is to check the power of government by a democratic constitution. The interests of the legislature must be identical with those of the country, thus the lawmakers will have the general interest at heart when wielding power. This will be assisted by legislative control of the executive; annual elections to restrain the power of members of Parliament; and Universal Manhood suffrage for those over forty instead of a property qualification, (for a high property qualification results in an aristocracy, and a low one embitters those who are excluded). He believed in an educated electorate, and this belief in enlightenment removed any anxieties about the tyranny of a majority. He believed that the industrial middle class were "the wisest part of the community"¹ and would guide the lower classes. A very naive faith, it would now seem. The whole commitment of these

1. quoted by G.H. Sabine, "A History of Political Thought", page 584.

Radicals placed too much dependence on the assumption that the greatest good for the greatest number will be the outcome if each man reasonably pursued his own individual interests. It is a strange paradox that Bentham and James Mill, while starting from an extremely pessimistic view of human nature, placed such great trust in man's reason as the power and guide to human progress, a view which characterized much of later Nineteenth Century liberal thought.

Liberalism as propounded by the Philosophical Radicals had great practical influence in Nineteenth Century politics. Their ideas inspired practical men to prune away a good deal of political deadwood, improved the efficiency of the judicial and legislative processes and radically reformed public administration. One of the salient features of the ameliorating process was the Reform Bill of 1832, a measure which did what Bentham had proposed, invigorated the action of government. Administrative reforms followed; the Poor Law was administered centrally; public health measures were brought in; and central administration for the County police and the inspection of factories was soon established. By way of these reforms and others, the influence of Philosophical Radicalism was to make for more controlled and more efficient government.

In criticism it has been said that Philosophical Radicalism was too much of an ad hoc collection of ideas, and that it placed too great a dependence on one class in society, the industrial middle class, believing that political power given to it would result in the well-being of the community at large. Much criticism has also been levelled at its pre-occupation with egoistic individualism, adherence to which tended to deny it any real idealism of the kind the Victorians found so inspiring in the work of T.H. Green. Nevertheless, when the radicals wrote, the

function of the state, the meaning of liberty and its relationship to legal coercion needed a rigorous reappraisal. The whole question of the relationship of man in society was in the spotlight. Society was undergoing major changes. Urbanisation, population increase, industrialization and social mobility created new puzzles and problems to the extent that Benthamism was itself soon outdated. If liberal theory was to be seen as a social and political theory in touch with these changes and not the ideology of a temporary pressure group, then modernisation had to be effected. The first of the revisionists was J.S. Mill, who set utilitarianism in a new light, analysed and presented a new concept of personal liberty and embraced both a more elitist and communal outlook. Though J.S. Mill professed allegiance to the utilitarian tradition, he made departures from it. He accepted the Benthamite principle of the greatest happiness of the greatest number, and that the individual was motivated by desire for his own greatest pleasure. But Mill emphasized a distinction between higher and lower pleasures and the need for government to improve the condition and consciousness of those who might only experience the latter kind of pleasure, left to their own devices.

Despite his problem with utilitarianism, J.S. Mill became the main protagonist of the first restatement of liberalism. He ethics repudiated the extreme negative aspect of the concept of liberty. He looked to a greater moral concern for social welfare, beyond the "merely observable and classifiable",¹ and held liberty, integrity, self-respect and personal distinction to be intrinsic goods and not merely instrumental in contributing to happiness. It is then, against this background of liberal thought

1. G. Watson, "The English Ideology", page 12.

that we proceed to our analysis of the concept of liberty as expressed by the political and social philosophers in our study.

Chapter I

John Stuart Mill

"Liberty is the English ideology, and its achievements within Parliamentary institutions dignified by traditional and ceremonial forms - sometimes called 'the Westminster model' - is still the first image that springs to mind when most men hear the name of England."¹

It was with the idea of liberty as a way of life in mind, that John Stuart Mill produced his great work, 'On Liberty'. Mill proclaimed liberty as the end in itself and in doing so he was appealing to a self-evident truth; at least this is what he seemed to be invoking in his claim that all mankind can never have the right to silence one dissenter. The distinctive characteristic of his utilitarianism was its moral idealism. The earlier utilitarians had not pursued liberal government because they desired liberty, but because they believed it would result in efficient government, more efficient they thought than benevolent despotism. But for J.S. Mill, the liberty which he eulogized so warmly was a good in its own right. This ideology of liberty, grounded in morality is what gave 'On Liberty' an ardour which did not grace his other work.

In the Introductory Chapter of 'On Liberty', Mill is concerned to warn us of the "tyranny of the majority,"² as an evil of which

1. G. Watson, "The English Ideology", page 11.

2. J.S. Mill, 'On Liberty', page 9.

society must be vigilant. Here we have Mill reacting against the democratic ideas with which the liberal movement began. He explains his case by stating what liberty meant in earlier times and contrasting this with what it means in his own day. Prior to the advent of democracy, conflicts had existed between government and certain of its subjects. As the political rulers sort to maintain their own power and coerce their subjects, liberty to these subject classes was seen in terms of safeguards against tyrannous rulers. In order to restrain these rulers from taking advantage of the weaker members of society, it was necessary to have an individual authority powerful enough to hold sway over them. But protection would also be needed against this "king of the vultures" who "would be no less bent upon preying on the flock than any of the minor harpies."¹ For this reason it was necessary that limits be set to the sovereign's power over his subjects, and at this point of limitation, the liberty of the subject began. This liberty was first seen in the form of sacrosanct political rights, the breach of which by the sovereign would justify an uprising against him.

More recently it has been thought that it was not enough merely to seek to limit the power of the rulers, but that the latter should also be identified with the people, making the interests and will of the people one and the same with the interests of the rulers. This would be the ultimate security against tyranny, for no nation would want to tyrannize itself. "Let the rulers be effectually responsible to it, promptly removable by it, and it could afford to trust them with

1. J.S. Mill, 'On Liberty', page 6.

power of which it could itself dictate the use to be made"¹ Mill then goes on to point out that these ideas, of the people having power over themselves and being self-governing, are wanting. "The 'people' who exercise the power are not always the same people with those over whom it is exercised; and the 'self-government' spoken of is not the government of each by himself, but of all over each. The will of the people, moreover, practically means the will of the most numerous or the most active 'part' of the people; the majority, or those who succeed in making themselves accepted as the majority; the people, consequently, 'may' desire to oppress a part of their number; and precautions are as much needed against this as against any other abuse of power."² The fear of oppression of individuals under a democracy is just as real for Mill as under a despotism, for in the former it is the strongest party which takes the reins of government, and against which we must be on our guard. Society can practice a social tyranny over separate individuals when it "issues wrong mandates" and "meddles where it should not".³ And even though these measures might not be maintained by such rigorous sanctions as would be so under a non-democratic regime, nevertheless, they are to be fought against, for they can be no less hostile to individual liberty. What Mill is actually railing against is what he sees as the new political despotism spawned by political democracy. He is afraid of the tendency of a government given power through an elective system to be inveigled by the majority that supports it to ignore or even suppress the views of minorities, thereby suffocating individuality. In other words, what is fashionable for the majority will

1. J.S. Mill, 'On Liberty', page 7.

2. J.S. Mill, 'On Liberty', page 8.

3. J.S. Mill, 'On Liberty', page 9.

become the rule for all. Now, because of the fundamental need to preserve individuality, a limit to collective interference with the individual must be ascertained. Mill sees the limit to the encroachment of majority opinion as an intrinsic good for mankind and as an antidote to the political despotism in a democracy.

But the question which now arises is, where should the limit to collective interference be placed? The ideal sort for is the balance between the independence of the individual and society's control over him. To find it is the task which Mill set himself. He considered the state of affairs regarding individual freedom and its place in the social structure to be ambiguous and uncertain. The conduct of individuals is in some instances governed by Law and in others, not appropriate for legal sanctions, by public opinion. But human affairs are gravely in need of such rules to be made more definite. Up to the present, rules that have held sway have arisen out of opinion and custom. Mill thinks that opinions should be supported by reasons, and if not they are merely personal preferences. In some cases these preferences have been held by a large section of society, but this does not give them more weight, for it is still only one opinion multiplied. Very often the view which has held the most powerful influence has been that adopted by a superior class in its own interests. But Mill's basic fear is of the pressure of the majority. In England he considered the "yoke of opinion"¹ to be heavier than that of the law, but that the latter as compared with the situation in some other countries is lighter in England. This he thinks is because of the customary inclination to think of government as being a threat to private interest. However, the approaching state of affairs is

1. J.S. Mill, 'On Liberty', page 13.

one in which the majority will identify themselves with governmental power, and opinion. When this condition is realized a threat to individual liberty will come from government and be no less dangerous than that from public opinion.

What then is required is some means of testing the rightness or wrongness of government encroachment on individual liberty not based merely on personal preference. Without such a measure those who would advocate government interference in a particular matter have no more moral authority than those who would oppose it.

Mill thought that he had found a basic guiding principle for this task. It would govern the relationship between society and the individual in a completely comprehensive way, embracing all the means of control and compulsion, legal or moral, which might be brought against the individual:

"That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty or 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 civilized community, against his will, is to prevent harm to others. His own good either physical or moral, is not a sufficient warrant"¹

Nor is it justified to claim that the individual might be compelled to act or not act for his own good or happiness. He may be reasoned with or persuaded to change his conduct, but may only be coerced if his acts are hostile to other persons; in this sphere of conduct he is accountable to society; but conduct which concerns no other person but himself is an absolute right. Herein lies the sovereignty of the individual of which Mill was so jealous to safeguard. So, when he postulated that all mankind has no right to silence one dissenter, he was asserting freedom of judgment; the individual is not to be coerced but convinced. Presume this as

1. J.S. Mill, 'On Liberty', page 15.

a right, as Mill did, and you have the essence of a liberal society; for this is a moral quality of a mature person: guided by reason. A liberal society was, for J.S. Mill, one which fully recognized this right and structured its political institutions accordingly. It was not merely that individual judgement was to be tolerated; a society based on Mill's conception of liberty makes this right a positive thing and a defining characteristic of a happy individual in a civilized community. It was this interpretation of liberty which led Mill to favour popular liberal government. But the latter was not sought by him because it would produce efficient administration. In fact in this direction he had certain misgivings, unlike his father, who trusted too readily in an extended suffrage. J.S. Mill was more concerned about the ethical good that his political ideology of liberty would produce, the elevated moral character which he believed political freedom would cultivate. This type of personality, that of the reasonable human being, would grow only in an atmosphere of free discussion of public issues, where political decisions were shared, where one could take responsibility for one's own moral convictions.

The cultivation of the improved human being is in line with much of the liberal thinking of the age. As we shall see in our discussion of the various authors, human progress was at the core of their philosophy. Mill shows himself to be a firm believer in the inevitable progress of mankind when he assumes that man has "come of age" in that he is now capable of improvement in an atmosphere of freedom, as contrasted with the barbaric state of society in which liberty as a principle of government would be ineffectual as a means to human amelioration. Man as a progressive being was an essential part of Mill's social philosophy, for he regarded any appeal on ethical questions to the principle of utility as essentially bound up with the interests of human progress.

But in expounding his basic principle of self-protection, Mill has also revealed his concern for a broader based social philosophy. For when he states that acts by individuals damaging to others are not to be allowed by society, and society can justifiably punish these via the law; and when he states that the individual is to be compelled to perform certain actions, such as in defence of the realm, or giving evidence in court, he is showing his concern for the individual as part of a wider community within which each private citizen has certain obligations. Society affords protection for the individual; it makes possible his right to liberty; but this right cannot exist in a vacuum - it presupposes the acceptance and performance of certain duties for the maintenance and prosperity, even for the very survival of society. Moreover, society is not something which is a logical entity existing separately from the individuals that comprise it. Society is each and every individual. Mill would have repudiated Rousseau's concept of the general will as logically untenable and would have said that only individual wills are real entities. So the society exists not for any good over and above each individual, but for each individual's good.

It is because of the paramount importance of the spiritual welfare of each individual, that there is a sphere of individual activity into which the society as represented by government may not trespass. This, according to Mill, is the area of a person's life and actions which effect no one but himself:

"It comprises, first, 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, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions..."

"...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."

"...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."¹

The greater freedom from interference with the individual by the state is a measure of human progress, and mankind is the beneficiary.

But J.S. Mill was not only anxious about the oppressiveness of political power. In the essay 'On Liberty', he appeals also for a genuine toleration of individuality by public opinion. Differences between individuals are to be valued, disagreement and new ideas to be welcomed as essential ingredients for a civilized community. Mill's fear was not just one of government, but of a majority that would be inclined to suppress a minority because it happened to be different or unconventional. He came to hold this view because by 1859, he had seen what his father, James Mill, and the other Radicals had not foreseen - that political reforms did not usher in the Millennium, and that liberty was not to be achieved by a reshaping of political organization. Mill saw quite clearly that a liberal government was not in itself enough for the achievement of liberty; what must follow was the establishment of a liberal society. Hence, the emphasis on social philosophy, as much, if not more, than political philosophy - and the realization that there existed a larger social context of which political institutions were no more than a part.

J.S. Mill was certainly not unconcerned however about the power of government, as we have already seen. In his chapter on "Liberty of thought and Discussion", he emphatically puts the case for open government against tyranny or corrupt government. This is seen as a necessary condition for a healthy liberal society. Society needs freedom of thought

1. J.S. Mill, 'On Liberty', page 18.

and discussion to give it light. In this respect press freedom is essential in a liberal society. Neither legislative nor executive must be allowed to censure which opinions and doctrines the public can be cognizant of. In the suppression of ideas that conflict with those of the ruling body, mankind may be deprived of novel ideas which are beneficial:

"If the opinion is right, they (mankind) 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."¹

But even if an opinion is false, it would still be an evil to stifle it, because this would be an assumption of infallibility. The danger of a government arrogating to itself such absolute certainty is that it might pursue, not the common good, but its own good.

In Mill's analysis of liberty we find the notion of impermanence in the affairs of the world. Everything is in a state of change, but potentially, change for the better. One cannot afford to be certain about opinions here and now because they may be rejected as false by future generations, just as the present age has rejected doctrines held dear in past times. All is subject to questioning, but everything can be made right. But it might be said, in criticism of this view, that such a sceptical uncertainty would lead to a paralyses of human action by government or individual. This is not so, says Mill. What ought to be strived for is to arrive at a viewpoint only after using ones ability to the utmost. And while there is no such thing as absolute certainty of the truth, human action must be based on the best assurance possible. Moreover, when we assume the truth of an opinion against an action, say

1. J.S. Mill, 'On Liberty', page 24.

against subverting the society for evil self-regarding ends, we do not proclaim this opinion, to be true to prevent its refutation; we hold that it is true because we have heard all of the arguments against it and they have not been seen to refute it. This principle of allowing opinions to be contested by all possible means, without fear of persecution, is what gives a society its right to act on such assumed truth. It might be argued though, that allowing error to be promulgated will be deleterious, and therefore such error should be suppressed. In Mill's opinion it would not be beneficial to suppress such error; we may use only rational argument to dissuade the person from holding it, for suppression is gratuitous in that it rejects the practice of searching for truth. Error itself is to be respected, for if it be honest, it is to be placed higher than mechanically accepted truth. Honest error arising from some experience which is incomplete is in fact a diligent interpretation of experience, though it may be faulty. The imposition of belief is anathema to Mill, for it involves no personal effort of free enquiry.

The idea of interpretation of experience is important for Mill, as it was for other Liberal writers of the Victorian era. What it really stood for was discussion. Man is capable of correcting his mistakes not by experience alone, but by a combination of experience and discussion. Here is another essential ingredient of Millian liberty and one which pervaded much of Victorian thought about liberty, as we shall see as our thesis develops. Mill is perhaps reflecting in a different context the classical concept of reason as a vehicle for attaining truth:

"Wrong opinions and practices gradually yield to fact and argument; but facts and arguments, to produce any effect on the mind, must be brought before it. Very few facts are able to tell their own story, without comments to bring out their meaning. The whole strength and value, then of human judgement, depends on the one property, that it can be set right when

it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of any person whose judgement is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and expand to himself, and upon occasion to others, the fallacy of what was fallacious."¹

Is this view of Mill's not a partial simulation of the Platonic dialectic, which relied on a linguistic analysis as a means of problem solving? The point made is, that this kind of critique is necessary if we are to know something of a subject, to be aware of every viewpoint and shade of opinion about it, and come to our tentative considered belief via honest discussion.

Mill also condemns the pragmatic approach to truth. The supposed criticism of Mill's position here, to which he will not yield, is that in certain urgent circumstances governments may have to act on very uncertain beliefs, and that some of these beliefs are in fact to be adhered to because of their usefulness to society rather than because they are true. This he says, is simply to transfer the assumption of fallibility from the belief in the truth of an opinion to the usefulness of that opinion. And is not the usefulness of an opinion a debatable matter just the same, and should it not also come under the scrutinizing process of honest and rigorous enquiry? But more strongly, a critic might say, regarding religious beliefs, that some converts feel so staunchly that their belief in a god or a future life is true to the point of assuming infallibility, and that it is dangerous to challenge such deep convictions. Right or wrong they are useful to society.

1. J.S. Mill, 'On Liberty', pages 27-28.

In Mill's answer to the question, he emphasizes again his concern for the individuals' freedom of thought and expression. Assuming infallibility is not to be taken as meaning a feeling of certainty for a particular doctrine, but the imposition of that doctrine on others while preventing them from hearing the other sides of the question. History is crowded with examples of the upholders of the laws of church or state persecuting beliefs, which later became the orthodoxy, and then the upholders of the latter persecuting dissenters from the new doctrine. Mill does not believe in the naivete that truth always triumphs despite its persecution; he holds that suppression of truth may be a bulwark against its progress, and thus to human progress. In this respect he is concerned that religious revivals often bring with them a revival of bigotry and intolerance, attitudes which are prevalent among the English middle classes, who are easily provoked into activities of persecution towards those who dissent from their cherished beliefs. The effect of public opinion in this respect is no less effective than the law, in that it may have such a mischievous effect on a person as to deprive him of his livelihood. Such social intolerance is hostile to liberty of thought and discussion and inconsistent with the truly liberal society which Mill desired. And again, the theme of progress is heard in this criticism of Mill's, for if individuals must disguise their opinions for fear of persecution or being considered immoral or irreligious, then many who have good intellects but not bold temperaments might be prevented from benefiting mankind. Thus a Liberal Society requires intellectual freedom; individual and social progress can only be nourished in such an atmosphere, an atmosphere in which large subjects are debated freely without the fear of being stifled by the disapproval of powerful political or social forces. But even when an opinion is true, it still benefits by its free discussion. Examination of the reasons for holding it, breathes life into what might become a dead dogma. And it is also important to give genuine consideration and study

of the case which is opposed to one's own. Without this knowledge one's own opinion loses its rationale and is little more than a prejudice.

Mill believed that social well-being must be reconciled to individual well-being. He was interested in the self-realization of the whole personality. To be a fully developed, self-realized human being the expression of emotion, of thought and action are necessary. This does not mean individual anarchy - far from it - the power of control over the properties of thought, duty and harmony in the personality, must also be cultivated. But essentially it is self-control to which the individual should aspire. There are no doubts that compulsion for the purpose of external order is necessary, but the mature human being is internally controlled. Individuality is thus vigorously stressed as a sine qua non of personal well-being; and the reasons given for the safe-guarding of freedom of thought and discussion also "require that men should be free to act upon their opinions, to carry these out in their lives, without hindrance, either physical or moral, from their fellow-men, so long as it is at their own risk and peril."¹ Nevertheless, while Mill holds individuality significant for a healthy society, he lays great stress on men acting on opinions, "at their own risk and peril." Actions however, cannot be given the same free scope as opinions. And even opinions, when their expression might lead to acts harmful to others or to society as a whole, become prohibited. The example Mill gives here is that of public oratory intended to incite people to unlawful acts. In cases such as this, interference with, and limitation of, individual liberty by governments is fully justified. But so long as a person's acts are not a nuisance to other people, so long as they concern himself alone,

1. J.S. Mill, 'On Liberty', page 69.

then they must be as free as opinions, to be carried out without fear of harrassment. Thus, different human characters, and different ways of living, odd though they may seem to conventional society, ought to be tolerated and even encouraged, provided they do not result in harm to others.

With this proviso; namely, that actions are done at one's "own risk and peril", and without "molesting others", Mill argues that individual freedom is fundamental, not only to the free development of a person, but also as an integral part of civilisation. With the liberty of the individual accepted as an intrinsic good, its limitation in the interests of the wider society could be decided with facility and confidence. But the problem was that the degree of individual spontaniety to which Mill aspires for a truly liberal society was insufficiently recognized in his day. It ought to be regarded as an intrinsic good, but the fact is that it was scorned by society and even by some reformers. Once again, in speaking of liberty as good in itself, Mill is in the realms of the metaphysical; he is appealing to a self-evident truth of the value of individual freedom which he seems to suggest is inescapable if one follows the dictates of reason. In support of his case he quotes Baron Wilhelm Von Humbolt, an eminent german politician and philosopher. In a treatise on, "The Sphere and Duties of Government", this German savant declares:

"the end of man is that which is prescribed by eternal or immutable dictates of reason, and not suggested by vague and transient desires, (it) is the highest and most harmonious development of his powers to a complete and consistent whole."

that therefore the object,

"towards which every human being must ceaselessly direct his efforts, and on which especially those who design

to influence their fellow-men must ever keep their eyes, is the individuality of power and development,"

that for this there are two requisites, "freedom and variety of situations;" and that from the union of these arise "individual vigour and manifold diversity, which combine themselves in originality."¹ This stoical adherence to the "immutable dictates of reason", which urges mankind to value individuality so highly is, with certain qualifications about the limitations of individual liberty, the quintessence of Mill's ideology. The mature man must be encouraged to think for himself and not be bound by custom, to which a too close attachment will stunt the growth of his distinctive qualities as a human being. For use effects functioning, and effects improvements in the important human faculties of, "perception, judgement, discriminative feelings, mental activity, and moral preference."² To be a worthwhile individual, it is necessary to use ones mental faculties in making choices for oneself, in planning one's own life, otherwise if a man follows only the dictates of custom, then he leads a life which is unexamined, brutish, and neglectful in its use of the variety of human aptitudes. Man must aim at self-development and improvement, at self-mastery over his impulses, thereby creating his own character.

What we have encountered here is a spirited defence of individualism as a means of countering the tyranny of the majority and of custom. If a society is to thrive and expand in desirable directions then, that behaviour which is regarded as uncustomary by the conforming majority must be allowed the greatest possible purview, so that those ideas

1. quoted J.S. Mill, 'On Liberty', page 71.

2. J.S. Mill, 'On Liberty', page 72.

advantageous to mankind might be made available to the community at large. To prevent the variety of talents and attributes from having their own specific growth and development would be unnatural for humankind, because individual differences abound and require different conditions for their intellectual and artistic growth. People who are genetically different and have lived differently, think differently, and therefore, need special conditions for their development.

Throughout Mill's social philosophy the dominant theme is individualism. The aim of individual liberty, we learn is not merely concerned to restrict the power of government. The power of the state may be one tyranny; but just as exacting might be the tyranny of custom, and of public opinion acting through the agency of a representative government or through other forms of social pressure. Tyrannies, no matter from what quarter they stem, are a threat to the fundamental individualism necessary to a truly liberal society. The justification of individual liberty for Mill is that it is not only an intrinsic good but also an instrumental good - it is seen as the foundation of growth, as a springboard to that human progress in which the liberals so passionately believed. There are no limits to this progress for mankind when it is based on the belief in the freedom of the individual to direct and plan his own life. Mill saw liberty as an inalienable right, but he also saw it as a fundamental requirement for a truly civilized society based on the rule of reason. Therefore, the practice of liberty is the practice of the rational method in the affairs of men, but accompanied by an appeal to imagination, and social feeling. Only by following this application of liberty can the benefits of civilization be realized.

In "Representative Government" we encounter similar views to those expressed in the essay 'On Liberty'. Questions of a strict political

nature are not pre-eminent. Mill sees the major threat to democracy in the political power of a majority used to repress minorities. Once more the emphasis is on what the earlier liberalism had failed to observe, that a liberal government could only be realized in the context of a liberal society. That political institutions are but a component in the larger social composition is a new political concept. Society is a third factor affecting the relationship between government and individual, and an important one playing a major part in the establishment of individual liberty. The fear of a public opinion intolerant of the individual, or of minorities, might be seen as a touch of realism on Mill's part, contrasting sharply with the earlier idealism of his predecessors. But also, as a highly sensitive and intellectual personality, Mill was perhaps reflecting his anxiety that mediocrity might be detrimental to individual distinction.

The best form of government for the realization of progress through reform was representative government based on the principle of individual liberty. Despotism cannot ever be good government where men are more than primitive, because it contradicts or is contrary to individualism, independence of mind and the free exercise of the multifarious human faculties necessary for personal fulfilment and the enrichment of society. Mill believed that a cardinal feature of good government was to bring about improvement in human character:

"One of the benefits of freedom is that under it the ruler cannot pass by the people's minds, and amend their affairs for them without amending them. It is true, a despot may educate people; and to do so really would be the best apology for his despotism. But any education which aims at making human beings other than machines, in the long run makes them claim to have control of their own actions."¹

1. J.S. Mill, "Representative Government", page 184.

In addition Mill held representative government to be superior to all other forms of administration because it placed sovereignty within the power of the whole community and gave each citizen a voice in the execution of that power. An entirely popular government was the only kind which would result in the achievement of this end, and rested on two principles:

"The first is, that the right and interest of every or any person are only secure from being disregarded, when the person interested is himself able, and habitually disposed, to stand up for them. The second is, that the general prosperity attains a greater height and is more widely diffused, in proportion to the amount and variety of the personal energies enlisted in promoting it."¹

Once more, individual self-dependence and individual participation and expression are in the foreground of Mill's thinking. The power of self-protection is a security against the evils of others. The self-dependence of each individual, or of groups of individuals, is better and more efficient for human well-being than paternalism, cruel or benevolent. A participating democracy in which individuals, either acting alone or in concordance, take part in public affairs is the only type of government commensurate with individual liberty and ~~its~~ resulting human progress. However, as it is impossible in a complex civilization for each individual to make a personal contribution to public life, then representative government must be the ideal form of popular government.

Power is a great danger in a democracy, just as it is in any other form of government. The dominant class may work for its own advantage to the disadvantage of others, whether it be a despot and his privileged supporters, the middle classes, or the labouring classes. The primary aim is how to ensure that this undesirable state of affairs be avoided. The power of sectional interests in a representative system of government must

1. J.S. Mill, "Representative Government", pages 156-7.

not be allowed to prevail over other sections of society, nor override, through their lack of insight, what is in the interests of the common good, and the realization of justice in society. So, J.S. Mill was not enamoured of democracy if it meant that through numerical majority a distinct class in society would attain control over the rest. This, in his opinion, was a misconception of what pure democracy meant. It did not mean that a simple majority be allowed to rule the whole people; it meant equal representation in government of all the people. In the practice of the former idea of democracy, the result is not the equal representation of all citizens, but simply a reflection of the voices of the numerical majority, which to Mill was little better than government by privilege, because it disfranchised minorities. While agreeing that a minority must be overruled by a majority when matters of state business are being deliberated upon by a representative assembly, Mill did not accede to the view that the minority should have no votes and thus be denuded of representation altogether. This was a crass injustice sorely in need of reform which must be remedied by the application of a truly equal democracy in which all sections of the electorate would be represented proportionately instead of disproportionately:

"A majority of the electors would always have a majority of the representatives; but a minority of the electors would always have a minority of representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege: one part of the people rule over the rest: there is a part whose fair and equal share of influence in the representation is withheld from them; contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation."¹

1. J.S. Mill, "Representative Government", page 249.

The application of proportional representation in an effort to limit some of the power of the numerical majority and allow minority interest to be heard, and bring their influence to bear, would, says Mill, eradicate some of the greatest evils of democracy. It would not, however, prevent complete power still remaining with the numerical majority - the evil would be less pernicious perhaps, owing to the temperate influence of the minority groups, but class government would still remain a real threat, and the minority would be only as safe as the majority would let them be.

A further safeguard which Mill favoured, as a defence against the advent of universal suffrage producing a House of Commons manipulated by the sectional interests of the labouring classes, was plural voting. Mill recognized distinctions of quality amongst individual men, and declared for facilities for the gifted few to develop their talents in the service of the community. He also believed that some opinions should carry greater weight than others because they are wiser. Thus Mill vindicated plurality of voting on a qualification of intellectual superiority. Level of education would be used as the test, and provide a ground by which plurality of votes would be accorded. This is Mill's antidote for:

"preserving the educated from the class legislation
of the uneducated; but it must stop short of enabling
them to practice class legislation on their own account."¹

So, with these two constitutional redoubts, proportional representation, and plural voting, J.S. Mill declared himself in support of universal suffrage and representative government.

But it was not solely his belief in democracy which persuaded Mill to accept a universal franchise. It was also his belief that democracy

1. J.S. Mill, "Representative Government", page 284.

would assist human progress. Among the objections made to the extension of the suffrage at the time was that lower class voters were too ignorant and irresponsible to be given such power. That Mill shared this fear to some extent is reflected in his advocacy of constitutional safeguards. But his point of view was different from that of others, in that he believed mankind to be ever capable of improvement. Men would learn to be responsible by practising responsibility. Democratic government and individual liberty would prove to be the educative forces for the cultivation of the intelligence of the lower ranks of society, and concomitantly, democracy and liberty would be the agents of progress towards a greater civilization.

J.S. Mill was dominated in his analysis of liberty by the ideas of the earlier liberal thinkers. But in addition, he introduced an ethical valuation of liberty which the older liberalism had lacked. However, he never really got to grips with the problems of individual liberty from the standpoint of wage-earners in an industrial society. A very weak point in his thinking about liberty is his attempt to delimit the area of personal freedom - those actions he termed self-regarding which affect no one but the agent, and which are to be sacrosanct from the interference of both state and society. The question might be asked: just how important are these self-regarding actions? Might it not be said that an action will be trivial indeed if it affects no one but the agent, thus affecting him only trivially. It would have given Mill's argument greater force if it could have been shown that certain intrinsic individual natural rights existed which must never be trespassed upon; but Mill's utilitarianism prevented him from such a clear commitment. He was, in fact, somewhat ambiguous on this question. On the one hand, he attached such intrinsic value to individual liberty that it prevented him from fully adopting the Benthamite doctrine of right being created by law, and the state

being the dispenser of liberties for the individual. Though he did touch on the relationship of freedom and responsibility, emphasizing the importance of self-mastery and self-fulfilment to social progress, he laid rather too great a weight on the idea that compulsion was a curtailment of liberty. Personal liberty is dependant on social and legal rights and obligations; this aspect of liberty, Mill did not actually explore. As we shall see later, this theme was taken up by T.H. Green.

Chapter 2

James Fitzjames Stephen

J.S. Mill, it might be said, had not solved a problem in his analysis of liberty, but had simply exposed one. This seems to be the position taken up by J.F. Stephen, who preferred the earlier Benthamite interpretation of liberty based on utility, and who repudiated Mill's idea that liberty was a "good in itself" as mere sentimentality. Mill, he thought, was a "deserter of the proper principle of rigidity and ferocity,"¹ which belonged to the older utilitarian school of Philosophical Radicalism. It was this tradition that Stephen was proud of, and which he felt that J.S. Mill had betrayed for weaker sentiments expressed in the essay "On Liberty".

Stephen begins his criticisms of Mill by challenging his central thesis. As we have seen, Mill stated his principle for allowing interference with individual liberty as being the self-protection of the individual and society and the prevention of harm to others. Any conduct which concerns the person alone is to be regarded as absolutely private. This sovereign area of liberty encompasses inner consciousness, conscience, unexpressed thought and feeling, opinion and sentiment, private tastes and pursuits. None of this, Stephen points out, does Mill attempt to prove.

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 12.

In furtherance of his criticism of Mill's liberty-principle, Stephen gives his own definition of the concept of liberty as it relates to human actions:

"All voluntary acts are caused by motives. All motives may be placed in one of two categories - hope and fear, pleasure and pain. Voluntary acts of which hope is the motive are said to be free. Voluntary acts of which fear is the motive are said to be done under compulsion, or omitted under restraint: A woman marries. This in every case is a voluntary action. If she regards the marriage with the ordinary feelings, and acts from ordinary motives, she is said to act freely. If she regards it as a necessity, to which she submits in order to avoid greater evil, she is said to act under compulsion and not freely."

Accepting this definition of liberty, with which Stephen assumes Mill would concur, then the latter position can be summarized as:

"No one is ever justified in trying to affect any one's conduct by exciting his fear, except for the sake of self protection,"

or

"It can never promote the general happiness of mankind that the conduct of any persons should be affected by appeal to their fear except in the cases excepted."

Put in this way, Stephen cannot see Mill's assertions as self-evident truths. To condemn the use of fear as a means of affecting human conduct, as he seems to think Mill does, is paradoxical to Stephen. Morality, religious or otherwise, leans very largely on fear as a governing factor in human conduct; for example fear of the law, fear of God's wrath, or even of the reproach of one's own conscience. Mill's claim that no interference with a person's conduct is to be tolerated unless on grounds of self-protection is not proved according to Stephen, for if morality is grounded in the sanction of society or of God, such interference with individual freedom cannot be deemed immoral

1. J. F. Stephen, "Liberty, Equality, Fraternity", page 57.

2. J. F. Stephen, "Liberty, Equality, Fraternity", page 57.

as Mill's theory would imply. Stephen thinks that he makes this point a *fortiori* by presuming that Mill would condemn the Almighty as immoral - "a tyrant trampling on liberty" - if he punished an individual for acts other than for "the purpose of protecting others."¹ Morality is more than simply allowing each individual to do what he likes so long as he does not hurt others. Moral systems exist to bring about benefits to society in general through the improvement of individuals, independently of Mill's liberty-principle.

Stephen's criticisms, if we accept them, severely weaken Mill's theory of liberty. In condemning interference as a means of influencing individual action, Stephen believes that Mill undermines morality because the latter presupposes a prohibitive system. Without coercion of one form or another, few people, says Stephen, would conform to the moral standards necessary for a civilized society. The legislator, or public opinion controls conduct in a systematic way which circumstances would compel in a more haphazard fashion:

"The laws which punish murder or theft are substituted for private vengeance, which, in the absence of law, would punish those crimes more severely, though in irregular manner."²

Coercion is not to be shunned as an evil threatening individual liberty. Coercion, whether by legal sanction, or the sanction of the disapproval of others, creates a fear necessary to morality, and, according to Stephen, man is constituted to respond to such fear by his very nature. But the main ground on which Stephen claims to have refuted Mill, on the question of coercion, is that Mill did not show it to be evil in itself

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 58.

2. J.F. Stephen, "Liberty, Equality, Fraternity", page 61.

fundamentally, but merely suggested that it had harmful effects. The point that Stephen makes is that it is the use to which coercion is put which is important for its condemnation or otherwise.

Mill held that liberty could only be properly realized in a state in which the populous had reached a standard of civilization which would enable them to benefit from free and equal discussion. At this stage of human advancement compulsion against mature adults, could not be justified, even for their own good. Stephen challenges this basic tenet of Mill's theory of liberty. Accepting that there is an area in which a person must be allowed to pursue his own tastes, the larger truth, says Stephen, is that those who are stronger and wiser in a particular sphere of life ought to compel other less fortunate individuals. This must be so, because the great mass of adults are not capable of knowing and seeking their own best interests. And in order to maintain his position of no compulsion of adults in their own interests, Mill would have to prove, according to Stephen, that all men are equally wise, and, thus, know their own good themselves. If this is not the case, then it would have to be proved that the wise in a community are not obliged to help those of lesser wisdom. In Stephen's opinion the possibility of a stage in human progress when "free and equal discussion" does duty for compulsion is a chimera. Referring to the facts of human experience, he argues that Mill has claimed too much for free discussion as an improver of conduct through its removal of ignorance. Misconduct is not caused by ignorance in most cases, we are told, but is the result of human wickedness or weakness. A man, for example, does not get drunk because he is ignorant, but because he is weak and foolish and governed by the desire for immediate pleasure.

Mankind, says Stephen, are a multifarious agglomeration of people who are incapable of being affected or improved by free discussion and who are totally indifferent to the refinements of Mill's concept of liberty. In sharp contrast to Mills' sanguine view of the prospects for the progress of mankind, Stephen says:

"Men are so constructed that whatever theory as to goodness and badness we choose to adopt, there are and always will be in the world an enormous mass of bad and indifferent people - people who deliberately do all sorts of things which they ought not to do, and leave undone all sorts of things which they ought to do."¹

Thus, if human beings are capable of improvement, Mill's liberty-principle will not be the agent for achieving it. The agent for any such progress will be coercion.

The Nineteenth Century was the time of the reform bills, which increased the franchise piecemeal. The inevitability of the increase in democracy was accepted by Mill and Stephen. Both men held reservations about its benefit. Mill believed that safeguards against government by the uninformed masses could be built into the constitution, such as proportional representation and plural voting; but he also placed great faith in the power of education to make responsible citizens of the labouring classes in society. Stephen did not entertain the same measure of enthusiasm for universal suffrage as did the so-called progressives such as Mill. One thing of which Stephen was certain was that the establishment of universal suffrage would not usher in the age of equality. Political power would remain concentrated but present itself in a different form:

"The result of cutting it up into little bits is simply that the man who can sweep the greatest number of them into one heap will govern the rest."¹

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 211.

Stephen believed that in any government the strongest man would be sure to rule. By a process of natural selection, those qualities most appropriate to the situation will give power to the persons who have them. It is the case that in a military government the qualities of the soldier will prevail; in a monarchy the qualities most valued by the king will ensure power to his minions and in a democracy those who rule "will be the wire pullers and their friends."¹ But to suggest that these rulers will be equal to those over whom they rule is a chimera. As the form of government changes so will the qualities which make for leadership. These might be strength of character, artfulness, business acumen, or oratory. But leaders there will be, those who will direct the mass of the people no matter what the form of government.

The advent of democracy in the form of universal suffrage could not be equated with equality, nor with the liberty, Stephen contended. Against this it might be claimed, of course, that with one man one vote all men have equal voting power, and a fundamental freedom attends the right of each elector to choose his parliamentary representative. Stephen ignores this consideration and concentrates on the merits and demerits of popular government in other ways. Like many of his contemporaries he looked upon democracy with a certain foreboding and was unable to give it the unqualified blessing that some progressives heaped upon it. Though accepting popular institutions as inevitable, he felt urged to point out their shortcomings. One major fear which he had, in this respect, was that with universal suffrage the rule of wisdom over folly might be reversed. Men might be elected to govern by the great untutored mass of mankind who were not the most suitable to the task, thus inverting the

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 211.

"natural relation" whereby the "wise and good rule" the "foolish and bad?"¹ Another disadvantage of popularly elected institutions is the lack of continuity in enacting legislation. This is because personal authority is lacking. The main obstacle here, Stephen maintains, is the result of the party system, which creates a situation whereby that party not in office does its utmost by constant criticism to prevent the other from governing. As a result the governing party very often abandons what it considers ought to be done in favour of what it is most likely to be allowed to do by the opposition.

Universal suffrage was not without its dangers to a man like J.F. Stephen. It would certainly not bring about equality in any important sense of the term because no such thing was possible, even if desirable. It did not add very much in the way of liberty either. In fact, Stephen felt, as did some other liberal thinkers of the age, that attempts to establish forms of equality would directly limit liberty - the liberty to exercise ones own natural talents and follow one's inclinations in many respects. This line of thinking was in fact also entertained by Mill, and here the two protagonists partially agree; but the difference which makes the difference between them was that Mill, though highly dissatisfied with the present low state of human nature, unlike Stephen, looked optimistically to a future state when a more favourable human condition would facilitate equality among men.

In Stephen's experience, liberty must be seen in context - the context of time, place and circumstance. Whether liberty was good or bad would depend on these provisos. The whole matter is so highly

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 212.

complex that it is not possible to be rigidly guided by a simple principle of the kind stipulated by Mill. Stephen thus advises us to be cautious and:

"confine ourselves to such remarks as experience suggests about the advantages and disadvantages of liberty and compulsion respectively in particular cases."¹

In his criticism of Mill we learn more about the shortcomings of liberty than its advantages. And we learn a great deal about the benefits of compulsion. The essence it seems of "Liberty, Equality, Fraternity" is the advocacy of strong government administered by efficient laws - a reinforcement of the authoritarian tradition of Thomas Hobbes rather than an espousal of nineteenth century liberalism. As Stephen interpreted it, the modern democratic state ought not to have liberty and equality as its basis; on the contrary, it ought to be a despotism in the hands of the gifted minority benevolently wielding great power.

1. J.F. Stephen, "Liberty, Equality, Fraternity", page 85.

Chapter 3

Walter Bagehot

The next of our nineteenth century political philosophers who concerned himself with ideas of liberty, and who, like J.S. Mill, looked to a nobler future for mankind, was Walter Bagehot. His main ideas on these themes are contained in his works, "Physics and Politics" and "The English Constitution". Like Mill, he believed that human progress was inevitable. He stressed the concept of government by free discussion as developing out of a more primitive state of society when custom and despotism was dominant. A political constitution based on the principle of discussion, he held, was to be identified with progress.

Bagehot believed in an environmental determinism -that the increases in scientific knowledge were affecting changes in politics and economics, and that natural selection made for continuous improvement in mankind and his civilization. He believed that progress in man was a result of the passing on of useful acquired characteristics from one generation to the next. Quoting Maudsley on the "Psychology and Pathology of the Mind" page 73, Bagehot states:

"Power that has been laboriously acquired and stored up as statical in one generation manifestly in such cases becomes the inborn faculty of the next; and the development takes place in accordance with that law of increasing speciality and complexity of adaption to external nature which is traceable through the animal kingdom, or in other words, that law of progress from

the general to the special in development which the appearance of nerve force amongst natural forces and the complexity of the nervous system of man both illustrate. As the vital force gathers up, as it were, into itself inferior forces, and might be said to be a development of them, or, as in the appearance of nerve forces, simpler and more general forces are gathered up and concentrated on a more special and complex mode of energy; so again a further specialization takes place in the development of the nervous system, whether watched through generations or through individual life."¹

In this way, says Bagehot, the past is linked to the present and the present to the future; a cultivated individual is able to pass on to his offspring the capacity for cultivation via inheritance of appropriate nervous mechanisms, and this continues with compound interest for generations to come.

Bagehot then, had a passionate, if somewhat naive faith, in human progress based on the wholly unscientific thesis that physiological development and cultural development are casually connected. According to him the progress of civilization has proceeded in the following way. Earlier primeval societies were organized on a patriarchal model; this Bagehot refers to as a "pre-economic age". Out of this patriarchal system in which the eldest male parent dominated the entire aggregated household come a separation of families to form a plurality of tribes or nations. The scriptures tell us that the families of Jacob and Esau become two separate nations. But the holding together of Jacob's children and its development into a community is, Bagehot thinks, the consequence of a state claiming allegiances beyond those pertaining to family. Bagehot is arguing that there is a natural progression from primitive patriarchal society to more complex improved forms of society,

1. W. Bagehot, "Physics and Politics", page 9.

just as the selective breeding of animals transmits improvements from one generation to the next. The ages of single authoritatian governments was an improvement on the tribal system, for it established communities under the rule of law, which was absent from the earlier patriarchal state. That these absolutist type of regimes suppressed liberty did not at this stage mean they were to be condemned. The repudiation of free thought at this time was a necessary evil, for it laid a firm foundation for the next stage of development by disciplining early man into a person better fitted for the improved civilization to come. Under these early despotic governments the law of states harnessed every man to his place in the scheme of things. What he was born to he stayed at and fulfilled his duties therein. Custom froze each individual in a hierarchical mould.

Now this state of things is, Bagehot says, correct for this earlier world, for these are the "ages of servitude" which prepared the way for later "ages of freedom."¹ Bagehot places great weight on the importance of training, claiming that ideas of liberty and euquality are only relevant when, through an apprenticieship under more rigid societies:

"the soft minds and strong passions of youthful nations
are fixed and guided by hard transmitted instincts."²

Thus, the ages of governing elites controlling their subjects by binding laws is seen as an essential precursor, a necessary yard-drill for toughening the sinues and nerves which are to be so fundamental to the

1. W. Bagehot, "Physics and Politics", page 30.

2. W. Bagehot, "Physics and Politics", page 30.

ages of freedom:

"The ages of monotony had their use for they trained men for ages when they need not be monotonous."¹

Like J.S. Mill, Bagehot lauded the need for variations in a society as necessary to the progress of civilization. It was the yoke of rigid customary discipline, which had served its purpose well as a formative stage of development, which had to give way to circumstances in which new ideas could be discussed freely without fear of sanction. This is what Bagehot refers to as the stage of civilization when the essential pre-requisite is variability. But this new freedom of ideas must not result in the repudiation of certain of the virtues of the earlier stage of development, so that variability must also be accompanied by legality if a nation is to survive the transmutation to the new stage of enlightenment. So, what is required for the progress of a society in which Bagehot so proudly believes is a fine balance between sufficient legality to unify a nation, but not so much as to stifle the variety so essential to change and progress. Despotism has its uses, he thinks, especially in earlier stages of development, or when a nation is at war. But in order that rigid custom be loosened to make way for progress an element of freedom of discussion is required.

"'Old law rests', as Sir Henry Maine puts it, 'not on contract but on status'"² This procrustean state of civilisation was broken out of, says Bagehot, because of the advent and growing influence of government by discussion. The mould of custom was first fractured in the ancient

1. W. Bagehot, "Physics and Politics", page 30.

2. W. Bagehot, "Physics and Politics", page 157.

republics of Greece and Italy:

"Liberty said, let there be light, and like a sunrise on the sea Athens arose' says Shelley..."¹

Bagehot contends that liberty in a state, whether it be a republic or a monarchy, is a system of government having its sovereign power apportioned among many persons and among whom discussion is free. It was discussion by men of their common interests and actions which nurtured the originality necessary to the progress of civilizations. Because of the incessant spur in some men to better their conditions of life, the customary rigidity of a number of earlier societies was eased and custom gave way to innovation and freedom. The great importance of government by discussion is that it straight away presupposes the fallibility of authority, for to follow discussion of a subject where it may lead, and finally come to a decision based on the outcome of that discussion, means that freedom of choice has come to take pride of place over established authority.

Bagehot's ideas presented in "Physics and Politics" show that the quintessence of his concept of liberty is a "polity of discussion".² Free discussion of opinion enables variability and originality of ideas to emerge; it makes for tolerance among men and furnishes civilization with the means to continuous improvement. But it also creates what Bagehot seems to hold as the qualities of the ideal liberal man. "This quality I call 'animated moderation.'"³ It is, he thinks, of profound usefulness in practical life. He sees it in the writers such as Homer, Walter Scott and Shakespeare, and he calls it "this union of life with measure of

1. W. Bagehot, "Physics and Politics", page 158.

2. W. Bagehot, "Physics and Politics", page 200.

3. W. Bagehot, "Physics and Politics", page 201.

spirit with reasonableness."¹ He also sees it in the English generally, but amongst statesmen who reflect it he singles out Lord Palmerston as something of a paragon:

"'He went,' it has been said, with a great swing;'
but he never tumbled over; he always managed to
pull up 'before there was any danger!'"²

So, here we have another benefit which an atmosphere of free discussion bestows - a quality which gives a man good judgement of what is right, and good intellect, but both in sufficient balance to avoid one-sidedness. This ideal of the liberal statesmen is shaped in a government of discussion because in such an atmosphere extremes of opinion cannot flourish. All of these advantages which free government affords far outweigh the disadvantages, and so Bagehot endorses Montesquieu when he says:

"whatever be the cost of this glorious liberty,
we must be content to pay it to heaven."³

Bagehot was zealously in favour of government by discussion, the core of his concept of liberty. One of the many benefits which he claimed for this form of government was that it improved intellect and created well balanced men. Holding this degree of enlightenment one would have expected him perhaps to have been willing to extend his principle of discussion to the populous at large by befriending universal suffrage, a policy which might encourage the ordinary citizen to take an interest in discussion of the political affairs of the nation stimulated by his power to play a part in electing his parliamentary representative.

1. W. Bagehot, "Physics and Politics", page 201.
2. W. Bagehot, "Physics and Politics", page 202.
3. W. Bagehot, "Physics and Politics", page 204.

Unlike Mill, who, as we have seen, expressed faith in the educative role that democracy would play, Bagehot, in "The English Constitution" 1866, lamented that democracy would be accompanied by intimidation, disorder and corruption, and he was not favourably disposed towards the establishment of universal suffrage for another hundred years. But like emergent nations that often have to learn to govern themselves by practice, it seemed to be Mill's view that, the enfranchised citizens would only learn to make mature and educated judgements about politics by way of a process of learning through involvement. True enough J.S. Mill had forebodings about what he called the "tyranny of the majority", but he was much more sanguine than Bagehot about the inevitable enfranchisement of the working man. Bagehot, who believed along with J.F. Stephen that liberty and equality were incompatible concepts, feared that democracy, in its potential to bring about greater equality, might result in the destruction of liberty. The liberty of individuals to express their individualism and pursue their own peculiar self-fulfilment might be smothered by the blanket of dull mediocrity:

"when England delivers herself over to 'the jangled mass of men'."¹

Bagehot and J.S. Mill were liberals who were much in agreement about the threat to liberty in their time. They wanted power for the middle class, but were fearful of the challenge to liberty which might come as a result of the "despotic power"² which universal suffrage would give to the working class. The problem with which both men concerned themselves was how to make democracy work in a way which would avoid the evil of opportunist party politicians pandering to the ignorant

1. G. Watson, "The English Edeology", page 157.

2. W. Bagehot, "The English Constitution", page 6.

multitudes of the lower classes. The aim was to preserve government by discussion and the guidance of the less wise by the wise. A frontal attack on liberty was seen by both men in constitutional reform which would give greater executive power to the House of Commons. In 'Representative Government', Mill recognized the authority of the Commons over the Monarchy and House of Lords, the latter unrepresentative institutions being invested with power only as a safeguard against errors of the popular assembly. But the preservation of liberty, he thought, would be gained:

"by disjoining the office of control and criticism" (the popular assembly) "from the actual conduct of affairs, and devolving the former on the representatives of the many, while securing for the latter, under strict responsibility to the nation, the acquired knowledge and practical intelligence of a specially trained and experience few."

It is at this juncture that Bagehot parts company with Mill. Bagehot regarded Mill's account of how the constitution works as 'a paper description' divorced from reality. Mill had not seen the important function of the Cabinet as a highly authoritative state management committee. Both men looked for antidotes against the 'tyranny of the majority', and its threat to liberty. Mill saw the solution partly in electoral reforms. Bagehot stringently attacked such proposals as vitiating to parliamentary government. By giving more power to the party machine outside Parliament, they would nullify the independence of the member of parliament, and thus, strike at the roots of moderation in the House of Commons. The way then to preserve liberty from the onslaught of working class despotism was not by the way of excluding only some working people from political power by electoral devices, but

1. J.S. Mill, "Representative Government", Chapter 5, quote by R.S. Crossman in Intro. to Bagehot, "English Constitution", page 7-8.

by having them all controlled and guided by their betters. Their betters were the representatives of the aristocratic and middle class who resided in parliament and made up the Cabinet, 'the efficient secret of the constitution!'

"The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers."¹

The focus of this conjoining of executive and legislature is the Cabinet:

"a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation ... A Cabinet is a combining committee a 'hyphen' which joins, the 'buckle' which fastens, the legislative part of the state to the executive part of the state. In its origin it belongs to the one, in its function it belongs to the other."²

The Cabinet is efficient because of "party loyalty, collective responsibility and secrecy."³ Thus, Bagehot's solution to the problem of depriving the working class from political power and hence, in his view, preserving liberty was to make certain that the power of decision-making was the exclusive right of the efficient part of the Constitution, the Cabinet. In addition to this measure it would also be necessary to improve working class conditions for the purpose of ensuring that they remain loyal to the Crown, while at the same time keeping them in ignorance of who really holds the power in government.

The shield against the worst effects of universal suffrage "the rule of an ignorant, miserable and vicious democracy,"⁴ if all attempts

1. W. Bagehot, "The English Constitution", page 65.
2. W. Bagehot, "The English Constitution", page 67, 68.
3. W. Bagehot, "The English Constitution", page 21, Intro by R.S. Crossman.
4. Quoted by R.S. Crossman in Intro to "The English Constitution", by W. Bagehot, page 10.

to delay it failed, was, in Bagehot's view, to make sure that "the democracy shall be educated and comfortable and moral,"¹ and, perhaps more important, excluded from all effective power concerning decision making in government. Bagehot was even more gravely anxious than Mill about the threat to British liberties from democracy. But as history has shown, Bagehot was in one way proved wrong. Despite his gloomy forboding, the enfranchisement of the working classes in the nineteenth and twentieth centuries has proceeded with equanimity, and the combination of government by discussion and universal suffrage appears a success. However, it might equally well be said that this success owes more to the growing power of the Cabinet, the middle class domination of parliament and the lack of political consciousness amongst the working class than it does to any of Mill's dreams having come true.

1. Quoted by R.S. Crossman, in Intro. to "The English Constitution", by W. Bagehot, page 10.

Chapter 4

Lord Acton

In expanding their ideology of liberty, the Victorian liberal and liberal-conservative political thinkers were not merely concerned to set out details of a liberal polity. As well as being interested in the practical aspects of governmental reform, they were also infused by a burning idealism. Each of the authors we have already considered, with perhaps the exception of J.F. Stephen, has shown an explicit belief in the idea of human progress towards a higher morality for mankind. This idea is clearly marked in the work of Lord Acton. His earnest quest for the good in human conduct was not even surpassed by J.S. Mill. The ideology of liberty which Acton propounded was indelibly grounded in morality, and therefore, political organization and reform had to be modelled in accordance with the moral law. Acton, like Mill, was an ideologue mainly concerning himself with general principles - he was engrossed in what he called ".... the reign of ideas."¹ The idea of the liberty of man was the essence of his ideology:

"Liberty is not a means to a higher political end.
It is itself the highest political end."²

This kind of thinking is reminiscent in J.S. Mill's objectivism, which seemed to be placing liberty in the realm of a natural law, immutable

1. Acton, quoted by G. Watson, "The English Ideology", page 16.
2. Lord Acton, "History of Freedom", page 22.

and eternal. But Acton's concept of liberty was imbued with a religious fervour quite foreign to Mill. Acton identified liberty with the cause of morality, a morality which was founded on religion. Man's duty was to reflect God's wishes. Freedom meant freedom of conscience, which meant freedom to avoid sin. Man is obliged to act morally on earth as a consequence of his obligation to God. A strong moral commitment permeates Acton's doctrine of liberty which is fundamentally grounded in this religious reverence. In this metaphysical setting the individualist approach to the liberty of Mill and Bagehot becomes transformed in Acton for:

"Liberty is not the power of doing what we like,
but the right of being able to do what we ought."¹

All politics then must find their rationale in ethics. Liberty is seen as an ethical concept and cannot be separated from duty; and duty is above the state or society because it is sanctioned only by God:

"The feeling of duty and responsibility to God
is the only arbiter of a Christian's actions."²

When Acton says that liberty is the supreme object of politics it is because he sees liberty as an ethical concept which involves freedom of conscience, the protection of the weak, representation in Government, the extinction of slavery and the ascendance of free opinion. In this way, liberty is not merely negative, but becomes a positive and creative principle aiding the individual to achieve self-fulfilment.

Liberty, in Acton's view, cannot be established arbitrarily; it is slow growing and late maturing. This is because it presupposes the existence and development of other things. Acton thought in developmental

1. G.E. Fasnacht, "Acton's Political Philosophy", page 19.

2. G.E. Fasnacht, "Acton's Political Philosophy", page 20.

and progressive terms. In his definition of Liberty he first states the conditions necessary to its existence:

- "1. Long and arduous experience,
2. a rampart of tried convictions,
3. accumulated knowledge,
4. a fair level of general morality,
5. education,
6. courage,
7. self-restraint."¹

Flowing from these conditions he says:

"Liberty is the assurance that every man shall be protected in doing what he believes his duty against the influence of authority and majorities, custom and opinion."²

We see here the same emphasis placed on the protection of the individual as was stressed by J.S. Mill and Bagehot; but the more strongly ethical character of Acton's view of liberty places greater importance on a man doing what is his 'duty' and being protected in this from the sources of encroachment mentioned above. So liberty for Acton might be the highest political end, but it is not the only or highest purpose in man's existence. Liberty must be subject to restrictions for the sake of the attainment of more supreme aims. These supreme aims are the moral object of obeying God. Acton regarded true freedom, to be freedom of conscience inspired by God because it liberated man from secular absolutism. In this way Christianity, is the handmaiden of liberty by making conscience a thing private and independent of the authority of the state.

In propounding their ideas of liberty, Mill, Stephen and Bagehot, have a number of ideas in common. These are a belief in progress, fear of despotism by a tyrant or by the influence of popular

1. G.E. Fasnacht, "Acton's Political Philosophy", page 29.
2. G.E. Fasnacht, "Acton's Political Philosophy", page 29.

democracy, a belief in a flexible constitution and government by discussion, the ascendancy of middle class power over the working classes, and a belief in the power of ideas. In considering Acton's position we find that he has, more than any of the other writers, attached his concept of liberty to the notion of conscience. Emmuel Kant said that two things filled him with awe - the starry heavens above and the moral law within. It was a similar belief in an infallible moral law and its influence upon conscience which Acton felt could alone give true meaning to liberty. It is, therefore, essential to give some consideration to Acton's analysis of conscience if we are to fully understand his concept of liberty.

Through his notion of conscience, Acton was able to delimit personal liberty, as Mill had attempted to do. But Mill had nothing to which he could anchor his sovereign area of personal liberty, apart from a vague appeal to a natural law. Acton however, added another dimension to the concept of liberty by stating that it rested upon the notion of Christian conscience. And, as the Christian is answerable only to God on matters of conscience, the justification for a sacrosanct area of personal liberty is that conscience is guided by the voice of God. For Acton, liberty and Liberalism depends on the idea of conscience which urges man to obey the inner light of God's commands in preference to those of man. Bagehot said that government by discussion presupposed toleration as essential to freedom; Acton said that conscience produced toleration, and because conscience is infallible it promoted liberty. It does this because each conscience respects the consciences of others, and in this way liberty is increased by limiting authority.

Lord Acton's belief in the sanctity of conscience and its importance to liberty greatly influenced his thinking about government.

He preferred democracy to any other form of government, but he was not amenable to what he referred to as absolute democracy. This was because "absolute government contradicts the Divine Law."¹ To be governed by any form of absolutism is the denial of government by discussion and reason. Thus, the nation must be guided and controlled by its representatives in government. Acton saw in direct democracy the potentiality for a unity of power which would be a threat to liberty, and he therefore advocated that power be divided as a pre-requisite of freedom. He was in favour of a federation, which he believed would be a protection against the centralization of power. Under a federal system, like that of America, Acton believed that:

"constitutional securities against democratic tyranny
and popular dictatorship were greater and more effective."²

than they were under the British system of representative democracy.

Acton was not an enthusiastic democrat, but towards the end of his life he modified his earlier views after seeing that democracy had been successful in England, France and America. His initial fears had been governed by his belief in moral responsibility, which he was afraid men would discard on being influenced by the mass. His federal constitutional checks were therefore essential as he saw it to prevent the majority from abusing its power and thereby jeopardising liberty.

1. G.E. Fasnacht, "Acton's Political Philosophy", page 104.

2. G.E. Fasnacht, "Acton's Political Philosophy", page 99.

Chapter 5

Thomas Henry Green

Acton had viewed liberty not simply as a negative concept to be identified with the absence of legal or other restraints, but as something positive:

"an active and creative principle the motive and source of all life..."¹

T.H. Green also took up this sense of the meaning of liberty and defined it as:

"a positive power or capacity of doing or enjoying something worth doing or enjoying."²

Acton was also echoed by Green in his insistence that conscience is a kind of supreme court of appeal in moral criticism of the state. Acton stressed the idea of personal rights in obligations or duties when he suggested that each individual conscience must respect the consciences of others. Furthermore, he declared that man retained an area of personal freedom which rested on an obligation to obey the voice of God, as it revealed itself in the conscience of man, enjoining him to do what he ought, not what he would like. It is with these notions of positive freedom, right, obligations and duties that we now proceed to an examination of the concept of liberty in the work of T.H. Green, principally in "Lectures on the principle of Political Obligation".

The work of T.H. Green marks a clear departure, not only from the

1. G.E. Fasnacht, "Acton's Political Philosophy", page 29.
2. Quoted by G.H. Sabine in, "A History of Political Theory", page 610.

principles of Benthamite utilitarianism, but also from the modified utilitarianism of J.S Mill. Green can perhaps be classified as belonging to what Dicey has referred to as the 'Period of Collectivism' in 19th century Liberalism from about 1865 to 1900:

"By collectivism is here meant the school of opinion often termed socialism, which favours the intervention of the state, even at some sacrifice of individual freedom for the purpose of conferring benefit upon the mass of people."¹

Dicey points out the vagueness of the term collectivism and states that a person may be said to be a collectivist in being opposed to certain tenets of individualism, yet be at variance with what might properly be called socialism. It would perhaps be near to the truth to place T.H. Green in this qualified category of collectivist. Green's collectivist views were in effect a re-statement of what liberalism meant. Green, like Mill, did in fact regard liberty as the chief end of citizenship but he made great play of his notion of 'positive freedom' involving the development of a social system which would enable its members to enjoy more of the benefits of civilized life. The legislation necessary for this purpose would restrict the activities of certain individuals; but this could be approved under Green's 'positive freedom' as creating conditions necessary to the common good. In the tradition of ancient Greek idealism, Green saw the justification of the state as the promotion of the good life for mankind. He placed importance on duties and obligations as well as rights, and advocated a greater sense of civic responsibility in place of ruthless competition and self-interest which individualism tended to encourage. With this aim of achieving a more co-operative life for society, state limitation of some forms of liberty could be vindicated.

1. A.V. Dicey, "Law and Public Opinion in England", page 64.

What T.H. Green tried to do was to show how personal liberty, so precious to the liberal temperament, depended on social and legal rights, obligations and duties. Green was concerned with what constitutes a moral community, and on this turned his ideas of moral freedom. Rights are equated with liberties. Rights and obligations are a dual social relationship in a social system - the former gives man his freedom, while the latter gives him his duties. In his lecture on 'The Grounds of Political Obligation', Green notes:

"my purpose is to consider the moral function or object served by law, or by the system of rights and obligations which the state enforces, and in so doing to discover the true ground of justification for obedience to law."¹

It is the 'moral function' with which Green was much occupied, for he believed that genuine liberalism must follow the guidance of moral purposes. The moral purposes he sought were the establishment of a more humane life for the bulk of the population. Thus, we have the ideas of a general good to be shared by all which should be the criterion of government action.

If follows from this kind of theorizing that the criterion for legislation would be severely limited if it rested on individual liberty alone. With his concept of positive freedom entailing that conditions be provided for personal fulfilment, the principle of least regulation of free choice would be totally inadequate to this end. Human needs cannot always be assessed in terms of freedom of choice because many situations and conditions of society under which people exist do not provide the opportunity for choice at all. What Green was saying was that liberty is not individual but social. It is concerned with the quality of life and society. With such terms of reference, a government must actively set about creating the right conditions for human progress,

1. T.H. Green, "Lectures on the Principles of Political Obligation", page 29.

by the appropriate legislation. It must influence morality by removing those obstacles which stand in its way, such as poverty and degradation, lack of education and facilities for personal improvement. The ethical character of Green's thinking about what liberty stands for is quite clear. It involves a relationship between individual and community; man needs a measure of individual liberty, but man is also a social being bonded to the larger social group.

The question which interested Green was, what was the value of the institutions in the community on which each of its members were so dependent? He believed that the answer to this question was that institutions in civil life were to be justified on the ground that they provided for the exercise of man's will and reason, the possession of which made a moral life possible. Will enables a man to achieve self-satisfaction by determining his actions, while reason gives man the capacity to see the perfection towards which his nature might be fashioned. Reason he thought guided the will and thus, made man a free agent, and a moral agent. And with this insight into the moral self-perfection which is possible, each man in society contributes to the improvement of society as a whole. Green gives this justification of a community's institutions, when they fulfil these criteria of making the moral life possible, the status of a 'natural law',¹ which involves a system of rights and obligations. But he does not hold natural rights and obligations as meaning that man retains certain sacred inalienable rights which he brought with him from a state of nature. Accepting that the conception of natural rights is untenable, he is at pains to justify that there is another sense of natural rights and obligations which does exist. What

1. T.H. Green, "Lectures on the Principles of Political Obligation", page 33, section 7.

Green means by 'natural' here is simply 'necessary' as a means to the realization of the true end of human society. Green distinguishes rights and obligations from moral duties, pointing out that though the latter are related to the former, the difference is that moral duties cannot be enforced by law. A person can be legally enforced to act in a certain way according to a duty, but the very nature of a duty is that it rests on certain dispositions and motives, which because of their purely mental character do not admit of enforcement:

"It appears, then that legal obligations - obligations which can possibly form the subject of positive law - can only be obligations to do or abstain from certain acts, not duties of acting from certain motives, or with a certain disposition."¹

The kind of outward acts to which legal obligations should be applied are, Green tells us, those which are necessary (and would not be achieved otherwise) to the maintenance of the society and the achievement of the moral end to which the existence of the society is the means. The function of legality is not, in Green's view, merely to protect the liberty of the individual. This theory has served its purpose in society, but is no longer relevant. In the interests of a society on the move, a society progressing to higher forms of civilization, particularly from a moral point of view, interference with the individual's liberty to do as he pleases in a *sine qua non*. But Green's conception of morality was not paternalistic:

"The real function of government being to maintain conditions of life in which morality shall be possible, and morality consisting in the disinterested performance, or self-imposed duties, 'paternal government' does its best to make it impossible by narrowing the room for the self-imposition of duties and for the play of disinterested motives."²

Green repudiates the theory of natural rights as traditionally understood, i.e. derived from some state of nature and retained in a

1. T.H. Green, "Lectures on the Principles of Political Obligations", page 37, section 14.
2. T.H. Green, "Lectures on the Principles of Political Obligations", pages 39-40, section 18.

contract between people and government. To Green it is the moral end of legislation which is important and what he accepts as being 'natural rights' are those powers necessary for a member of society to achieve the moral end. And law is justifiable on these grounds alone. There can be no rights without obligations; man claims rights from society, and society counter-claims obligation from man, and the end product of this relationship is the moral perfection or ideal of man. This arrangement rests on the recognition of a common good accepted as a personal good by each individual member of society. Each individual is thus, an end in himself and his liberty is ensured through universal recognition of the same freedom for all. These rights or liberties are basic to the development of a moral personality, for without them the individual is unable to accept the common good as his own good. However, rights are only conferred on individuals as they are members of a society who have submitted to common aims and interests. Without organized institutions to direct the life of society in all directions of the common good, no individual rights could exist:

"To ask why I am to submit to the power of the state is to ask why I am to allow my life to be regulated by that complex of institutions without which I literally should not have a life to call my own, nor should be able to ask for a justification of what I am called on to do."¹

Because rights are derived from membership of a society, it follows that unsocial actions claimed as rights by anyone are a contradiction, for being a member of society entails the self-limitation of ones powers to an extent which harmonizes with the exercise of the power of the other members of that society. The objection to this, that one might claim the right to resist because he had not consented to the restriction of his

1. T.H. Green, "Lectures on the Principles of Political Obligation", page 122, section 114.

powers, is countered by Green, in that, not consenting would entail a forfeiture of all rights for that person. This is because powers, as rights, are obtained only as a result of membership of a society.

Greens ethical model was not individual liberty per se, but a mutual relationship between individual and community. Without this, no real individual development is possible, he thought, for this depends on the existence of a society capable of creating social bonds sufficiently strong to ensure the survival and advancement of the group. The development of the human personality can only be realized in group membership, and in playing a significant part in the functioning of that group. And the social group, Green held, was a natural consequence of the nature of man - there was in him a compulsion to be a member of a society, and it was this that was more important than force in holding society together and making progress possible. In other words, it was the social group, rather than the individual through which the laws of survival worked, a view, as we shall see later, that was diametrically opposed to Spencer's interpretation of the concept of natural selection.

The new liberalism, of T.H. Green acknowledged the social impulse as natural to man, and rejected laissez-faire type individualism as being at variance with the ideal moral potentialities of mankind. The ideal end of moral development is the moral equality of every member of a society, each respecting the other's freedom of thought and action as responsible citizens. For this state to be realized, force in society must be reduced to the minimum, for it detracts from the individual as a moral agent himself. This kind of thinking clearly brings out Green's position regarding the function of the social group. Society is not an end in itself, but is as Kant said, a "Kingdom of ends, each person being

an end in himself". Realization of the aim of moral self-determination and moral dignity is the reason for the existence of a civilized community with its system of rights, obligations and duties as Green saw them. These individual ends are recognized and supported by the community because the common good can be realized only through each individual being conscious that his achievement of his own well-being depends on membership of the community. And the individual realizes that his own personal rights or freedoms must accept some limitation in deference to the social interests of the entire community.

Different though Green's views were from the earlier liberal thinkers we have examined, there remains a basic liberal element in his moral theorizing which provides an important link with them. This is his insistence on the individual as a moral end in himself for which a society exists, and not the other way round. Self-abnegation for the sake of the state was not Green's advocacy. The individual is obligated to the social system because the latter alone can secure his rights. But this liberal link is with J. S. Mill rather than with the earlier Benthamite tradition, for Green placed greater emphasis on the ethical than on the legal conception of the relationship between individual and community. Bentham had claimed that rights were derived from law; but Green regarded law as no more than the instrument of fundamental moral principles emerging from a growing and progressing public opinion. Natural law, necessary to the community, meant justice, equity, and humanity, the source from which juristic law is infused with spirit. Law then, must work in close contact with morals - the latter being the task master for government. Green believed in the moral idea of a social conscience which both guides the making of, and is protected by law. This is also a truly liberal element in Green's thinking; like Acton he believed that each man must be allowed freedom of conscience for it is the essence of a liberal society that each man be allowed to judge for himself. This moral freedom was the keystone

of Green's liberalism, but it could not exist except for a relationship to society which entails obligation to that society. It is only in the context of a society that an individual personality can be endowed with liberties. The good liberal government minimizes coercion and encourages moral self-control, and avoids frustrating the individual's self-expression whenever possible. Each citizen is a free participant in a free society in which government guides and controls in the light of the idea of freedom of action and judgement for all men in so far as these arise out of a sense of social responsibility. To enable men to achieve the level of sophistication necessary to act and judge responsibly, Green looked to the social function of education. He believed, like most other liberal thinkers, in the idea of social progress. In modern society, the policy of education for all would ensure that the benefits of civilization accrue to every one of its members. Here was a clear indication of the moral superiority of modern nations over ancient ones, for did not the civilization of antiquity deny its cultural goods to all but an aristocracy?

After a consideration of Green's idea of what liberty meant in the last quarter of the 19th century, it is evident that he was making a restatement of liberalism. The older liberals had attempted to exclude the state from interfering too much with individual liberty and the operation of market forces. State legislation he saw as necessary for the regulation of commercial and industrial institutions in the interests of the community at large. Government and economic institutions were interlaced so closely that they must both contribute to the ethical progress of society. This change of view brought an entirely new meaning to

liberalism and to the concept of liberty, to such an extent that it raises the question whether Green should be included amongst liberal thinkers. Spencer would have said not, for it was his view, that liberalism stood fundamentally for individualism. Had liberalism not believed that the activities of the state be kept to a minimum, and had it not looked to constitutional safeguards as a bulwark against interference with freedom either from popular despotism or party despotism? Green justifies his restatement of liberal ideology and its consequences for liberty with his concept of 'positive freedom' which viewed the state as a positive agent working via legislation to improve the general welfare of its citizens. Some of the positive actions which he believed the state should undertake were compulsory education for all, financed by the state, more large scale sanitary arrangements for the promotion of improved health, better standards of housing to improve living conditions and legislative control of private contracts. Interference with existing property and contractual rights was, after all, legitimate where these were hostile to the common good.

T. H. Green might be classified as a 'liberal socialist' by some. But on the other hand it could be cogently argued that quite properly he did not seek to make individual liberty an end in itself, but more correctly saw it as a means to happiness. And as he was concerned to make the advantages of the civilized life open to all men, then he was in essence attempting to give a more practical realization to the utilitarian principle of the "greatest happiness of the greatest number". So perhaps this interpretation places Green more firmly in the liberal philosophical camp than in the socialist one. But as his philosophy of liberalism was meant to embrace the interests of the community as a whole and thus move it away from identification with middle class interests, to this extent

he does have an affinity with many who would give themselves the name of socialist.

Chapter 6

Herbert Spencer

If the work of Green is seen as an intelligent and appropriate reaction to changed circumstances then, that of Herbert Spencer must appear to be something of an anachronism. It is essentially a defence of the kind of individualism and materialism attacked by Green in terms of the new preoccupation with evolution made popular by the works and followers of Darwin. Spencer is in fact the classic representative of the school known as Social Darwinists. Though Spencer shared the common belief with the other liberal thinkers in the inevitability of progress for mankind, to him this did not mean the mitigation of bad social conditions by state action. He believed dogmatically in the progress of man through the evolutionary process of the survival of the fittest. To him pain and suffering were necessary burdens which would produce good results for mankind by enabling only the best to survive. For the state to tamper with this process would only thwart these beneficial results.

To understand Spencer's conception of liberalism and the nature of liberty in this context we must first look briefly at how he attempted to relate his social theories to biological evolution, for it was this which, he thought, gave his social philosophy its scientific underpinning. The basis of his view rested on what he called the "law of

equal freedom."¹ Equal freedom was the freedom of each individual creature to struggle for existence and for the fittest to survive. This so-called freedom of the evolutionary process seen as an inexorable "life force" was analogous to the great systems of natural law of the 17th Century. Fundamental to this evolutionary theory was an idea Spencer came upon when studying physiology. From Von Baer's embryology he learned of the law of differentiation and integration, "... that the development of every organism is a change from homogeneity to heterogeneity."² This idea was seen as the cosmic principle working in the physical biological and social universes. Spencer deduced organic evolution from the conservation of energy principle and argued that nature progressed from energy to life, then to mind, mind creating society, society evolving to civilization, and from then on to more highly developed civilizations. The progress to higher social organization would only come from the survival of the fittest in the evolutionary struggle.

Quoting from his work "Social Statics" 1851, Spencer says :

"Note further, that their carnivorous enemies not only remove from herbivorous herds individuals past their prime, but also weed out the sickly; the malformed, and the least fleet or powerful. By the aid of which purifying process, as well as by the fighting so universal in the pairing season, all vitiation of the race through the multiplication of its inferior sample is prevented; and the maintenance of a constitution completely adapted to surrounding conditions, and therefore most productive of happiness, is ensured."³

Arguing on this basis, progress in human affairs is thus, only ensured if the weak and incapable are thrust aside for the sake of the survival

1. H. Spencer, "The Man v The State", page 140.
2. H. Spencer, "The Man v The State", page 21.
3. H. Spencer, "The Man v The State", page 139.

of the strong and the best. This relentless process, Spencer saw as the "decrees of a large, farseeing benevolence."¹

Survival of the fittest via natural selection enabled some of the species, homosapiens, to endure in the savage and primitive times. But this survival mechanism, says Spencer, still continues to work in more advanced environments. Civilized men can survive only by developing capacities other than brute strength. Civilised life requires special types of intellect, and the ability to defer immediate gratification for the sake of greater goods to come. The way to progress, we are told is bound to result in misery for some because they are not fitted for the evolving conditions of society. To attempt to remove the unhappy conditions is futile for the evolutionary process is winding its way forward and shaping mankind to its teleological purposes. The unhappiness, misery, and degradation which it wrecks in its way are necessary evils which must be borne:

"... No power on earth, no cunningly-devised laws of Statesmen, noworld-rectifying schemes of the humane, no communist panaceas, no reforms that men ever did broach or ever will broach, can diminish them one jot. Intensified they may be, and are; and in preventing their intensification, the philanthopics will find ample scope for exertion. But there is bound up with the change a 'normal' amount of suffering, which cannot be lessened without altering the very laws of life."²

A measure of sympathy among men, Spencer tells us, is acceptable, but only in so far as it does not interfere with the "law of equal freedom", for in this case it might result in the "pure evil" of suspending "in some particular department of life the relationship between constitution and conditions."³ When this occurs suffering may be decreased temporarily

1. H. Spencer, "The Man v The State", page 140.

2. H. Spencer, "The Man v The State", page 140.

3. H. Spencer, "The Man v The State", page 140.

but in the long run it is in fact increased, because those who are not the fittest for life are allowed to survive and multiply and become an encumbrance to those better adapted for existence.

The support for his thesis Spencer took from Darwin's work, "Origin of the Species"; but was inaccurately conveyed by his analogy. Darwin was not committed to the view that the fittest are the best. Nor to the idea that the survival of the fittest justified the annihilation of the less fit. Unlike Spencer, he was aware of the essential part balance played in nature - Spencer's position was nearer to that of Lamarck than to that of Darwin. The belief in the inheritance of acquired characteristics seems to play a prominent part. It was this view of evolution which led Spencer to think that it was the individual and not the social group which evolved. Society, he understood, to reflect the advancement of its members. All his thinking on ethics, politics and economics was coloured by this idea of organic evolution. He saw society as the outcome of natural development and not as something which was manufactured by government. Society he deemed, is in a sense, a natural organic structure made up of the interdependent institutions of government, religion, industry, commerce and so on. It cannot be moulded or shaped as communists or socialists think, nor arranged as many Liberal Acts of Parliament were designed to arrange it.

Spencer eulogised the liberalism of the past as being guided by the true principles of individual liberty. The legislation reflecting these principles he claims are legion. Some of the examples given by him are: the repeal of the Combination Acts, and the ending of measures which interfered with the freedom of travel for artisans; the freedom for Catholics to practice their religion; the acts which forbade the buying and bonding of negroes. There was also the Reform Bill, and the

Municipal Reform Bill which narrowed the political serfdom, thus lifting coercion of the many by the few. These measures, and many more favourable to individual freedom, were brought about either by liberals themselves, or under the influence of liberal principles. The philosophy of liberalism at this time was to emphasize voluntary cooperation and weaken compulsory cooperation. But the liberalism of the present, Spencer asserts, has lost sight of its true principles of liberty, it presents an ideology which is reflected in increasing coercive legislation and this diminishes the freedom of action of individuals. Liberal policies in the past, we are told, were of a kind which abolished grievances, and attenuated evils, which were the cause of much unhappiness. These were negative measures, which came to be recognized as a positive advantage. It was this kind of thinking which led Liberals, Statesmen and voters alike, to view liberalism as standing for a policy of positive social welfare. This confusion about what liberalism really stands for has, says Spencer, been brought about by mistaking the indirect relaxation of restraint (true concept of liberalism) with more direct measures requiring coercive legislation (false conception of liberalism).

The consequences of what Spencer deems to be a reversal of liberal policy are, he thinks, clear to see. The measures which he condemns as unnecessary State interference with the freedom of the individual began at the time of the second administration of Lord Palmerston (1860), but we shall confine ourselves to some of the examples which Spencer gives of State encroaching legislation under Gladstone's first ministry and later. There is the institution of the State Telegraphy System, accompanied by the prohibition of private telegraphing agencies; the authority of the Secretary of State to regulate hired conveyances in London; regulations to prevent the spread of cattle diseases; a Beer House

Regulations Act; and a sea-birds Preservations Act. Then there is the Education Act which provides for the setting up of School Boards with the power to purchase sites for schools, some of which may allow free education paid for by the local rates, and to make schooling compulsory. There were additional Factories and Workshops Acts, placing restrictions on the employment of women and children in fruit-preserving and curing works. Then, under another ministry, there was in 1880, a law which forbade conditional advance notes in payment of sailors wages; a further law was enacted to increase local authority power to compel school attendance. In 1882, the Board of Trade was given power to grant licences to generate and sell electricity, and municipal bodies were enabled to levy rates for electric-lighting. And so Spencer goes on enumerating the further compulsory legislation which he feared would come in the future involving more and more restrictions on the liberty of the individual citizen. Broadly speaking, Spencer was opposed to a great deal of the regulation of industry, to sanitary regulations, to public charity and state support for education. All of these measures, which would be sanctioned under T.H. Green's conception of "positive freedom", were anathema to Herbert Spencer.

It might be claimed as a counter to these fears of state regulation that they are justified on the grounds that they are brought about by a democratic legislature created, and sanctioned in its operations, by the people themselves. Spencer repudiates this reasoning, saying, that the coercion doled out, remains a curtailment of the individual liberty regardless of whether the subject had a voice in creating the legislative body by democratic process, or whether it was a despotism established against his wishes:

"If men use their liberty in such a way as to surrender their liberty, are they thereafter any less slaves? If people by a plebiscite elect a man despot over them, do they remain free because the despotism was of their own making?"¹

Spencer is here expressing the same fear of despotism by popular consent as was expressed by all the other writers we have consulted with the exception of T.H. Green. This is to be expected, for Spencer clearly belongs to the earlier liberal tradition. Despite the fact that his laissez-faire concept of liberty would stand against practically all measures of reform and efforts to promote social welfare, he claimed that true liberalism should concern itself with challenging the assumption of unlimited parliamentary authority, as it did the assumption of unlimited monarchical authority. Thus, he stresses:

"that 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 restraint it imposes on him."²

All coercion of the individual, all restraints on his liberty must be limited to those necessary to prevent the transgressions of the liberty of others.

This criticism of the growing power of government over the individual is taken up again in Spencer's chapter "The Great Political Superstition". His attack in this section of 'Man v The State' is directed against what he refers to as "the divine right of parliament",³ which he regards as a superstition no more credible than the belief in the divine right of kings. Spencer's purpose is to challenge the idea that a government's authority is unlimited. The justification of the

1. H. Spencer, "The Man v The State", page 78.
2. H. Spencer, "The Man v The State", page 79.
3. H. Spencer, "The Man v The State", page 151.

absolute power of the monarch in earlier times was that his power was delegated to him by divine will. Modern government cannot claim such supernatural aegis. But, claims Spencer, governments have still tended to hold on to tacit acceptance of such unlimited power as though their law-making was under the behest of God. In this way has arisen the belief that an Act of Parliament has unlimited authority. But Spencer refuses to be influenced by the suggestion, and disputes the concept of a Sovereignty of Parliament as he would the sovereignty of a despotic ruler. Rule by the many, or the right of the majority, does not give unlimited authority to the legislature it elected.

Spencer then proceeds to show that the so-called "right of the majority is a purely conditional right, valid only within specific limits."¹ He points out that if an organization were established for the purpose of following a particular programme of aims, and the majority of its members were to decide to follow a course of action incompatible with these aims, then the rest of the members would not be duty bound by such a decision. The action would be pronounced 'ultra vires', and it would be asking the membership to give support for policies which were beyond the organization's terms of reference. In the same way, members of a state would only be obliged to follow a majority decision if it were in line with the objectives agreed to when the government was established. In this case a contract would stand, but if the government were to carry out policies, in the name of the majority, which were not specified at the outset, then no contract between all the members of the society would be valid, and for the minority to be coerced into acceptance of these policies by the majority is sheer tyranny. Spencer here expresses the same fear of the 'tyranny of the majority' as did J.S. Mill. Thus, it

1. H. Spencer, "The Man v The State", page 156.

would seem that a supremacy of a majority over a minority can only be morally justified in the case where the proposal is in accordance with the purpose of society as such. The will of the majority, then, may only be forced within definite limits, beyond which its power must be restrained.

In discussing the idea of "natural rights" Spencer's interest is in how far the individual has rights against the community. To know this is essential to knowing the proper function and scope of government. He rejects the current thinking of his day that there are no such things as natural rights. The evidence for the existence of "natural rights" is for Spencer overwhelming. Are not tribes regulated in their conduct by custom prior to the advent of government? The Bechuanas, the Koranna Hottentots, the Arancanians, the Kirghizes are all controlled by custom. The authority of such customs are so revered by primitive men that they limit the power of government when it is established. These customs have the authority to overrule governmental power because they avow certain individual rights which guarantee certain personal actions and possessions. Spencer's point is that rights are not the creation of the law, but were recognized before the existence of law, deep in the heritage of custom. Further evidence to support this contention that "natural rights" pre-date government is that there exists almost universal correspondence in the rights revered by different nations. The same kinds of aggressions against others are almost universally condemned: homicide, theft, adultery, breach of contract, libel, false witness and so on. This basic conformity amongst nations about essential rights is:

"because the alleged creating of rights was nothing else than giving formal sanction and better definition to those assertions of claims and recognitions of claims which naturally originate from the individual desires of men who have to live in the presence of one another."¹

1. H. Spencer, "The Man v The State", page 167.

If this be the case, that man possesses certain natural rights, then it is the duty of the state to preserve them, to sanction and defend them. This makes government the servant of the individual and not vice versa.

The idea of "natural rights" is based on Spencer's evolutionary individualism. The assumption he makes is that life is justifiable. If life is justifiable, then life sustaining activities are also justifiable. Individual liberties are life sustaining so individual liberties are justifiable and thus must be 'natural'. Social life is prompted by the 'natural' needs of the individual. Living and working in groups not only ensures the survival of the groups qua groups, but more important, recognizes the rights of the individual. And, it is the maintenance of individual rights on which the life of society depends. It would seem then, according to Spencer, that the individual has natural rights which are to be protected by government, and that there can be no unrestricted state power over individuals in any sense of the divine rights which once belonged to kings. Thus, the idea that the power of popular government is unbridled, because its sovereignty resides in the will of the majority, is declared by Spencer to be a political superstition. Government is merely a committee of management which, while it obtains its authority from those who elect it, must not go beyond the specific limits of its terms of reference, even if sanctioned by the majority, for even these terms of reference are conditional on the maintenance of certain basic "natural rights" of the individual which existed prior to government.

From what Spencer has said, the concept of liberalism which he seeks to maintain is that which concerns the freedom of the individual against state encroachment and interference. This is in contrast to T.H. Green's theory of liberalism, which was a justification of state interference in the lives of individuals for the purpose of improving their social

well-being, and in this way increasing their liberty by providing them with greater opportunities for self-expression and fulfilment. Spencer's theory emphasizes the "natural liberties" of men, and condemns state interference with these as an intrusion and as self-defeating. Preserving the conditions favourable to the evolutionary process alone will lead to human progress.

Chapter 7

Francis C. Montague

The liberal ideology of liberty in the 19th century was not something static. It did not even embrace a blue-print for an ideal society as was the case with communism or even socialism. This fact has emerged quite clearly from the works of the writers we have considered so far, for each individual political philosopher has expressed his own personal view as to the meaning and function of liberty. In the last quarter of the 19th century increased government legislation which interfered with individual freedom became necessary to meet the changing circumstances which individualism had brought in its train, and a change of emphasis from individual and negative ideas of liberty to collective and positive ideas of liberty became more and more apparent. Thus, liberty to some of the liberal thinkers was not something which could be delimited and set up as a personal right to freedom as J.S. Mill, Acton and Spencer had attempted to do. That Liberty meant more than individual freedom from the interference of others, or of the state, in ones activities, was the view, as we have seen, of T.H. Green. This was also the belief of F.C. Montague as presented in his book; "The Limits of Individual Liberty".

Montague's contention was that the high hopes of the advocates of individual liberty for the progress it would achieve for mankind had not

been justified. The basic idea held by the ideologues of individualism was, says Montague, that the elimination of unnecessary restraints and privileges would produce the good society, and the acts of statesmen would become gratuitous. This idea rested upon the assumption that human nature was basically good, but that society, being bad, corrupted it. If the individual were left to follow his own good instincts and reason, without the debasing interference of the institutions of society, he would more readily do what was right. This kind of thinking relegated the state to the protection of individual freedom against disorder. And such faith was placed in the efficiency of the freedom of the individual that it was believed little else need be secured to guarantee progress:

"His unsatisfied desired will constrain to industry; the multitude of workers will involve competition; and competition will stimulate to their richest growth all the virtues and all the faculties of man. This doctrine may be called the doctrine of negative freedom. Few speculative doctrines have had so fair a trial in practice."¹

But the achievement which the propounders of individual freedom had looked for had not ensued. A hundred years of pursuing a policy of individual freedom, Montague asserts, had not produced the expected human greatness and happiness. The variability in J.S. Mill's sense, which individual freedom it was thought would produce, had not resulted in the fullness of human character. Nor had it made men content. The fact was, according to Montague, that discontent and pessimism was the order of the day and was reflected in the melancholy which pervaded art and literature. And the reason for such a state of affairs was the belief in a freedom which was unqualified. Other liberal thinkers had held that

1. F.C. Montague, "The Limits of Individual Liberty", page 4.

progress to a better society would only come by making man as free as possible. Montague had doubts about the truth of this proposition promulgated as a law of social movement. If unqualified freedom entailed unlimited competition with all its grossness, could this be termed human progress? Some practical men might think so, but the more poetic and religious temperament regarded progress as a unifying process accompanied by a peaceful tranquility and achievement. The ruthlessness of a competitive milieu in which conflict gave victory to the strong by trampling down the weak was anathema to the idealist and to be rejected as human progress. Thus, unqualified freedom and its concomitant, unlimited competition were morally offensive. The question which Montague seeks to answer is what is the true principle of social life? Is it competition or co-operation? The answer to this question has profound consequences for the theory of political liberty. Those who count true freedom to mean every man being left to himself will acclaim unbridled competition as natural and beneficial. But those who aver that progress is bound up with co-operation, will say that the organization which this makes inevitable will necessarily curtail individual freedom for the sake of the benefit of the group. The latter postulate comes within the concept of socialism and was regarded in Montague's day as being irreconcilable with freedom. But this 'Socialist' attitude was also embraced by liberals such as T.H. Green who, in contrast to Mill and Spencer, did not think that society could be improved for the majority of mankind by allowing each individual to behave as he desired except in cases where gross injury to his neighbours resulted.

The ideal sought for by such thinkers as Green and Montague was a situation in which each individual contributed to the advancement of

the community at large, and not merely to his own aggrandizement.

Individualism was what the capitalist had strived for against the constraints which the unequal power of the landed classes wielded over him at a time when the English constitution worked in favour of the landowners. The liberty which the capitalist wanted was individual liberty to promote his business as he saw fit. He attained this aim and enjoyed free trade and light taxation, and the achievement of great wealth. This, says Montague, is why the capitalist so readily embraced laissez-faire individualism. But the great prosperity of the capitalist class was largely at the expense of the labouring classes, whose poverty made them no match for their wealthy masters, even though the law was impartial:

"As between rich and poor, an equal law gives
free play to unequal force."¹

The endeavour of the workman thus became the need to protect himself by legislation favourable to his class. Spencerian survival of the fittest was no answer for the working man - this was a philosophy of the strong and privileged. The economic salvation of the labouring classes lay in a collectivist approach to the amelioration of their degradation, and they paid little heed to the capitalist cry of individual freedom.

"The workman is ambitious rather for his class than for himself."² It is this state of things brought about by industrialism, universal male suffrage and a new political awareness in the working classes which had resulted in a different legislative emphasis among statesmen. Thus, the political activity of the state had increased, giving a more 'positive' slant to ideas of liberty in the name of common action for the public good, as opposed to the principle of laissez-faire individualism.

1. F.C. Montague, "The Limits of Individual Liberty", page 10.

2. F.C. Montague, "The Limits of Individual Liberty", page 11.

Measures had been taken by the state to help support the poor, provide for education and health, to redistribute income via taxation and to assert its right to interfere with freedom of contracts. These were all positive state actions for the common good which could not have been justified under earlier liberal principles of negative individual liberty.

The government, says Montague, must interfere in the lives of individuals, for this is essential to the improvement of the life of artisans and of labourers. If progress is to mean anything, then a more satisfying life for the great mass of the people must be achieved, and the oppressive sense of waste removed. A new, more rational approach to liberty and liberalism is what Montague argues for. What is seen as the most important task in society is not the protection of individual freedom at all costs, but the reconstruction of society. Liberalism has no time for consistency; it must not be bridled by the principles of Ricardo, Mill, and Spencer when the exigencies of the age call for a radical change of view. This change of policy is regarded as rational because it is necessary on practical grounds. No doctrine can be preferred to common sense when common sense tells us that human suffering is unnecessary.

But to fully understand Montague's position regarding his concept of liberty, we must examine his analysis of the relation between the individual and society. In the second chapter of his book "The Limits of Individual Liberty", he critically analyses the idea of individual liberty in English political theory. Liberal thinkers from John Locke to Herbert Spencer have, claims Montague, assumed the individual to be a simple primary fact. Society is nothing more than the relationship between these elements. The state, which ensures the continued existence of society has been viewed as a necessary evil. The function of the state from this standpoint is to protect each citizen against the violent

encroachment of his fellows, and to protect the nation against the violence of other nations. Any other functions which such a state may justifiably undertake for the good of its members must be regarded as the result of abnormal circumstances. This political theory, says Montague, presupposes a mutual exclusiveness between state action and individual life:

"The individual is expansive, organic, living; the state is rigid, mechanical, lifeless."¹

And the progress of the individual will mean the shrinking of the influence of the state in his life.

Such a view of man and society was not a self-evident truth for Montague as it was for some of his fellow liberals. Indeed, he tells us, Pericles, Fabius, Plato and Cicero in ancient times would not have understood the opposition it presupposed between state and citizen. The states of antiquity conducted their affairs as though the life of both state and citizen were one:

"... a state was a corporation, citizenship a privilege, personal freedom the right to discharge public duty. The body politic secured to its members everything which made life worth living; and in return its members held their lives only for the service of the body politic!"²

Similarly, it would have been difficult for the men of the Middle Ages to understand the modern concept of freedom which Montague was criticising. The idea of restraints on the individual would not have been comprehended because it was the organization of the universal church which defined the purview of individual life. But also in modern times, says Montague, the English notion of freedom is not entertained too widely on the Continent. Republicans and Socialists there do not seek to reduce the influence of the state and public opinion to the minimum, but desire that they operate

1. F.C. Montague, "The Limits of Individual Liberty", page 25.

2. F.C. Montague, "The Limits of Individual Liberty", page 27.

in a way that Republicans or Socialists approve of.

It seems peculiar to Montague that Englishmen should favour a concept of liberty which views government and institutions with such suspicion. The liberty which the Englishman hallows is both negative and unsocial. The individual in English political thought has been regarded as supreme. This has been taken for granted. But, asks Montague, what would the nature of the individual be prior to and apart from society? Montague criticizes the preoccupation with individualism in the three schools which have had much influence on English ideas of liberty. These are the Schools of Hobbes and Locke, which claimed that the social system stems from the origin of a social contract; the School of Bentham which based social organization on the principle of utility; and the School of Spencer which claims that the social system rests upon natural laws of evolution via natural selection.

The Social Contract Theory, though proved to be false, says Montague, has, even so, contributed to 19th century doctrines of freedom. The quintessential aspect of the theory of the Social Contract is that political associations arose from the agreement of individuals to sacrifice some part of their natural rights in order to receive protection from authority. But the view held was that the less individual liberty was given up to authority the better, so that political association was accepted merely as a lesser evil than isolation. Competitiveness and self-seeking was still esteemed within the confines of a social contract. And this attitude has greatly influenced the modern doctrines of negative freedom. In Bentham's political theory we find that, although he rejected the concept of a social contract, he preserved Locke's notion of human actions being governed by the avoidance of pain and the enjoyment of pleasure. This, Bentham called the utility principle, which he claimed was the foundation

and justification of a society; the *raison d'être* of society was thus, the greatest happiness of the greatest number, for this resulted in the largest amount of pleasure and the smallest amount of pain. But again individualism is at the heart of this theory, for Bentham puts natural individual man as the cause which makes political association inevitable. Bentham, Montague tells us, sees society as no more than a collection of individuals, each cleaving to his own idea of the good life for himself. Society exists to further this individual endeavour. But Montague thinks that there is more to a social system than this. He speaks of the "organic incorporation of the individual to society", of "a spiritual nature in man" and "a moral purpose in the state."¹ The individual of the Social Contract and Benthamite schools do not recognize such sentiments as devotion to the state, and find state interference with its members to be an intrusion on individual liberty.

It is the School of Herbert Spencer to which Montague next turns his attack. Spencer's approach is equally individualistic. The creation of Society is seen as stemming from the nature of the individual. Society is a natural organism which has evolved to meet the needs of the evolving individual. Natural forces, chemical, mechanical; animal instincts such as hunger, thirst, reproduction; and the finer instincts of love and power love of beauty, and even talents and virtues, express themselves in the struggle for survival which is the cause of human development and social progress. But claims such as these are wholly incompatible with the social misery of the present times. They have been put to the test and they are obviously wanting.

1. F.C. Montague, "The Limits of Individual Liberty", page 40.

Montague called into question this entire approach to liberty. Accepting that individual energy is required to make a nation rich, he questioned whether this alone can civilize a nation. Great objects, he believes, are achieved by men working collectively. This is true, he tells us, in the religious, moral, artistic and scientific fields as well as in the political and economic. He condemns the self-centred and self-contained individual as being little removed "from the strong and solitary beast."¹ Both are limited in their activity to self-pleasure, but for civilized achievements beyond this they are helpless.

Montague is at pains to refute the contention that the qualities of society are determined by the qualities of the individual, the idea that society can be deduced from individual biology and psychology. His case is that we cannot deduce society, from the individual, because the latter cannot have a separate existence from society. Nor can we on the other hand deduce the individual from society, for society cannot exist independently of the individual. The truth might be, he thinks, that there is an interaction between the individual and society, and that neither can be understood without the other. He makes the point that the individual is only what he is in relation to other things. Thus, it makes sense to say that the individual can only be understood in his relationship to the totality of people, events, and circumstances. With regard to the relationship existing between an individual and other individuals, Montague is saying that personality is a social term having meaning only in a social context i.e. man's relationship with his fellows. For how can a man be regarded as moral or political except in his moral and political relationship with others? It seems to be the case then, that in order to ascertain

1. F.C. Montague, "The Limit of Individual Liberty", page 51.

the relationship between man and society, the structure of society must be known, which means that the individual cannot be usefully studied without also studying society. So the proposition that knowledge of the individual explains society is confounded because society itself has to be relied on for an explanation of the individual. Thus, man can only be studied as a social animal, and not as a separate entity existing apart from society. Any study of the biology and psychology of man must be from an environmental standpoint. The proposition which Montague believes true is that interaction between the individual and society means that they determine each other.

This view of political science determines Montague's conception of liberty. The individual is inextricably tied to society. He is a member of a social and political community from the beginning of life. The social organization which has shaped his parents and all others he will associate with, will also shape him, because as a citizen he will have received the influence of the principles and institutions on which the state is founded. This social organization has developed over a long time to satisfy the wants of human beings and make for their greater security. And, claims Montague, research into the early history of institutions has taught us that social union is a growth natural to mankind, and that freedom for individuals has meaning only in a social context, for liberty without laws is a nonsense. Thus, only membership of a society can lead to freedom. In this way Montague seems to be echoing T.H. Green in that rights imply obligations for both the subject and the state.

Montague outlines the areas in which the state ought to discharge functions. In doing so he gives power of influence to the state that would have been anathema to earlier liberal philosophers, as it was to his contemporary, Herbert Spencer. Apart from the state being responsible for

public defence and for keeping order in the dominions with which all liberals would concur, he extends the interference of the state in many areas which not all liberal thinkers would have found palatable. For example, the state, he says, should undertake industrial enterprise in countries where private capital is not plentiful for the task of production. Roads, railways, postal and telegraph systems should be under the exclusive control of the state. He is also concerned that the distribution of wealth be regulated by the state. He rejects the acceptance of market forces governing the distribution of wealth as wasteful. Enormous fortunes, he says, must be discouraged because of their corrupting influence upon their possessors, and upon the rest of the population who observe its resulting indolence, luxury and extravagance. Graduated taxation is to be exercised to reduce the inequalities of wealth. The state must also relieve the distress of paupers. Public money is to be invested in land or houses to be let or sold. The state should also take responsibility for providing the best possible education for its citizens; and this entails a good primary, good intermediate, and a good academic system of education. It is also the duty of the state to care for the health of the citizen, establishing laws against the adulteration of food, for the safety of shops, houses, mines and factories, and for the limitation of hours of labour for women and children. Furthermore, the state should make facilities available for recreation and edification of the citizens, such as parks, museums, gymnasiums, libraries, schools of art and science. In all of these measures the state interferes in the life of the individual to provide conditions and facilities for his well-being - positive actions which provide him with the opportunities for self-fulfilment if he so chooses to take advantage of them.

These fundamental points of Montague's are in line with the concept of 'positive freedom' which T.H. Green regarded as so important to human happiness. Merely to prevent the citizens from robbing and murdering one another is not the total function of the state. And a free society is not to be measured by its lack of state interference in the lives of its members. The freedom of unlimited competition and unrestrained discussion, which some philosophers advocate for normal development, says Montague, is not adequate to its task. The strong may benefit from free competition, the intelligent and educated from unlimited discussion; but for the weak, free competition means hopelessness and death, and for the unenlightened unsusceptible mind, free discussion is a nonsense. What the state must do is to organize society so that as many of the underprivileged in the population as possible can benefit from civilization and take part in its activities:

"But take such people in hand without too nicely sparing their precious individuality. Drill them without remorse in the routine of elementary schools; provide them at moderate rents with houses fit for men and women; give them a chance of growing up healthy and intelligent. Then competition may do them good. They are armed for the struggle. It is no longer a butchery, but a fair fight. They have come within the range of discussion. They are able to draw an inference and act upon it. They have the beginnings of hope, of ambition, of public spirit, of curiosity and taste."¹

The kind of freedom which allows that a man should be free to do what he likes is destructive of social organization and therefore defeats man's higher purposes. According to Montague, the society which is freest is the one organized for the realization of the highest purposes, and this organization involves not only individual constraints but positive action by government.

1. F.C. Montague, "The Limits of Individual Liberty", page 175.

Montague's conclusion is that man has not yet come of age; he has not progressed sufficiently beyond the savage state to the state of perfection necessary to enable him to repudiate force in measures of reform and replace it by argument and rational persuasion. It seems to him (and here we observe an affinity with J.F. Stephen) that a policy of the greatest individual freedom consistent with the maintenance of a civil society is not the way to human progress. This being so, then coercion to further this endeavour, provided that it is exercised responsibly, must not be ruled out. Montague declares, that the working classes who have obtained political power are by no means enlightened, and in such a state are not amenable to improvement by persuasion alone. Therefore, restraints and assistance are necessary for their improvement.

Emphasizing the way in which the individual's actions are inextricably tied up with the social actions, Montague further attacks Mill's distinction, (as did Stephen) between self-regarding acts and social acts. Though Mill conceded that no human actions could be devoid of influence upon society, he maintained that punishment ought not to be administered unless the action directly injured society. The example given by Mill to illustrate this principle was ~~that~~ of a drunkard, who was not to be punished for being a drunkard because this was a self-regarding act of injury to his own body, but only for the harm which his drunkenness ~~did to the~~ community in the form of violent acts etc. But Montague says:

"A confirmed drunkard weakens his community for every useful purpose, for national defence, for the production of wealth, for political progress, for joint moral and intellectual improvement. He does something worse than this. He transmits to his children a bad constitution and a powerful impulse to vice. In each of these respects a drunkard offends, and offends most heinously against the public welfare."¹

1. F.C. Montague, "The Limits of Individual Liberty", page 186.

Thus, Montague maintains against Mill that all actions must have consequences for other men as well as for the agent, and which will merit reward or punishment. Because these so-called self-regarding acts have social results, Mill's distinction between self-regarding and social acts is impossible to maintain, and we can only truly speak of the degree of social acts. In the example given, drunkenness would be punished when a man was sentenced for not being able to pay his debts or maintain his family, because the latter defaulting would be a result of the habit of drunkenness. Mill might claim that drunkenness in this case was being punished indirectly. Montague asks, if it is punished indirectly then why not directly? For, if as would be the case, a man unable to pay his debts or support his family, due to a general commercial depression would not be punished, then in the case of the drunkard, the difference which makes the difference is the habit of drunkenness, and whether or not drunkenness is punished is a matter of the degree of its consequence. What freedom then the individual may have rests with society and what it considers as expedient to its continuation and progress. Conceptions of liberty such as Mill's, which lay down sacrosanct principles are without foundation, claims Montague, for man receives his whole character and endowment from his interaction with society, and cannot act apart from society.

Montague attacks the individualist view, also held by Mill, that the individual is the best judge of his own happiness. Very often, thinks Montague, individuals miss the greater happiness because, in their eagerness to seize pleasure, they do not consider its source or quality. But Montague even questions that men are able to know what is most pleasurable for them. Furthermore, he does not accept that the end of human action and happiness is always pleasure; and in this case the individual will be even less competent to judge what is best for himself. High value is

placed on education in moral judgement, and as the greater part of mankind are not trained to any degree of sophistication in moral matters, then they cannot know what will make them happy. It is here again that the state is important in the life of the individual, because it is largely the state which is responsible for the moral education of its citizens in the moral precepts of the society. But the current elementary education in moral matters, he feels, is not enough to give the individual the degree of moral maturity necessary to make him the best judge of his own happiness in this respect. Even when man is able to judge what action will make him the most happy, he does not follow his better judgement, but instead yields to the baser side of his nature:

"They see what is right; they fain do what is right; they would often be glad of some slight external influence which would constrain them to act in accordance with their own better nature. But for want of strength they actually choose to do wrong."¹

It is thus clear to Montague that it is the duty of the state to interfere in the lives of individuals to a much greater extent than earlier liberal thought would have allowed. Without such interference, society would be unable to achieve the higher moral ends on which the true happiness of individuals depends.

If limitations on individual actions are necessary to the good of mankind, so are limitations on the freedom of discussion. Society has an interest here too. Freedom of speech to say anything will result in encouraging men to do irresponsible actions, Montague contends. Such actions would be punished by the law, and so should the encouragement of those actions. He goes even further than this, claiming that in some instances the state should also coerce those who incite others to transgress

1. F.C. Montague, "The Limits of Individual Liberty", page 190.

the morality of the age. He maintains that the predominating morality of the age must be protected by the state's guardianship. The state, he thinks, would be right in punishing those who impugned moral principles which were generally accepted by society, as well as those who violated them. Mill would have objected to this view on the grounds that if such expression of view did not do harm to others, it ought to be encouraged, for it might prove to be beneficial to mankind by resulting in a better moral principle being established. Innovators, Mill thought, were important to the progress of society. Montague also allows this possibility, and thus, recommends a wider latitude in the discussion of morals. But the principle of limitations on freedom of discussion, he thinks, must stand because of its usefulness to society, for discussion of political and religious issues may alter men's thinking on these subjects and produce beliefs which might have profound consequences for society. For example, a persuasion that private ownership of land is iniquitous might ferment agitation against it. Another example is that a religious sect might believe that faith alone justified their conduct, and were thus outside the prevailing moral law of the land. In cases such as these, the accepted moral code would be upset, and therefore, state coercion to prevent the propagation of such doctrines would be justified.

Like other Victorian liberal thinkers, Montague believed in human progress. He saw the continuance of past, present and future as an evolutionary process shaping human progress towards ever higher achievements. Though admitting the need for the coercion of individuals in certain circumstances, he had great confidence in the use of reason in the affairs of men. Reason, he thought, would eventually lead them to a greater understanding of one another, and to a greater cooperation in the creation of a better society.

Montague's concept of liberty, like that of Green's, placed rather more significance upon the notion of positive freedom than it did upon negative freedom. It also involved the cooperation of individuals in a society as a necessary condition for the progress of mankind, thus it repudiated the laissez-faire individualism of Herbert Spencer. Common action for the public good entailed interference in the lives of individuals. A liberty too concerned about individual rights, which only the few could enjoy at the expense of the many, was not, in Montague's opinion, what liberalism stood for. He stressed the importance for human progress of creating conditions for the development, rather than the variety of human character. Therefore, the reconstruction of society for the benefit of all was of more value to human happiness than mere negative individual liberty. Philosophically, he could not entertain any notion of natural indefeasible rights. He argued that rights can only have meaning in the context of society, and as the nature of society changes so does the nature of individual rights.

Chapter 8

Henry Maine

In his book "Popular Government", Henry Maine strikes a cautionary note against the trend towards increasing legislation under a liberal democracy. Clearly, his views contrast sharply with those of Green and Montague. Maine sets himself the task of testing and evaluating the ideas of popular government, democracy, and progress. In describing what liberty means in the context of political democracy, he takes his cue from Thomas Hobbes, who said that political liberty was political power:

"When a man burns to be free, he is not longing for the 'desolate freedom of the wild ass', what he wants is a share of political government. But, in wide democracies, political power is minced into morsels, and each man's portion of it is almost infinitesimally small."¹

Like J.F. Stephen, Maine takes the view that one result of democracy is that the individual is weak but the masses are strong. At least those who lead the masses have a great accumulation of power at their disposal. The power of the people in a democracy is not their own power in so far as its exercise is in the hands of their leaders. The people will be controlled by them in one way or another, by cunning, eloquence or the skilled application of commonplaces. This is the consequence of government resting upon a suffrage which gives each man a fragment of political power, as Hobbes had said. By itself, this fragment of power is not efficacious to

1. H. Maine, "Popular Government", page 29.

to its holder, but it is to the political leader, the 'wire-puller', who utilizes these fragments. The work of the 'wire-puller', says Maine, is made possible by Party feeling, a force which is of paramount influence on human nature. He likens it to the primitive combativeness of mankind which sets totem against totem. In other words, ordinary men belong to one party or another, not by any rational conviction, but because of the emotional appeal of popular oratory which is the work of the 'wire-puller', who must exploit this inborn tendency to belong to one faction or another, by whipping up party political fervour and loyalty. The effect of this process will be that the leaders will cease to voice opinions other than those instrumental in attracting the greatest support with the electors. Maine sees the extension of the suffrage to be in the interest of parties, and thus, a highly valued device of the 'wire-puller'. But the result, he says, of an electoral system where every adult male and female has a vote, and expresses that vote, will be that government and law will descend to a standard which expresses only the average opinion.

It is in the expression in government of the average opinion following on the establishment of universal suffrage that Maine sees a danger. It is thought, he says, that such a political constitutional change will:

"promote progress, new ideas, new discoveries and inventions, new arts of life."¹

But in the long term, he thinks, after initial destruction of present institutions, the result will be, not the Radicalism with which the advocates of universal suffrage have been associated but "a mischievous form of Conservatism" which will:

1. H. Maine, "Popular Government", page 34.

"drug society with a potion compared with which Eldonine would be a salutary draught."¹

But Henry Maine is also concerned about the affect of too much government intervention in the affairs of the individual and how it might affect human motives. He fears the demoralizing effect which high taxation would have on those who are willing to work hard and save, and on this question he is at one with Herbert Spencer. Democratic legislation, when carried beyond moderation, no matter how philanthropic its aims, is seen by the thrifty and industrious of mankind as fiscally oppressive. Maine sees the motives which impell men to work and create wealth, and which result in inequalities of wealth distribution, as resulting from the struggle for existence and the survival of the fittest, which Spencer had so ably expounded in "Man v the State". If government based on universal suffrage thwarts these human motives, then it will be acting against a fundamental individual freedom, the freedom to be unequal, and also setting its face against a law of human nature. The greater benefit for human happiness is thus, in Maine's view, not more power in the hands of the state to regulate the lives of individuals, but the freedom of private enterprise, and individual striving for greater personal economic acquisition as the fruit of success in universal competition.

Democratic government is seen by liberals and progressives generally to be "the corner stone of liberty". But Henry Maine declares that it has gross shortcomings as a system under which liberty might flourish. To begin with, he points out that one of the main difficulties for democracy lies in the nature of man himself. If democracy is government by the multitude, then how can the multitude exert its will. The fact is that only individuals can

1. H. Maine, "Popular Government", page 35.

have wills; to speak of a collective will is logically untenable, for it is attempting to make a class a real entity. Thus, to talk of the 'will of the people' or 'public opinion', as politicians do, can only mean:

"that a great number of people, on a great number of questions, can come to an identical conclusion, and found an indential determination upon it."¹

Maine points out that only on the simplest of questions can this be the case. On complex questions of politics, trained minds are needed, so to think that the great mass of the population can have sound opinions on such questions is merely fanciful. And if such opinions were depended upon for the purpose of legislation, then the result would be ruinous, and progress would be thwarted. The truth, Maine tells us, is that the Demos does not have a will of its own, making public opinion an independent and spontaneous thing, but that it simply adopts the opinion of one man or a few men. This influence upon, or making of, public opinion might be engendered by party leaders, or by the press.

Maine considers that representative government of the English model has been a successful form of popular government because the electoral body which chose a number of persons to represent it was not large, and because the expressed views of these representatives were not fettered by the dictates of their constituents. They merely vouchsafed to give general support for certain public policies. This system reduced the difficulties of popular government because of the smaller number of persons who decided public questions. But this system is being eradicated and replaced by one based on the assumption that the greater mass of the enfranchised citizens can decide important political questions themselves. And the parliamentary

1. H. Maine, "Popular Government", page 88.

representative is becoming, Maine thinks, a mere mouthpiece of the opinions of those who appeal to the people who sent him to the House of Commons. This system is that of the Party Caucus, which defeats the principle of representative government. What has emerged then, to replace the unfettered representative is the instructed delegate, a practice which vitiates the liberty of the parliamentary representative by curtailing his freedom of action. Such practice, says Maine, has arisen as a result of the growth of the House of Commons and the variety of opinion clamouring for expression, the consequence of which might be a revolutionary constitutional change, in that the legislative authority of the House of Commons, will be usurped completely by a Cabinet of executive Ministers leading the party in power.

Henry Maine thought it to be an error to equate democracy with progress:

"The delusion that Democracy, when it has had all things put under its feet, is a progressive form of government, lies deep in the conviction of a particular political school; but there can be no delusion grosser. It receives no countenance either from experience or from probability."¹

England has been made famous, he states, by the work of minorities, not by that of majorities, and much of the reform of the past four hundred years, he believes, would not have been realized under an extended franchise and large electoral body. Much of the progress which has taken place such as the reformation of religion, the toleration of dissent, the introduction of power driven machinery which made the Industrial Revolution, would have been prohibited by the conservatism and resistance to change of the mass of the population:

1. H. Maine, "Popular Government", page 97.

"Even in our day, vaccination is in the utmost danger and we may say generally that gradual establishment of the masses in power is one of the blackest omens for all legislation founded on scientific opinion, which requires tension of mind to understand it, and self-denial to submit to it."¹

But legislation has become the sign of the times, and, Maine contends, will not abate until the legislative power and full authority of the state is vested in the people as a whole. Democracy, he says, has come to be seen as inevitable, and irresistible, and because of this it has been given the complimentary name of Progress. But there is no truth in the proposition that parliamentary reform and legislative innovation will be always beneficial. A more sound proposition, he believes, would be that the scope for all reform has strict limitations:

"We can no more argue that, because some past reforms have succeeded, all reforms will succeed, than we can argue that, because the human body can bear a certain amount of heat, it can bear an indefinite amount."²

And with the growing desire for more and more legislation, the chances of establishing bad legislative measures grow more probable. Here Maine is uttering Spencer's warning about the unforeseen consequences of legislation. Maine believed in slow piecemeal reform, accepting the application of the Darwinian rule, "small changes benefit the organism,"³ as fitting for communities of men, and that sweeping political reform is dangerous.

As our survey has shown, Henry Maine was somewhat hostile to popular government; he saw the movement to full democratic government and universal suffrage not as an essential element in an age of progress, as some liberal thinkers did, but as probably not helpful to progress at all. He also

1. H. Maine, "Popular Government", page 98.
2. H. Maine, "Popular Government", page 150.
3. H. Maine, "Popular Government", page 171.

viewed ideas of equality as incompatible with ideas of liberty because he believed that democracy, generally accepted by progressives as essential to equality, would, in fact, inevitably lead to tyranny. He held this opinion because he feared the susceptibility of a credulous Demos to the manipulation of 'wire-pullers' using the party system to their own and not the public's advantage. He also had great misgivings about the benefit of the growing volume of reforming legislation, which he regarded as the mark of popular governments in their efforts to gain mass support.

Chapter 9

Henry Sidgwick

In the examination of the usage of the word 'Liberty', Sidgwick concentrates on that aspect of its meaning which:

"is opposed not merely to physical constraint but to the moral restraint placed on human inclinations by the fear of painful consequences resulting from the action of other human beings."¹

On this question of moral restraint, Sidgwick takes issue with the Hobbist judgement that freedom is impaired only by the moral restraint of government action. Hobbes had held that the "State of Nature" in which no government existed was a state of unlimited liberty, though at the same time, one of perpetual fear of one man for another. This idea is a nonsense to Sidgwick, for to be restrained by the awe of ones lawless neighbour is as inconsistent with liberty as to be restrained by the awe of the magistrate. Sidgwick thinks that liberty thrives more in an organized or ordered political society than in a Hobbesian state of nature, and that liberty is endangered by the fear, engendered by human beings generally, in their capacity to place restraints on the liberty of other human beings. Because this is the true state of things, it is the case that legal penalties, though they must diminish liberty generally, provide a greater liberty, in that they furnish protection from private restraint:

"It may be said that the end of government is to promote liberty, so far as government coercion

1. H. Sidgwick, "The Elements of Politics", page 45

prevents worse coercion by private individuals."¹

Sidgwick also distinguishes between 'constitutional liberty' and 'civil liberty' in a democracy. The former means that a community's subjects are free when they are restrained only by the will of the subjects acting as a corporate body. This is when coercion is exercised by the consent of the majority of citizens under a democratic constitution. But such a conception of freedom, Sidgwick believes, though important, is directly contrary to the notion of freedom which can be the possession of every member of a society. It is obvious to Sidgwick, as it was to Mill and others, that a government whose power is vested in a mass electorate can place restraints upon the minority in the name of the majority, and thus, put into practice a form of tyranny against that minority. Yet a despotic government might exercise only that amount of coercion necessary to protect the individual from a worse coercion by private citizens. It is then, liberty in the sense of the absence of physical and moral coercion, the civil liberty, of individuals, with which Sidgwick is largely concerned at this juncture.

The safeguarding of the freedom of the individual has been embraced, says Sidgwick, as the ultimate purpose of interference by government in the lives of its citizens. But this is not the case in practice, for those who profess this type of individualist approach to government actually go much further than this in their legislative aim, and seek to protect the subjects from pain and enable them to gratify their desires. Thus, Sidgwick emphasizes that the utilitarian view of individualism is adhered to by those who might actually disclaim any allegiance to it.

Sidgwick examines briefly the chief heads of governmental interference in terms of the "Individualistic Minimum". These are the right of

1. H. Sidgwick, "The Elements of Politics", page 46.

personal security, the right of private property and the right of fulfilment of contracts freely engaged upon. And in Sidgwick's opinion the kind of legislation recommended and adopted can not be justified on the principle of freedom as an absolute end. What is required for justification is a utilitarian principle which holds that the protection of individuals in pursuit of their ends promotes the general happiness. Thus, with regard to individualistic legislation, Sidgwick takes for his basis the principle of non-interference as interpreted from a utilitarian position. He states the general aims of individualistic legislation to be:

- "1. To secure to every sane adult freedom to provide for his own happiness, by adapting the material world to the satisfaction of his needs and desires, and, establishing such relations with other human beings as may in his opinion conduce to the same end;
2. to secure him from pain or loss caused directly or indirectly by the action of other human beings - including in this loss any damages due to the non-performance of engagements made without coercion or deception; while
3. throwing on parents the duties of care, sustenance, and education of children, until they are able to provide for themselves, and regulating family relationships - and to some extent the relation of the sexes generally - with a view to the better performance of such parental duties."¹

It is Sidgwick's conclusions about the utilitarian interpretation of the "Individual Principle" applied to governmental action which guides his thinking in areas of governmental interference which goes beyond the "Individualistic Minimum". His position on this point is stated in his discussion of socialistic interference. Sidgwick's thinking concerning governmental interference of this kind is in harmony with the emphasis placed on the increasing role of government in the affairs of the individual, referred to by Dicey as the "Period of Collectivism", which we

1. H. Sidgwick, "The Elements of Politics", page 58.

earlier noted in connection with the theory of T.H. Green. Sidgwick states:

"It is universally recognized that the present drift of opinion and practice is in the direction of increasing the range and volume of the interference of government in the affairs of individuals."¹

In this respect, state socialism has been contrasted with individualism. The task which Sidgwick sets himself on this subject is to remove the confusion of thought which these supposed diametrically opposed concepts have created.

Sidgwick's judgement on this question is that a good deal of the increase in governmental interference which the older laissez-faire school of thought find so alarming, is compatible with vigorous individualism. For, what this governmental intervention is meant to achieve for the individual is, in fact, a protection against the harm which other men might do to person or property. To illustrate this point, we are given the example of interference for sanitary purposes. It would be accepted as a principle by any individualist, says Sidgwick, that the government must take steps to prevent one private person causing harm to others by allowing his house or business to be a source of disease or nuisance. And with the increasing complications of human living, which industrial civilization brings with it, new occasions for governmental interference are justified, either on grounds of preventing new mischiefs, or the removal of long-standing ones, which increased scientific knowledge has revealed.

Sidgwick is further opposed to the view of "Absolute Individualism" because it is found wanting both on psychological and sociological grounds. The psychological aspect of the question is involved with ideas of paternal interference by government in the life of the individual. The "Absolute

1. H. Sidgwick, "The Elements of Politics", page 143.

Individualist" point of view is that government should not coerce individuals in their own interest because men themselves are better able than government to ascertain their own best interests, and by seeking these they will achieve the worthy aim of self-reliance and enterprise. Here we have the 'negative' aspect of liberty expressed in the traditional individualistic manner. Sidgwick, while expressing some affection for this argument, also emphasises the 'positive' aspect of liberty of T.H. Green, saying that a system in which each private individual seeks his own interest with as little restraint placed on him as possible does not necessarily lead to the realization of the greatest happiness for the aggregate of persons. This is, Sidgwick believes, because activity conducive to the interests of a private individual may diverge from the interests of all. Thus, from the sociological aspect of the question, the best interest of society as a whole, the common good, is not served by a total laissez-faire type individualistic approach to government. But Sidgwick's stance is by no means purely socialistic. He accepts the motive of self-interest as essentially the flywheel of society, and rejects large scale socialistic schemes for reconstructing the social order in a way which would make too many inroads into the individualistic basis of society. Any changes then, brought about by socialistic interference of government, is for Sidgwick, only acceptable as supplementary and subordinate to a basically individualistic system of society.

In his effort to justify a measure of socialistic intervention, Sidgwick is at pains to show that a strictly individualistic conception to governmental legislative activity does not make for the individual's interest being sufficiently conducive to the common interest. He argues that even on strict individualist grounds the appropriation of natural resources by a few individuals restricts the productive application of

other men's labour. Therefore, in the interest of the whole aggregate of individuals, limitation and regulation must be placed upon the appropriation of natural resources. It would thus be regarded as the duty of government in the interests of the community, to place restrictions on the use of natural resources, such that they would not be wasted by private interest. Some of the examples given by Sidgwick where government interference would be appropriate are in the management and control of mines and fisheries, natural water courses for the supply of irrigation and power, and even, if necessary, the complete abolition of private property in land. The public interest also requires that monopoly resulting from a combination of industrial or commercial concerns must be limited, while on other occasions there might be a need for a combination of producers in order to realize a certain utility, and here, governmental action is the most effective method for the purpose. Further, government is specially facilitated to provide certain kinds of service in a modern community. As examples of these, Sidgwick gives, banking and insurance for the poor, the responsibilities of paper currency for the community generally, and the collecting and circulating of statistical information.

The forgoing are some of the examples cited by Sidgwick to reinforce his view that governmental interference in the lives of individuals is necessary for the good of the community as a whole, and that the traditional individualist laissez-faire approach to the organization of industry and commerce is not the most effective and efficient. It is clear then, that for the securing of certain utilities for the community at large, government must undertake responsibility instead of leaving it to the private enterprise. Governmental interference of this kind, Sidgwick refers to as "Socialistic" in principle, meaning the increase of the sphere of government, and the narrowing of that of private property and private enterprise, in the holding or regulating of resources and functions. It

is in this sense of the term 'Socialist' that Sidgwick means it to be used in opposition to 'Individualist'.

Sidgwick's understanding of the term 'Socialist' is that which relates to a moderate measure of governmental interference in the lives of individuals. The aim of such interference is to secure benefits for the community generally. It will be a necessary outcome of the aim that a distribution of wealth take place as a result of the type of governmental intervention and enterprise given in the above examples. But Sidgwick stresses the distinction between this meaning of socialist, and that which has as its aim the express purpose of altering the distribution of wealth by taking from the rich to benefit the poor. He cites education as a further example where his type of socialistic activity can be seen in application. Public expenditure for instance is used for promoting general technical or professional education. This enables the labourer, through greater efficiency, to earn more wages, but it also means that employers and consumers will also benefit as a consequence of this greater efficiency. Such expenditure, because it improves production, can be regarded as designed to benefit the whole community, while at the same time it will have the further attribute of reducing inequalities in the distribution of wealth. Also of importance is the fact that public expenditure on education provides other benefits than industrial efficiency, for it can be seen not only as a means to elevate the poor, but to be of general benefit throughout society in bringing about a moral and intellectual uplifting through religious, scientific and literary education via the agencies of museums, libraries and universities for adults, as well as the provision of schools for the young. The government ought also to make funds available for research projects which might be of benefit to the community at large, but which would not always be directly saleable for industrial or commercial benefit. Expenditure in this respect might be on salaries, instruments,

libraries, laboratories, equipment and art galleries. This kind of project would, Sidgwick believes, make opportunities available for the scientific and artistic education of the children of poor families that they might realize any potential they might have. Again the general aim of such governmental action in fields such as these is for the benefit of the community as a whole.

Sidgwick's thesis illustrates in the examples given, the need for governmental activity in the interests of the community. And so, he is able to justify legislative and administrative governmental intervention in the lives of the people which goes beyond the more narrow "Individualistic Principle" of protection of the individual from mischief. The concept of liberty which Sidgwick is espousing, is clearly not one of negative liberty alone; it is also the positive concept of liberty which T.H. Green stressed as being so fundamental to enable the great majority of the people to be free to enjoy the benefits of civilization. Without raising the poorer citizen's material standard and providing him with the facilities for self-improvement, negative personal liberties, as Green said, are meaningless. The measures of State intervention of the kind that Sidgwick has argued for, though socialist, are not contrary to individualism as he understands the concept, giving a man greater opportunities for self-help and fulfilment, the benefit is not only to himself but to the community at large. Liberty is not merely negative and individualistic, but also positive and collective, and in this latter sense the lifting of restrictions from the opportunities of the great mass of men is a gain to the community. And in creating greater opportunities for people by government interference in their lives, Sidgwick thinks that individualism, as he conceives it, gives greater scope for human progress.

Chapter 10

William, Edward, Hartpole, Lecky

The last author to be considered in our study of 19th century ideas of liberty is William, Edward, Hartpole, Lecky. In his book, "Democracy and Liberty" he states his views on liberty and its relationship to government, the individual and society.

Lecky, like some of the other writers we have studied was unable to accept the popular notion that liberty was inextricably tied up with democracy. He accepted the democratic form of government as a fact of life to be lived with for some time to come, but saw the fundamental task of politicians as that of moderating the evils which he thought were characteristic of democracy. In his rebuttal of the argument that democracy is conducive to liberty, he refers us to history for examples of democracy leading away from liberty. In Ancient Rome, for example, the change from an aristocratic republic to a democracy soon gave way to an imperial despotism. In France, more than once, a despotism has been brought into being by a plebiscite. And furthermore, the equality which is often seen as the complement of democracy is the arch enemy of liberty. This is so, because to make men equal would mean a:

"constant, systematic, stringent repression of their natural qualities."¹

Such restraints in the pursuit of equality hamper liberty in terms of natural individual development, and here again we have the view which was

1. W.E.H. Lecky, "Democracy and Liberty", page 256.

expressed by Henry Maine, that men should be free to be unequal. Lecky also saw democracy adversely affecting that balance of opinions, interests and classes which is the succour of constitutional liberty. Democracy also undermines the authority and efficiency of Parliaments, and by doing so impairs them as organs of political liberty.

Authoritarianism in a democratic institution is seen in his own day, says Lecky, in the discrediting of free contract and free trade. Authoritative regulation here is evident in the widespread protectionist policies adopted by most of the democratic nations which restrict and regulate, and interfere with industry in numerous ways. Lecky points out, as did Spencer and others, that the growth of democracy brought with it the expansion of state authority and its functions, and that this makes for restrictions on individual actions because of the multiplication of state officials and the growth of state bureaucracy. These developments and others, such as the progressive increase in taxation, restrict liberty. Particularly on the question of taxation, Lecky thinks, does freedom receive a set back, for he regards a man's freedom to use his property and money as a fundamental right, and taxation is a forcible limitation of this right. Men have to pay taxes for objectives which they do not support, and in this way their freedom is circumscribed. Lecky sees democracy as having a penchant for increasing taxation, thus making it more pernicious towards liberty. He believes in the policy of no taxation without the consent of the taxed, an old fundamental English freedom, as being repudiated under a democracy in favour of a system in which one class is compelled to pay the taxes imposed by another. It is Lecky's observation that more and more taxes are being levied for purposes antagonistic to the community's interests as a whole, and must therefore be regarded as a tendency towards confiscation, aimed at the destruction of the power of the wealthy classes in favour of those classes that can be bribed by, what Henry Maine called the

'wire-pullers'.

In his concern for liberty, Lecky further criticises democracy because it gives the ignorant class, who, he thinks, have little respect for liberty, and who will be most influenced by a persuasive leader, the major say in political decisions. Lecky argues that it has always been the middle and upper classes who have shown most regard for liberty, and that the democrat's aim is the exploitation of these classes. Democracy, he espostulates, has a tendency to cause these classes to turn away from liberty and towards despotism. This change of heart is a direct result, we are told, of the insecurity and instability which a democratic system produces. He says there are in such a system:

"the spectacle of dishonest and predatory adventurers climbing by popular suffrage into positions of great power in the state; the alarm which attacks on property seldom fail to produce among those who have something to lose, may easily scare to the side of despotism large classes who, under other circumstances, would have been steady supporters of liberty."¹

These classes will see a despotism, (which leaves property, industry, religious liberty and private life unmolested, and by doing so affords order and security) as something to be preferred to a democratic republic which denies those benefits and freedom. Lecky takes the establishment of the despotic French Empire of Louis Napoleon in 1852, to have been partly the result of the threat to the agricultural and middle classes made by the socialists in 1848.

Lecky, like J.S. Mill, was concerned to place safeguards against popular democracy in the electoral system. He favoured proportional representation as did Mill, arguing that democratic principles would be better served under a system in which government represented the whole of the people rather than a majority. Under the majority system large

1. W.E.H. Lecky, "Democracy and Liberty", page 259.

numbers of electors, he says, are not represented merely because they happen to be in a minority in their constituencies. This is not conducive to liberty for those so placed, because, Lecky says, they are in effect deprived of the franchise. The evil Lecky wishes to guard against is that of the most numerous class, (and necessarily to him the most ignorant) permanently dominating all other classes, thus leaving the latter totally without representation. J.S. Mill's fear of the majority is clearly evident in Lecky's thinking on this issue, and emphasises the importance he places on the representation of the views of the minorities. Lecky quotes Mill:

"In a really equal democracy every or any section would be represented, not disproportionately, but proportionately. A majority of the electors would always have a majority of the representatives but a minority of the electors would have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government but government of inequality and privilege contrary to the principle of democracy which professes equality as its very root and foundation."¹

Lecky contended that an electoral system planned in terms of proportionate representation would be, though not perfect, much more democratic than the existing one. It would more accurately represent the wishes of the electorate, avoid the great waste of votes, stimulate more political interest among the minorities in constituencies, and end the sharp change of policy which accompanies the change of political power through a slight shifting of electoral opinion. More candidates of intellectual eminence would be selected by party managers because of their greater opportunities of success via their support from the more enlightened voters from the minorities in the electorate. This would bring about an improvement in the intellectual level of the members of the House of Commons. Countering the argument that this would be detrimental to local representation, Lecky says that the strong local candidate would still most often obtain the

1. W.E.H. Lecky, "Democracy and Liberty", page 267.

required number of votes, and that the transfer of votes would be done by the present disfranchised minority in the constituencies. By this system of proportionate representation then, it is urged that an important freedom is restored to minorities, while at the same time, going some way towards the democratic principle of absolute equality, by ensuring the parliamentary representation of the various classes, interests and opinions in their proper numerical proportion.

A sympathetic attitude is also shown by Lecky to Mill's expedient of plural voting. This would give two or more votes to classes of persons who had achieved certain positions of responsibility and standards of education. Mill had listed such persons as employers of labour, formen, labourers in the more skilled trades, bankers, merchants and manufacturers, for this privilege. And greater voting power still was to be conferred upon members of the liberal professions, university graduates and other persons who had achieved higher educational status. Mill had also been in favour of the preservation and extension of the provision whereby owners of property in different constituencies were able to vote in each one of them. These policies were advocated to circumvent the danger of class legislation and government dependence upon a low political intelligence. But the predominant view in Lecky's day was opposed to this kind of thinking. The watchword of English Radicalism was one man one vote, a principle which was progressing inexorable towards the consummate domination of property and liberty by the "poorest and most ignorant".¹ In Disraeli's first draft of the Reform Bill of 1867, a system of plural voting based on qualifications was in fact introduced, aimed at counterbalancing the weight of mere numbers of voters by increasing the influence of intelligence,

1. W.E.H. Lecky, "Democracy and Liberty", page 275.

education, property and frugality, but the opposition of Gladstone and his followers resulted in Disraeli's abandonment of these measures. The ridicule which they received under the label of "fancy franchises" did a great deal, says Lecky, to stifle serious and rational argument about their usefulness as safeguards against the use of political power by a majority to repress minorities.

Lecky, in his discussion of the limits of governmental interference in the moral life of the individual further shows his affinity with J.S. Mill:

"If a man's bad acts affect himself alone, or if they only affect adult men who voluntarily share in them, there is a strong presumption that they ought not to be brought within the coercive province of law. They may be matters for argument, remonstrance, reprobation, but they are not subjects for legislative penalties."¹

This aspect of liberty, and the several objections to it, we have considered in our study of Mill's treatise 'On Liberty'. What we discovered about it was that, in essence, and with qualification, it stood as an important guiding principle as part of the Victorian ideology of liberty. In spite of the many qualifications advanced by other liberal theorists it is still the same principle to which Lecky subscribes. Mill had argued that the law must punish only those injuries to society which are clear, direct, and definite. The depravity of a man might make him less useful to a society by his bad example to others. There is a likelihood of his doing harm to society. But despite this, punishment must not be applied unless there is clearly identifiable damage, or risk of damage, to either person or persons.

Lecky is as seriously concerned then about the relation of legislation to individual actions as was Mill. He adumbrates some of the main reasons

1. W.E.H. Lecky, "Democracy and Liberty", page 275.

for the preservation of individual liberty based on Mill's principles. The community cannot claim infallibility on moral questions. The danger of governmental interference in the lives of individuals often becomes overwhelming, enfeebling and enervating moral resistance. This destroys the self-reliance and spontaneity without which character degenerates. When excessive governmental regulation suffocates these qualities of character, individual moral freedom is the casualty. Another argument is that government interference often becomes self-defeating by the fact that the reaction to suppression results in the vices it is the intention to stop, becoming more aggravated. They may be prevented by law from being publicly performed, but their existence may continue secretly and be more harmful as a consequence. The more positive way, according to Lecky and Mill, to decrease vice in the community, is to change the moral habits, tastes and interests, a process which is not within the province of legislation.

It is largely for these reasons that Lecky concurs with J.S. Mill about the coercive powers of the state being generally harmful to others. Exceptions to this rule, where they arise, must have strong arguments for their acceptance. But, says Lecky, in the present political climate the number of exceptions have increased, and these have become more important in the minds of the legislators than has the rule itself. While accepting that much legislation affecting the free actions of the individual is justified by appeal to exceptions, Lecky has misgivings about the growth of legislation in this direction, for he states that though we are far from the moral regulations obtaining in some Catholic countries, and among the Puritans in the Commonwealth, in Scotland, and in New England, British legislation by no means adheres to the limitations of J.S. Mill's doctrine.

For example:

"It condemns prize fights, and duels, and suicide, though these are purely voluntary acts of adult man. If a man, through some religious scruple, suffers members of his family to die for want of medical aid, he is punishable by law, though all parties concerned may fully share in the superstition. Theatrical amusements are placed under legal censorship; games that are played for money in licensed houses, and some forms of gambling in private houses or in voluntary societies, as well as in public places, are criminal offences; and under the guise of the Licencing Acts, an increasingly severe censorship is exercised on many other forms of public amusement."¹

He thus condemns paternalistic legislation and its encroachment on individual liberty, saying that the way in which the amusements of mature adults are regulated by English Law, would be thought to be intolerable and childish in many continental countries.

In Lecky's thinking about liberty we have come back to the more negative and individualistic interpretation of the concept expressed by J.S. Mill. Lecky's concern is about the freedom of the individual, and particularly the cultured individual, to have a voice in politics, and to carry on his private life as he wishes without too much interference from government and society. He fears the growing power of the majority to suppress minorities as endemic to democracy, and hostile to liberty. Lecky is anxious about the increase in legislation and state authority which has come about since the extension of the suffrage, but at the same time he accepts popular government as inevitable, believing, however, that its evils can be alleviated by constitutional safeguards.

1. W.E.H. Lecky, "Democracy and Liberty", page 126.

Chapter 11

General Appraisal of the authors studied

Our study of the works selected for this thesis has not enabled us to show that there existed in Victorian England a definite and precise concept of liberty. Some of the writers saw liberty as negative and individual, while others saw it as positive. We shall discuss these interpretations further, but first let us establish what themes the authors held in common, despite their differences of opinion.

Each one of the authors, with the exception of J.F. Stephen, were cautious optimists believing in human progress, though they did not accept that it would be engendered by the same means. Mill, Bagehot, Maine and Lecky, believed that the liberty of the individual would be the mainspring of progress, while Acton, Green, Montague and Sidgwick believed that collectivism was the way forward for human improvement. Stephen refused to see progress as something continuous; rather he thought it and regression were more likely to alternate throughout human history. He did however, believe that civilization, when it had been realized, flourished in an ordered and disciplined society, so this perhaps makes him something of a conservative liberal, who believed in authoritarian government.

But the claim holds for most liberal social theorists of the epoch, that a belief in liberty entailed a belief in human progress. Liberty

was nothing less than the culmination and summation of political and social development. Liberals entertained the expectation that political institutions, not only in England but everywhere else, would be liberalized by a process of gradual evolution. As L.T. Hobhouse puts it:

"Every constructive social doctrine rests on the conception of human progress. The heart of liberalism is the understanding that progress is not a matter of mechanical contrivance, but of the liberation of living spiritual energy. Good Mechanism is that which provides the channels wherein such energy can flow unimpeded, unobstructed by its own exuberance of output, vivifying the social structure, expanding and ennobling the life of the mind."¹

Most of the authors held misgivings about popular democracy. Bagehot even thought universal suffrage ought to be delayed for a hundred years, so intense was his forboding about the uneducated masses coming to have too much influence over legislation. All of the authors, however, accepted democracy as inevitable, but advocated safeguards of one sort or another, either constitutional, or in terms of other legal obligations and moral duties to the community or the state. The fear that the unenlightened majority might gain too much influence over the more cultured minority, and thereby replace individual distinction by dull mediocrity made our liberal theorists, for the most part, sceptical of popular government, and in the case of Henry Maine, exceedingly hostile. Their anxiety was also due to their belief that democracy entailed equality, and that the latter would be incompatible with liberty. It was not then, a democratic system which they believed would safeguard liberty, but a parliamentary one based on representative government placed safely under the control of the cultivated and wise minority.

Nor was laissez-faire a doctrine which endeared itself to our political thinkers. The writers who come under positive and collective

1. L.T. Hobhouse, "Liberalism", page 73.

notions of liberty such as Acton, Green, Montague and Sidgwick were totally opposed to laissez-faire; but it is also true to say that Mill, Stephen, Bagehot, Maine and Lecky did not in fact advocate the doctrine. Spencer, who seemed to be defending laissez-faire in his organic evolution and survival of the fittest theories, described in "The Man v The State", in fact denied that he ever professed allegiance to the doctrine. He claimed that his aim in writing "The Man v The State" was to "define the proper role of government,"¹ and he was indignant at being labelled a laissez-faire reactionary for his criticism of growing state interference in the life of the individual. Leaving aside the issue as to whether or not Spencer was an apostle of laissez-faire, after exploring the views of our other authors and giving examples of the kind of economic, political and social legislation which they favoured, and which was carried through Parliament by Liberal legislatures, it cannot be far from the truth to say that practically no major liberal theorist from Mill onwards, in the 19th century, stood on a platform of laissez-faire.

It was the more collectivist approach to liberalism, and its need to redefine liberty in positive rather than negative terms which led liberalism further away from any possible association with laissez-faire. This restatement of liberalism, largely initiated by T.H. Green, tended to blur the difference between liberalism and some other political theories. Was there, for instance, actually any real difference of principle between the collectivist liberal, and what L.T. Hobhouse called "Liberal Socialism?"² The Fabian Society which was formed in 1884, reflected a social philosophy which offered no sharp difference of principle to separate it from Green's

1. G. Watson, "The English Ideology", page 74.

2. L.T. Hobhouse, "Liberalism", page 62.

positive interpretation of liberty. Both political stances doubted that private enterprise could appropriately and adequately provide for human needs, and both offered as a solution to this hiatus the legislative and administrative power of the state. The Socialism of the Fabians, like the liberalism of Green, was a doctrine of self-realization, not of suppression. No doubt socialist policy of state intervention was to go further than that of Green's, but both were at one about the need to remove the ill-effects of an economy uncontrolled by government action. This was a policy giving them an affinity which clearly separated them from the Marxists who based their policy on the dialectic of history and the class struggle, leading to revolution and the dictatorship of the proletariat. Fabian Socialism, like Collectivist Liberalism, believed that liberty could not be achieved in an environment of economic and social insecurity. Thus, such aims as a basic level of leisure, health, education and subsistence, below which no one in the community must be allowed to fall, came to be seen by Fabians and the British Labour Party as an extension of liberty.

Liberalism ceased to be an ideology exclusive to Liberals. In fact, liberalism, in its broad sense since the 19th century might be more accurately identified in large parts of the western world, where political and civil liberty, and the maintenance of a substantial degree of social and economic security is available for everyone. This culture favours neither total free enterprise in the economic system, nor total domination by the state, but instead supports what Maynard Keynes expounded as a mixed economy - "the marriage between liberalism and state control."¹

1. M. Cranston "Freedom, a New Analysis", page 54.

Chapter 12

Some recent views on the basic ideas
of the authors studied

Liberty is a complex concept, and perhaps it would be more correct to speak of liberties rather than liberty. Liberty stands for a variety of things in a variety of contexts. As we have seen, it involves notions of negative and positive liberty, democracy and equality, and individualism and collectivism. We know what our Victorian theorists thought about these concepts. Let us look at them now in the light of some more recent studies.

Much has been written about the meanings of the negative and positive senses of liberty. Perhaps J.S. Mill is the greatest champion of negative liberty, for he believed that:

"The only freedom which deserves the name is that of pursuing our own good in our own way."

By this, Mill did not mean that compulsion was never justified. Compulsion is in fact necessary in order to restrain those who would deprive other individuals of the minimum of freedom to which they are entitled. Following from this interpretation of liberty, the law functions to maintain order and prevent conflict between individuals, and the state occupies the role of nightwatchman or traffic policeman. We learned from our analysis of Mill's views that he held individual liberty to be sacred because he believed that without it the progress of civilization could not continue. Only in

a climate of free and varied ideas would truth, spontaneity, originality, genius, mental energy and moral courage thrive. He feared that "collective mediocracy" would crush and destroy these qualities. Thus we have great emphasis laid upon the negative aspect of liberty and its challenge to interference with the life of the individual. The limiting of authority to a minimum is essential, runs the argument, if human dignity is to be protected - to be absolutely free is impossible, for we must surrender some of our liberty in order to preserve this minimum, but to go beyond this is to go so far as to be self-defeating.

Negative liberty is liberty from interference, which if not safeguarded, mocks the concept of a man as a person with a life of his own:

"This is liberty as it has been conceived by liberals in the modern world from the days of More and Erasmus (some would say Occam) to our own. Every plea for civil liberties and individual rights, every protest against exploitation and humiliation, against the encroachment of public authority, or the mass hypnosis of custom or organized propaganda, springs from this individualistic, and much disputed, conception of man."¹

In appraising the view of negative liberty, Isaiah Berlin states that J.S. Mill has mistakenly associated two notions which are quite distinct. He declared that all coercion is evil even though justified to prevent greater evils, and that non-interference is a great good. As a result of the existence of the negative aspect of liberty, Mill believed that certain commendable attributes of character would be nurtured, such as courage, originality, imagination, independence and non-conformity. Berlin attacks this view as a non-sequitur, pointing out, as did J.F. Stephen, that these attributes of character are just as likely to be engendered in a social and political atmosphere of quite rigid discipline, as in a liberal society. If this be the case, then Mill is in error in claiming that an environment of freedom and tolerance is a necessary condition for the flowering of

1. Sir Isaiah Berlin, "Two Concepts of Liberty", page 12.

human talent and qualities of character.

The positive sense of liberty stems from the desire of the individual to be his own master. It is a freedom to achieve some good object. A man wishes his decisions to be his own and not forced upon him. Isaiah Berlin believes this individual desire derives from the rational aspect of a human being without which a man would not exist as a self-conscious, thinking and willing human being. This notion of positive liberty - being master of oneself, and the notion of negative liberty - not having other men prevent one from making one's own choice, do not seem to be distinctly disparate. But Berlin argues that these 'positive' and 'negative' notions of liberty have historically moved apart until they have become diametrically opposed to each other. This is clearly shown, says Berlin, in the ways in which the idea of self-mastery in the positive sense of liberty was used against the individual by countering the belief, that a positively free individual is a slave to no man, with the rejoinder that he may be a slave to nature or his own uncontrolled passions. Thus, we get the proposition that man is a slave to his own base self, and that there is another higher self, which, if he follows its prompting, will free him from the control of the former. We have then, a higher spiritual self contrasted with an irrational, impulsive, empirical lower self. This kind of thinking led to the idea that the higher self was represented by the race or social organism which was more comprehensive than the individual. It was then a short step to using such organic metaphors to justify the coercion of some men by others for their own sake in the name of a higher level of freedom, represented by the realization of the higher and true self, as something which men would always choose if they were as rational and wise as their coercers:

"This monstrous impersonation, which consists in equating what x would choose if he were something he is not, or at least not yet, with what x actively seeks and chooses, is at the heart of all political theories of self-realization. It is one thing to say that I may be coerced for my own good which I am too blind to see; this may on occasion be for my benefit; indeed may enlarge the scope of my liberty; it is another to say that if it is my good, then I am not being coerced, for I have willed it, whether I know this or not, and am free - or 'truly' free - even while my poor earthly body and foolish mind bitterly reject it, and struggle against those who seek, however benevolently to impose it, with the greatest desperation."¹

This interpretation of the positive notion of freedom can also be applied to the negative one, for it can be claimed that the area of liberty which is private to the individual is in fact not the imperical self but some higher self with a purpose beyond anything that the emperical self may conceive of, and which may be identified with an organic entity such as a class, or a state, or a nation. Berlin, however, lays the blame at the door of the positive notion of liberty for dividing the personality into two, a baser self in need of control by a higher self. By starting from this definition of a man, the manipulator is given licence to make it mean whatever he desires. Berlin inclines towards the negative, "the liberal view" of liberty, and sees in attempts to establish a positive sense of liberty a contradiction in the idea of being forced to be free, and a tendency for this concept of liberty to lead too easily to a justification of political autocracy:

"The 'negative' liberty that they strive to realize seems to me a truer and more humane ideal than the goals of those who seek in the great, disciplined authoritarian structure the ideal of 'positive' self-mastery, by classes by people or the whole of mankind."²

An interesting and worthwhile criticism of Berlin's account of

1. Isaiah Berlin, "Two Concepts of Liberty", page 18.
2. I. Berlin, "Two Concepts of Liberty", page 56.

liberty has been made by Bernard Crick.¹ Liberty, he thinks, is something more than the mere absence of constraint. He stated that the latter is more correctly described as 'isolation', 'loneliness', or 'self-reliance'. This condition he rejects as abstract and sociologically impossible.² Furthermore, he sees Berlin's onslaught against the presumptuousness of "positive liberty" as lacking, because it fails to recognize that freedom involves a relationship between people, and that it involves 'activity'. It is important, says Crick, in a study of liberty, to analyse the connection between political action and liberty. Particular objects, he thinks, are necessary as goals of freedom because negative liberty cannot, in itself, stand as an 'ideal' to strive for.

What is required, according to Crick, is a synthesis which will avoid both the latent tyrannical aspects of 'positive liberty' and the anarchical or quietist aspects of 'negative liberty'. This synthesis establishes what Crick calls true freedom, which pays exclusive allegiance to neither the positive nor the negative concepts in Berlin's sense.

Crick's true freedom is:

"A relationship and an activity: an individual acting voluntarily in public or for a public - whether in art of politics."³

Freedom then, is public action and participation. Seen from this standpoint, liberty becomes a broader concept than most theorists have seen it to be. It involves positively creative activity. But by this sense of positive, Crick does not mean that liberty is to be identified with one goal or good for everyone, a definition to which Berlin objected. Crick's 'new' positive liberty entails, among other things, "freedom of choice -

1. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', Third Series.
2. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 198.
3. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 200.

amid clash of alternatives."¹

The synthesis of negative and positive liberty shows that freedom rests on an interaction between private and public activities, says Crick, and privacy and freedom are most evident in a society where government is carried on publically. Thus, freedom in this sense means taking part in public life as well as living privately. Crick takes Aristotle as his model, holding that:

"the man who seeks to dwell outside the polis, or the₂ political relationship, is either a beast or a god."²

It is, therefore, the being part of public life which is important. Free actions by private men, actions of speaking out freely in public affairs is contrasted with the liberty which rests upon an abstract concept of right derived from some supposed principle of natural law set down in the work of some learned savant. For example:

"Freedom does not consist in being able to choose between pushpin and poetry, but in actually choosing. Although both choices are possible, neither is necessary or entailed."³

In this notion of freedom set forth by Crick, the public and private life achieve a relationship in which one compliments the other. It is a view which echoes that of Montague, who argued that the individual could not logically exist apart from society and vice versa, so that the idea of society taking its origin from the individual was logically untenable. But in Crick's analysis of liberty the individual is of crucial importance

1. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 204.
2. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 207.
3. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society'. page 204.

also, for political liberty depends on the active participation of individuals in the life of a free community. Moreover, the individual will play his part as a member of a group; and some individuals will be leaders of groups representing various interests in society. These leaders must be free to speak for public interests if there is to be the public debate which makes a free society. The result is an open debate at several levels in society, each of which is necessary to representative government, the essence of which is communication, not the exercise of rights, as some theorists have contended. We find here in Crick's plea for active discussion as essential to liberty, a partial reflection of Bagehot's advocacy of government by discussion as of fundamental importance to liberty.

In an atmosphere of communication, such as Crick favours, government planning is not a power to be apprehensive about. It is not hostile to freedom, for the operation of planning will depend upon the fullest public discussion, honest gathering of information, and criticism of the plans by those people who would have to experience the consequences of them.

"Negative Liberty" represented by J.S. Mill and other individualists, and favoured by Isaiah Berlin as an antidote to the totalitarian systems which 'positive liberty' could be interpreted to justify, is not adequate as a theory of freedom, says Crick. Freedom must involve activity, though we might seek to establish an area of personal "negative liberty" which our positive action might seek to avoid breaching. In this theory of freedom, Crick says he is arguing for the earlier 17th and 18th century view of "freedom as citizenship,"¹ a view, which was abandoned in the mid 19th century either by ideas of the national state or by the view of some liberals that all power was intrinsically evil. Freedom as citizenship

1. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 213

means that man is not free unless he is an active participant in the affairs of his community; so above all, freedom depends on individual man to bring it to realization by his own activity:

"We need to recover the lost relationship between common citizenship and freedom. More precisely, we need to extend it to the people before other forces in our society succeed in treating them entirely as masses."¹

We have seen that most of the 19th century political theorists we have studied had some misgivings that democracy might lead to a form of equality which would be hostile to liberty. The concepts of democracy and liberty for them actually meant Constitutional Representative Government placed firmly in the hands of an educated elite, a new informed class. These concepts did not mean government by the enfranchised working classes. As it is false to think of the Victorian liberal represented by our authors as committed to laissez-faire, so it is false to think of him as absolutely democratic. Democracy was only acceptable under circumscribed constitutional conditions, a delegated parliamentary sovereignty, as we earlier explained. The Victorians feared that democracy might lead to mediocracy as a result of government by ordinary men; they feared arbitrary acts designed to confiscate wealth; they feared also that democracy might lead to tyranny as a result of the electorate choosing to give its support to a dictator. But perhaps more fundamental was the issue of equality, which seemed to the Victorian liberal to be a corollary of democracy. His fear in this respect was that political equality bestowed on the masses by democracy might lead to the imposition of equality in social status and wealth. Political equality was therefore, only acceptable if it could be achieved without social equality, for the latter was seen as a threat to liberty, and in fact incompatible with liberty. To bring about equality would mean sacrificing liberty. If liberty was one of the highest political goods, and to some,

1. B. Crick, "Freedom as Politics", in 'Philosophy, Politics and Society', page 213.

the highest political good, then anything which was a threat to it was to be feared and resisted. The kind of political democracy which sought to pursue social equality appeared to be such a threat, and was repudiated in favour of a political liberty which protected the individuals' right to be unequal.

A problem still remained for the Victorian liberal; and this was how far could their allegiance to liberty be reconciled with the gross social inequality which existed in the 'age of liberty'. We have already shown that the restatement of liberalism in 'positive' terms was an attempt to solve this problem. In a discussion of this question in his essay "Liberty and Equality"¹ E.F. Carritt argues a contrary case to that of the Victorian liberals, and claims that equality is in fact compatible with liberty. For when we talk of freedom as a right which men have, it is equal freedom that we mean. We must mean this, Carritt claims, unless we are in favour of a system in which each man seeks his own freedom at the expense of others. As it would not be possible for a man to have an absolute right to liberty, then the only right possible is the right to equality in the sense of men having equal claims. This equality of claims was, he says, what Aristotle meant by justice. And justice Carritt takes to mean:

"the treatment of every man as an end', 'counting every man for one,' an equality numerical till reason is shown to the contrary. And if for the moment we neglect other possible conflicting claims, the amount of freedom a man has a right to, the amount we ought prima facie to secure him, is just so much as is compatible with an equal amount for others."²

The concern then is with the extent to which equal liberty is affected by other aspects of equality.

1. E.F. Carritt, "Liberty and Equality", in "Political Philosophy", Oxford Reading in Philosophy.
2. E.F. Carritt, "Liberty and Equality", in "Political Philosophy", page 136.

Political equality which the Victorian liberals viewed with trepidation, though not necessarily the great protector of liberty per se is to be supported, says Carritt, as having more to offer liberty than other known political objectives. Also, equality before the law makes for equal liberty by the law being impartially administered. And measures favouring equality which would diminish the liberty of some people in order to increase the general liberty would be justified. For example, in the case of someone owning a superabundance of some necessary commodity or convenience at the expense of the majority, he might reasonably be deprived of his monopoly. His being deprived is an act favourable to the liberty of the majority, who would otherwise go without these necessities.

Further, Carritt points out that political equality, economic equality, and equality before the law are inextricably related to one another, and that without the maintenance of equality in all these areas, equal liberty is endangered. For instance, gross inequalities of wealth give power and influence to the rich, affording them advantages over the poor, which are irreconcilable with political equality. Such inequalities may also result in 'equality before the law' being placed in jeopardy because of the wealthy being able to afford litigation and expensive legal experts which the poor can not. Furthermore, inequalities of great magnitude aggravate class and cultural differences to such an extent that judges are often patently out of touch with many of the people whom they have to judge.

The case argued by E.F. Carritt is that equality is not the enemy of liberty, as the Victorian Liberals had argued, but on the contrary, it is essential to equal liberty, by which he means the bestowing of liberty on all the people.

Much was made by the Victorian Liberals of the distinction between the concept of individualism and collectivism. Some of our authors tended to favour the individualist approach to liberty, while others argued the collectivist case. This is not to say that any of them held an extreme individualist or collectivist ethic. Liberalism remained distinct from anarchism and communism throughout the nineteenth century. It was argued by the collectivists against the individualists that a close interrelationship existed between the individual and the state, and that pure individualism was unsocial and unethical. They believed that great objects were achieved by men working collectively.

It has even been questioned whether any real antitheses existed between individualism and collectivism. Erned Barker¹ argues that the distinction between a period of individualism and a period of collectivism in the 19th century is merely a rhetorical distinction. He regards the entire 19th century as a period which saw a continuous extension of individual rights. The epoch referred to as "Collectivist" was that of the promotion of government activity engaged in to facilitate the actual exercise of individual rights. Barker calls this process 'Individualist' because it extended personal rights:

"If by individualism we mean a belief in the rights of individual persons, and by collectivism we mean a belief in the collective service owed and rendered to such rights by government, we shall see no opposition, but rather a necessary connection."²

Individualism, in the sense of the state leaving the individual alone to conduct the whole of his life as he pleases, would, says Barker, mean that the state was failing in its duty to give its citizens the opportunity to exercise their rights, thus making it impossible for them to have any liberty

1. E. Barker, "Principles of Social and Political Theory", Oxford University Press 1965, page 208.
2. E. Barker, "Principles of Social and Political Theory", page 208.

at all. To avoid this state of affairs, the state has a fundamental role to play in the liberation of the citizen, and this, Barker concludes, must be recognized as part of a true account of individualism. It is the duty of the state to provide the conditions necessary for the development of the individual's capacities, for they would not come to fruition otherwise. And it is through collective effort in an organized state that the development of each individual can be made manifest. This interpretation of individualism emphasizes the essential requirement for individual development of the collective service which each citizen in concert with others helps to provide for all.

It may seem paradoxical, says Barker, to claim that the individual gains in liberty while at the same time the state increases its control over him. But this is explained in that individual rights are not gratuities - they must be paid for, and the most significant price is a spiritual one. This means the balancing of the spiritual gain received in increased enjoyment of rights against the spiritual loss entailed by consenting to the control which accompanies them. It also involves weighing the loss of liberties for one class in society against the gain of liberties of another.

In place of the idea of antithesis between individualism and collectivism, Barker postulates the idea of 'tension' between individual development, and the collective service and control of the state. These two opposites are seen as complementary to each other, but with a delicacy of adjustment between them. Man has in his nature the tendency to privacy and the tendency to sociability; he is a unity with two diverse elements which create tension in him. This is significant for politics, because it means that there are not two separate bodies of men, one called

individualist and the other collectivist, but that the polarity exists in each person. Likewise there exists the two complementary poles, of individual development, and collective service which must be recognized and reconciled. No antithesis between the individual and the state, or between individualism and collectivism exists, in Barker's view. What does exist, is a tension revealing the existence of the private and the social attributes of man which complement each other, but which do not divide.

We have discovered that the Victorian idea of liberty was not cast in a precrustean bed of ideological dogma. The 19th century political ideologists we have studied did not pay allegiance to a fixed set of basic principles about liberty. As our study has shown, their views as to the properties of the concept of liberty were not the same. Even during the fourth quarter of the 19th century, when, as some commentators have argued, the emphasis was placed on the positive and collective senses of liberty, and liberalism was said to have been revised or more correctly, restated, some theorists still stressed the importance of the negative and individualist senses of liberty as being authentic liberalism. Furthermore, we have seen that these same contrasting interpretations of liberty are still being made by some political theorists today. While at the same time, others are disputing the existence of an opposition between the negative individualist, and the positive collectivist senses of liberty. It is in fact difficult to confine the label 'positive' to the collective notion of liberty, and the label 'negative' to the individual notion of liberty. Today it can just as well be argued that to be an individual one needs positive freedom as it can that negative freedom is the condition of individualism. Obviously, some of our freedoms such as freedom from the tyranny of government or from the pressure of the majority, also involve freedom to take part in shaping a society's future, including the freedom

to reorganize some of its most fundamental relationships through education and legislation. Both kinds of liberty are desirable and necessary and cannot exist in isolation from each other.

We have said that the liberal idea of liberty, is not a static ideology. It is a changing, ongoing and developing application of the concept. Its meaning, or meanings, can only be fully understood in the context of the time and conditions of an era, and as these are always in flux, so in the idea of liberty. Therefore to understand the liberal concept of the liberty, we must, with John Stuart Mill, be prepared to be life long learners. And perhaps this absence of rigidity is the very strength of the ideology of liberty, enabling it to be an effective antidote to those dogmatic ideologies which are sustained by the heady wine of metaphysical absolutism.

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