

NATURAL ORDER

ESSAYS EXPLORING
CIVIL GOVERNMENT
&
THE RULE OF LAW

By

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“Impenetrability! That’s what I say.”
Humpty Dumpty in Lewis Carrol’s *Through The Looking Glass*

“There is a crack – A CRACK – in everything,
That’s how the light gets in,
That’s how the light gets in.”
Leonard Cohen, *Anthem*

To Varuna

*'Come in,' she said,
'I'll give you shelter from the storm.'*

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INTRODUCTION

The Historical Setting of this Volume

A quiet crisis is slowly gripping the socialist Indian state – a crisis of legitimacy. It is not that liberals have succeeded in convincing the populace at large of the evils of big government; rather, that the government itself is repeatedly showing itself off to be an organization that does not know how to govern. It does not know what it must do; it does not know what it must not do. It is clueless as to its proper role in society.

While every Indian city is close to collapse, while large swathes of the mainland have been taken over by armed Naxalite rebels, while the fringes of the empire are aflame with secessionism, the government has decided that it must teach the unlettered! And, for this purpose, it has imposed a new tax on the productive part of the citizenry; another burden on their tired and weary shoulders.

Meanwhile, the courts do not work and the police work even less. Over 100,000 people, mainly pedestrians, cyclists and motorcyclists, are killed every year on India's anarchical streets. An open-and-shut case like the murder of Jessica Lal could not

be successfully prosecuted. In the meantime, as lawlessness and civic disorder mount, the government remains keen on running a vast, inefficient and wasteful public enterprise sector, refusing to privatize out of 'political necessity': the socialist and dynastic Congress party rules the country with support from various Communist parties. Never mind the fact that the former Soviet Union, the nations of Eastern Europe and even Communist China gave up the false ideas of collectivism almost two decades ago.

India began 'liberalising' in the early 1990s, and the opening up of the economy to private entrepreneurs has yielded rich dividends for the people. Civil aviation, automobiles and telecom are just three areas where consumers have gained hugely and many jobs have been created. However, this 'liberalization' has totally escaped the political arena, and liberals in politics are non-existent. Indeed, although India is supposedly a 'democracy', genuine 'politicians' are difficult to find: the current president is a technocrat-scientist; the prime minister is an economic bureaucrat; and Sonia Gandhi cannot be called a 'politician'. Politics seems to have been abandoned in favour of technocracy

At such a historical moment, an ideation on liberal ideals and what liberals believe to be the role of ‘civil government’ might be pertinent. Civil government is that which is neither military government nor the sort of ‘party government’ we have in socialist India. Civil government is necessarily bourgeois government, emanating from a civil society that survives via the market economy. These liberal ideals and the liberal conception of civil government can then be contrasted with socialist ideals and the socialist view as to why a government exists.

In this volume the reader will find an exposition of ideas that have a long lineage, dating back to John Locke, through the philosophers of the Scottish Enlightenment all the way down to Austrian economists of recent times like Friedrich Hayek. With reference to liberalism for Third World countries, the late Peter, Lord Bauer and the Peruvian economist Hernando de Soto have stood up admirably for these ideals. In independent India, the late Professor B R Shenoy upheld liberalism in his famous note of dissent to Nehru’s grandiose Second Five Year Plan. Today, his daughter, Sudha Shenoy, is a leading liberal; and there are two think tanks in India now, Liberty Institute and the Centre for Civil Society, set up to propagate the ideas of classical liberalism. This is a school of thought that believes in

free trade, a free market, individual rights and the rule of law.

Since these ideas originated in England, and since we in India follow the ‘Westminster-model of parliamentary democracy’, we take a close look at how the ‘rule of law’ emerged in Britain. This will help us in grasping the fundamental truth that we have aped English institutions without the liberal ideals upon which they are based.

It is hoped that this book will be of use to practitioners of government in India, who have become used to looking at their task from the socialist perspective for so long that they can scarcely see that it is their ideology that is responsible for their failures.

It is also hoped that this book will be of use to academics in the various fields connected with the science of government – like economics, political science, public administration and law. In these fields socialist ideas have held sway for much too long in India. A new way of looking at these subject areas may have heuristic value as well.

Students of the humanities and law will also find this book useful. The ‘Indian Economics’ and ‘Civics’

they are taught in school effectively shuts out the liberal critique of state socialism. Thus, this book will serve as an eye-opener for them.

I also invite the attention of the concerned citizen, who may be a layman as far as these subject areas are concerned. The battle between liberalism and socialism is essentially a battle of ideas at this stage, since there is no effective liberalism in politics; hence it is vital that concerned citizens take an interest in it. Let us not forget that socialism in its heydays commanded wide support because of the backing it received from leading members of the citizenry. This book is written specifically with the intelligent layman in mind.

This book does not contain journeys to the extreme shores of libertarianism, which some call anarcho-capitalism. In this sense, my position is conservative: that is, I have taken the view that government is necessary. However, I do believe that this book is still a radical exposition of liberal ideals, in the sense that it offers a radical challenge to prevailing notions of state and society, especially in India. All my libertarian friends will hopefully see that, in the final analysis, this is not as conservative a book as it seems to be at first glance. Indeed, I do expect middle-of-the-road conservatives to be disturbed from their

statist complacency by this book. This is above all a call for the dethronement of the idea behind Leviathan.

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CHAPTER ONE

THE PRESUMPTION OF ‘NATURAL ORDER’, AND THE PRINCIPAL CHARACTERISTICS OF THIS ORDER

– including an enunciation of Liberal Ideals

Buri nazar waley, tera bhi bhala ho!

(Good wishes to you too, the one with the evil eye!)

Slogan on a Delhi auto-rickshaw

There is a *natural order* around us. This order is easily visible when we visit crowded commercial areas in densely populated cities. In Delhi’s Chandni Chowk, Bangalore’s Brigade Road, Tokyo’s Ginza, London’s Oxford Street or Singapore’s Orchard Street, the visitor does not find posses of armed policemen ‘maintaining order’. The order exists on its own. *Homo Economicus* is a ‘rule-following animal’. He obtains desired objects by following unwritten rules that have been learnt over generations. The study of these rules is the task of the subjects of Law as well as Economics – both ‘moral sciences’. It is indeed a tragedy that in this age of super-specialization there are very few who study both subjects – as Adam Smith and scholars of his generation had done.¹

¹ Adam Smith’s friend David Hume wrote extensively on law. Frederic Bastiat displayed a thorough grasp of both Law as well as Economics. Modern Continental scholars like Bruno Leoni and Friedrich Hayek mastered both subjects as well. Today, the idea has finally permeated in the West that these subjects are

The fact that a natural order exists independently of any single human will is also central to all questions of Political Science, for it is evidence of a deeply ingrained commercial ‘culture’ that has come about outside all political authority and direction. Since culture is something that has evolved slowly over many generations without any government controlling it, as have language, money and morals, it is a towering achievement for any civilization to possess a deeply ingrained commercial culture, for this is the means by which savages have tamed their instinctual urges and submitted themselves to the rigorous discipline of obeying the ‘rules of the game’. It is these rules and the nature of this game that are the subject of this essay. It will be seen that these rules are anterior to all government.

At this stage let us begin by saying that the vision of an India that ‘lives in her villages’ and another that appreciates the commercial culture of her teeming cities represent a ‘conflict of visions’ of the Thomas Sowell² kind: liberals see India’s future in terms of thousands of free trading and self-governing cities and towns; the establishment is still attempting ‘rural development’ – the upliftment of the peasantry. In the

closely related and students should be exposed to both. Unfortunately, this trend is yet to catch in the Indian government-run university system.

² Sowell, T. *A Conflict of Visions: The Ideological Origins of Political Struggles* (New York: Quill, 1987).

meantime, every Indian city and every Indian town is unlivable.

To the student of government, this natural order in the affairs of ‘rule-following’ men is something that makes the task of government relatively simple. If, on the other hand, the natural affairs of men resulted in a ‘war of each against all’, as was Thomas Hobbes’ paranoia, the task of government would be difficult, if not impossible. The proper understanding and comprehension of this natural order, then, is the first task of government, because it is a force on its side. A government that understands this order and supports it, gets an ally.

[Note that this ‘natural order’ does not exist in Srinagar, Kashmir, where there are armed soldiers posted every 5 yards. What the ‘government’ is doing there is a question that needs to be asked. What about Kabul or Baghdad? How do people obtain their daily needs in these cities? Should we first set up a government in these places, and a ‘democratic’ one at that, or should we set up a duty-free shopping area? Which will promote more ‘order’?]

It would not be accurate to describe this natural order as just a ‘market economy’ although the market is definitely its most important component, for it does

include private voluntary institutions of piety and charity, and, in modern times, the institution of the free press. However, the ‘market economy’ lies at the heart of it all. Institutions of piety and charity depend upon donations from those who earn in the market economy. And the free press is a profit making institution.

For these reasons, good government is based on the realization that the society it seeks to serve is already a self-ordering one, possessed of ethics and rules that make a *complex, competitive and impersonal* order possible. Through the market, every possible societal want is satisfied, almost entirely without recourse to either civil or criminal law. The market is the institution through which society survives. A good government is one that preserves and protects this market. A bad government operates as a predator on the market: it has the ‘evil eye’.

[The italicized words above deserve closer attention. The order is ‘complex’ in that it cannot be fathomed by a single mind, or even a group of minds, because it is the combined product of the separate actions of each and every thinking and acting human. The order is ‘competitive’ in that it is a means by which individual human survival is achieved. And it is ‘impersonal’ in that it has nothing to do with ideas

like community, group solidarity, or 'the brotherhood of man', or even love and friendship.]

It may be contended that there are parts of the world where this order of the market has not percolated, but governments in the Indian sub-continent can rest assured that such a situation does not prevail in their vast territories. Archaeological studies speak of ancient trade (dating back to 3200 BC) throughout central Asia centered on Baluchistan, a 'troublesome' northwestern province of modern-day Pakistan. Philip Mason's *The Men Who Ruled India* mentions the case of one British district officer there who, when confronted with two warring tribes in his jurisdiction, got them to assemble regularly in neutral territory and trade with each other. Thus, the existence of a 'natural order' in the affairs of men must be *presumed* by any organization seeking to be a good government; in specific instances where this order may be lacking, a good government will seek to invoke it.

THE PRESUMPTION OF ORDER

In the market economy, human beings obtain their needs and achieve their individual plans by *presuming* order. For example: I give my servant 100 rupees and ask him to fetch me a packet of cigarettes.

Both my servant and I can presume that the cigarettes will be available, that the tobacco company will manufacture and distribute them, and that the retailer will stock them. In all our excursions to the market we usually obtain what we sought to obtain – and our individual plans succeed – because we have correctly presumed that the order is *a factual state of affairs*.

Indeed, we can actually presume order even in emergencies: if caught in a sudden downpour we can presume that there will be a shopkeeper nearby who will sell us an umbrella. Or that when we have an automobile breakdown, there will be a skilled mechanic available. In a medical emergency, similarly, we presume that the medicines required will be obtainable – and they usually are, in the private market, but not in the government hospital!

Therefore, if there are areas where we fail, the cause is always government monopoly: you switch on your air-conditioner, but there is no electricity, a government monopoly. Or you take your new Mercedes out for a spin but there are no roads – because roads are a government monopoly. You fail to get a railway berth on the train to Goa – because railways are again a government monopoly. Or your financial plans – like building a house or sending your son abroad for higher studies – fail as your

savings have been eroded by inflation, and the government is the monopoly issuer of money. It has been well said that ‘where the government plans, individuals cannot plan’. In reality, the government does not ‘plan’ anything; they are simply ‘running’ a host of monopolies. In all these areas, they are behaving like textbook monopolists, dropping the quantity supplied, lowering quality, and collecting ‘economic rents’. If all these areas were opened up to private sector competition, and all these goods were supplied by competing businessmen, each one of these goods would be available on demand, and the order that we can now presume in only some areas will extend to the whole.

Let us now proceed to an understanding of the individual human mind as it goes about making gainful exchanges in the natural order, as a ‘rule-following animal’.

‘BETWEEN INSTINCT AND REASON’

The fact that humans in the market economy follow unarticulated rules when going about the processes of exchange is indicative of the fact that they have not reasoned about them. Human behaviour in the market lies ‘between instinct and reason’, as the Nobel laureate Professor Friedrich Hayek put it in the very

first chapter of his *Fatal Conceit: The Errors of Socialism*. We have overcome the instinct to plunder, to get whatever we desire by snatching it from its possessor – but we have not reasoned why. This is not unusual: in our language too we follow unarticulated rules without knowing why. A child, applying analogy, knowing that the past tense of ‘try’ is ‘tried’ will say, “Papa *buyed* this toy for me” till he is told that he ought to have said ‘bought’. But the parent who corrects the child will not know why the rule exists, or who formulated it. Language has been there for millennia, and it is only in fairly recent times that the rules of grammar have been formulated. In precisely the same way, the ‘rules of just conduct’ that people follow in market exchange have evolved slowly. Those who progressed from the life of the nomadic hunter-gatherer, or that of the subsistence farmer, and shifted to cities, discovered a better and easier life there – if only they followed the rules of the game; rules that were not written down, but which one could vaguely discern other people following. Thus, these rules were followed by newcomers not through their articulation, but merely through imitation of the behaviour of others. Reason did not enter the picture at all. By imitating the behaviour of settled city-dwellers – ‘when in Rome do as the Romans do’ – the newly arrived barbarian accommodated himself to his new surroundings, by

following the customs and practices there: *Raju Ban Gaya Gentleman*. He specialized in the urban division of labour, serving the needs of others, and thereby earning the means to get his own needs satisfied by further exchanges with strangers. In time he realized that this was a better life than that of the nomad, and he settled down to it. His children followed him, and theirs. Millennia later, philosophers like Hayek attempted to understand these rules that govern market exchange.

[These rules exist independent of any 'rulers' and would remain even if rulers did not!]

The conclusion is therefore stark: *homo economicus* is not the 'rational utility maximizer' of the Economics textbook. Rather, he is more like a zombie, exchanging goods and services in the market without knowing why he does so. To the extent that civilization is artificial, *homo economicus* has overcome his instincts. He exhibits new patterns of behaviour, but these have been learnt by imitation. Just as the grammarian finds rules in language, so too can the philosopher find rules in market exchange. But no one has formulated these rules, and not many know them either. All that human reason possesses is a 'sense of gain', and it is this sense that has powered civilization. Trade is a win-win game, so people keep

playing it – but they do not reason beyond that. It would be a great folly indeed to see civilization, language, morals, markets and money as the product of human reason. These have all evolved slowly alongside the development and growth of the human mind itself.

AN ORDER WITHOUT DESIGN

Once we have understood that the individual human being involved in market exchanges in the great centers of civilization is engaged in activity that lies ‘between instinct and reason’, it is only a short step to understanding that the natural order we speak of is an ‘order without design’. It is an order that results from masses of individuals following unarticulated rules; no single mind has created the order; and the order does not obey any single human will. The order is produced by its *elements* following rules. Although, as we have seen, the individual has overcome his instincts (which are his nature), and thus his new-found behaviour is artificial and learnt, the natural order is ‘natural’ in the sense that no human mind has produced it. The natural order is most emphatically not a man-made order, in the sense of a single will, some great ‘founding father’, as having created it. This understanding is critical to any true ‘social science’.

Indeed, the fact that a social order exists independent of any single human will is what should comprise the central focus of inquiry of any true social science. There would be no need for a science of society if the order we see were produced by central planners and central legislatures. Because there is a natural order in society, because human beings interact in harmony within it, there is something that needs to be understood and explained by a science of society.

The socialist attempt to establish an economic order based on centralized political direction is thus a false and absurd social science that is actually an ‘abuse of reason’. What has not been made by reason – what is, in this sense, an order far beyond reason – cannot be substituted meaningfully by anything that is the product of a single mind like that of the central planner. As Hayek said, “what cannot be known cannot be planned”. This is why central economic planning always fails. The same failure is also bound to meet centralized legislation that attempts to alter the rules of the great game of exchange without understanding the naturally evolved ‘rules of just conduct’ in the first place.

The natural order of the market is therefore not a man-made order. A man-made order would be, say,

an English garden. This is the ‘planning’ vision – what Jawaharlal Nehru called ‘socialistic pattern of society’. Nehru sought to replace a spontaneous order with a man-made one – made, that is, by he himself. This is the ‘fatal conceit’ of the planner, and it infects those with engineering and scientific mindsets. They demand a ‘blueprint’ and they want it ‘implemented’: by the government. To such minds, central planning, strong government direction and control, articulated ‘ends’ that ‘society’ must pursue – these hold instinctive appeal. The trained engineer naturally believes in ‘social engineering’ – for he cannot accept the idea that a natural order exists and should be left well alone. They call the organization employed by their social engineer ‘government machinery’, the word itself illustrating their complete misconception of the role of government in a free society. Such minds find it impossible to understand that there are no regularities and constants in the social and moral sciences, everything is uncertain, and nothing quantitative can be predicted. But armed with statistics, mathematical models and economic plans, such minds persist with their errors.

[It cannot be a mere coincidence that in socialist India the brightest minds combined an IIT degree with an IIM one, both ‘elite’ government-run institutions of engineering and management

respectively. There must be some dark reason why the IIM management courses reserved a majority of their seats for engineers from the IITs. I suspect they wanted to create an elite cadre of business managers with this fatal flaw of the 'engineering mind'. They abused the reason contained in Professor Hayek's The Counter-Revolution of Science: Studies on the Abuse of Reason.]

The anarchistic conception of the market order is not like a jungle as compared to an English garden, but more like the Garden of Eden, wherein each of us can find a specialized niche by which to survive, supply the needs of others, and have our own needs supplied by others in turn. The crucial difference between the Garden of Eden and the jungle is that in the jungle animals camouflage themselves in order to survive while in the Garden of Eden humans advertise their wares. In the jungle, animals hide to avoid getting eaten. In the Garden of Eden, humans don't worry about getting eaten, or about food running out: their only concern is with demand dropping off. There is always an abundance of goods offered in the market, provided one important condition is met: No government interference.

The Greek word for an order that is not of human design is *cosmos*, evoking, as it does, the entire

universe, all the stars and all the planets. When the word *cosmos* is used in this sense, it is with awe. The very same awe should be exhibited when we speak about the natural order of the market, for our mind can only comprehend a little bit of it at a time. When we find fruits from all over the world in the corner store, we cannot comprehend at once the apple grower from Kulu, the mango orchard owner from the Konkan, or the trader of dried fruit and nuts from the Middle East. The order extends beyond our shores every time we order something on the Internet and it reaches us without the assistance of any world government. In the liberalized trade regime of today, though it falls far short of free trade, we buy wines and spirits, cars and stereos, clothes and watches, and so many other things that come from foreign countries. This is conclusive evidence of an order that is anterior to government, of rules that are anterior to all man-made law. Such a human phenomenon should evoke awe and wonder just as the *cosmos* of stars does.

SEVERAL PROPERTY AS THE NATURAL LAW OF THE EXTENDED ORDER OF THE MARKET ECONOMY

The fundamental characteristic of the extended order of the market economy is that it is made possible by

‘several property’, and accepted rules about the transfer of these properties by consent. These can be observed in any vegetable or fish market in India where, without the presence of any policemen, every buyer accepts that the vegetables or fish arrayed before a vendor are rightfully his property, and that to make some part of it his own he must establish a bargain and trade something desirable to the vendor. I must stress the fact that even in the absence of the policeman, and without recourse to any court, an infinite number of properties are owned and transferred in ordinary vegetable, fruit and fish markets throughout India, providing gains to all concerned, both buyers as well as sellers. Thus, property rights in a free society are a ‘patchwork’: every individual comes to the market with what he owns. This natural phenomenon may be contrasted with the ideas of communists and socialists who idealize property as a monolith – where everything is owned by the government. Such ideas are opposed to the natural order of the market economy. Where such ideas gain ascendancy, the market cannot function.

Private ownership is therefore *presumed* in the market order. ‘Possession is nine-tenths of the law’. The fisherman who lands his catch does not possess a title to them supplied by Neptune, but everyone treats his catch as if it were his. This has deep implications

for any good government – and that is, there is a ‘claim to title’³ by anyone who possesses anything. Disputes over some properties will always exist, and that is what the courts are there for – to settle them, grant undisturbed possession to the rightful owner; and that too, fast!

The market economy is based on private several property. Any government that seeks to protect and preserve the extended order of the market must be based on this fundamental law. This fundamental law must be seen by all as above the government; as something that the government can therefore never alter. This is a law that arose in society; this law was never enacted by any government in any legislature, and must be beyond the powers of the government to amend in any way. The ownership by people of little, little bits of property is to be taken as a legal fact that is inalienable just as it is imprescriptible. A good government exists to protect these private properties for their owners, thereby providing *Justice*, essential to the preservation of the extended order.

There is no better authority suited to open the bowling attack on behalf of the liberal side than the

³ There are differences between my approach and that of those liberals who argue for ‘property rights’. These will be further explored in essay number 8 in this volume, on ‘Politics, Democracy and the Rule of Law’. In my approach, property originates in a ‘liberty’ and there is a ‘claim to title’. The transfer of property is governed by consent, or contract, and this creates a ‘private right’ because it also creates a ‘private obligation’.

man who penned the first ‘treatise on civil government’, in 1690, John Locke:

“Where there is no property there is no justice,” is a proposition as certain as any demonstration in Euclid: for the idea of property being a right to anything, and the idea to which the name of injustice is given being the invasion or violation of that right; it is evident that these ideas being thus established, and these names annexed to them, I can as certainly know this proposition to be true as that a triangle has three angles equal to two right ones.⁴

The task of government in preserving the natural extended order by securing several property involves two inseparable liberal ideals: Freedom and Justice. That is, for the citizen, Freedom from unlawful restraint on the part of anyone else, *including the authorities*; and the provision, by these authorities, of Justice in case anyone was to break this fundamental law. This is ‘liberty under law’.

[Freedom, then, is not the removal of all restraints; rather, it is the application of equal restraints upon all. This is ‘liberty under law’.]

⁴ Locke, John (1690) *Two Treatises on Civil Government* (London: Routledge)

Where a government understands its role in a free society, this task is simplicity itself, involving the outlay of very little tax revenue and manpower. Some good magistrates, a few learned judges, a small band of trained policemen – that is all the task requires.⁵

Where the government performs this task even tolerably well, the liberal ideal of Freedom combines with Justice in the most perfect and agreeable manner, and a free, open and great society lives in harmony with its laws and its government. There is prosperity along with respect for authority. There is neither rebellion nor revolt. The government and the market complement each other perfectly – the end result being quite like the French song the Italian legal philosopher Bruno Leoni quoted in the same context:

*See how Nature had the extreme good sense
To make the rivers flow exactly under the bridges.*

As Leoni said, a government rightly and justly conceived is inseparable from the idea of a free market, for the very existence of a free market implies restraints upon those who are enemies of the extended order: just as international trade requires action against sea pirates, domestic trade requires

⁵ Public prosecutors are unnecessary. Crimes are against individuals, not the State. Therefore, individuals should be free to prosecute their own cases. Further, when judges award economic compensation to victims, (as torts), prisons and other such ‘correctional’ facilities are rendered redundant.

action against thieves and robbers. Of course, as many have warned since, this certainly does not imply a strong central government, and a huge role can and must be played by institutions of local self-government, about which more later.

Thus, the liberal conception of the government of a free and prosperous commonwealth is a minimalist one. Liberals see government as but a monopolist on the use of legitimate force. Liberals hold that the use of this force must be restricted to the provision of Justice. There is Justice when legitimate force is only used against those who perpetrate injustices. As far as those who follow the 'rules of just conduct' are concerned, they enjoy the most perfect Liberty. Thus, liberals value the Voluntarism of the extended order of the market and desire to keep its opposite, Coercion, within strict limits. To liberals, the very idea of constitutional government is to prescribe the limits to coercive acts by the state. This idea has been best expressed by Thomas Paine in his pamphlet *Common Sense*, wherein he begins by asserting that we do not have government because of our goodness; rather, we have government because there are some bad people among us. The role of the government is to go after the bad guys and bring them to Justice, while leaving all the good guys alone.

Thus, unlike socialists and communists and welfare statisticians, all of whom envision an extensive role of the state, which they see as the fount of all ‘good things’, liberals view the state as an organization based on coercion and taxation which must therefore be strictly limited by constitution. Liberals do not believe in ‘collective property’ like the communists and socialists; they do not support nationalization of industries. Indeed, to liberals, the idea of collective property so cherished by communists and socialists is but a chimera, a hoax – all these collective properties are but private properties exploited by those who claim to represent the public. Liberals believe private property must be inviolable. This, to liberals, is Justice. It is the fundamental basis of the natural order of the market.

To liberals, if society is to be free, coercion must be restricted; and if society is to be prosperous, capable of accumulating capital – the life-blood of capitalism – taxation must be minimal. Liberals alone call for a minimal role for the government; that role being restricted to using coercion in the pursuit of Justice. If government is thus restricted and limited, there is Freedom, Justice and Voluntarism. Coercion is used only against the unjust – the outlaws. Beyond this, to liberals, the government has no other role to play. The government is not ‘society’: rather, the

government is ‘an organization within society’, with some specific tasks, funded collectively. Everything else falls within the ambit of voluntary action in civil society, including charity for the poor, education for the unlettered and free healthcare for those who cannot afford to pay. Liberals view generosity to be a virtue best exercised voluntarily; where the state taxes us coercively in order to ‘help the poor’, natural generosity gets eroded, vast bureaucracies are spawned, and the poor receive no worthwhile help at all.

Thus, to the liberal, society is the *cosmos*, the natural order, while government is a man-made organization set up to protect the law-abiding citizens and their properties and rights. The *cosmos* works because rule-following individuals exercise their liberties creatively, while adhering to the rules of just conduct. This *cosmos* cannot be run by commands. It is the government as an organization within the overall order that must be run by commands (based on justice and morality).

The *cosmos* is thus based on private law, while the government is based on man-made legislation or public law. A false social science that confused the two has contributed to our lack of understanding of these vital differences between a *cosmos* and an

organization. These false ideas have attempted to remodel society on the lines of an organization run by commands. As a result, society failed to succeed, markets failed to work, and Liberty was lost.

Socialists often aver that modern society has grown so complex that it needs to be ‘planned’ by their government. In reality, society has been able to reach this level of complexity only where the natural order of the market economy has been free. If planning was instituted, this complexity would disappear.

EXCLUSION AS THE BASIC PRINCIPLE OF A PRIVATE PROPERTY ORDER

The fact that properties are severally owned implies that each property owner has the right to exclude those who will not pay his price from the enjoyment of his goods. If you do not have the money to buy mangoes, the mango seller is within his rights to exclude you from their consumption. The same applies to a Mercedes-Benz car: if you cannot afford what the company demands for an SLK, you have to make do with your Hyundai Santro. Private several property held by individuals as a ‘patchwork’ means that long-established conventions are being followed in all the markets by which each seller is able to exclude those he chooses to. “Rights of Admission

Reserved” is a sign outside many a fancy restaurant, and if you turn up in sneakers and jeans they may deny you entry.

The critical point to note is that we are not sharing anything – we are all buying and selling. In order to survive, we must be able to exclude those who will not pay. Side by side with several property comes the principle of exclusion. The question then arises: What about ‘common property’ and those goods from which non-payers cannot be excluded? The liberal take on this is very different from what the socialists have been spewing all these years.

There are ‘collective properties’ that all cities and towns need, and these are footpaths, streets and parks. These are properties that all the citizens, and all foreign visitors, can freely use. No one can be excluded from their use, so no businessman will produce them. These are collective properties that cities and towns must provide for themselves through collective action. Of course, in gated localities and ‘company towns’ (like Jamshedpur) private companies provide these collective properties.

Note that the liberal case for collective properties is very different from the socialist one, which trumpeted steel plants, 5-star hotels, and hundreds of

public sector firms producing goods ranging from photo film to fertilizers and from textiles to cars and scooters as examples of ‘collective property’. They invested in these firms at the expense of roads. Their idea of ‘collective property’ is false.

Of course, there are ways out of the dilemma that ‘non-excludability’ presents. You cannot exclude anyone from receiving a radio broadcast, but if you can tie the ‘public’ broadcast with a ‘private’ advertisement, businessmen will happily invest in radio stations. The same applies to a pedestrian subway, from which no one can be excluded: however, if a private developer can develop some ‘private’ shops along the ‘public’ subway, and sell them, then the facility can come free to the citizenry, without any need for collective action. You cannot charge ships which see the light from a light-house, but in England lighthouses have always been privately set up, sharing fees with the ports nearest them: ‘public’ light combining with a ‘private’ port facility. If the idea of tying ‘private goods’ with the ‘public property’ is carried out with inter-city highways, I do believe they can be made available to the citizen if not free of cost, then very close to that.

COMPETITIVE INDIVIDUALISM AS THE PRINCIPAL CHARACTERISTIC OF THE EXTENDED ORDER

With his own property, man becomes an individual, securely possessed of whatever he can legitimately call his own – like his home – which give him his distinct personality. Since individuals own several property, and since individuals engage in trade, the essential characteristic of the extended order of the market economy is ‘competitive individualism’. As far as the government and the law are concerned, the primary implication of this is that both the law and the government are guarantors of individual rights and individual liberties.

It needs to be emphasized that in the extended order of the market economy, we all act as individuals and we are in ceaseless competition with all other individuals – with the sole exception of those who comprise family and close friends, with whom we share fraternal bonds. As far as the rest of humanity is concerned, they are all strangers – with whom we must compete if we are to eke out a better living for ourselves. The difference between a close-knit tribe and the extended order of the market is that the latter is totally impersonal. In the market, we serve strangers and are served by strangers in turn. All

these strangers follow the ‘rules of the game’, and all that we owe them is that we too follow these ‘rules of just conduct’. These rules allow us to peacefully co-exist, adding more and more strangers to the extended order; but these rules also allow us to peacefully compete with each other. Many leading liberals view the extended order of the market, with its specialization and the division of labour, as a means of ‘social co-operation’: but this term is extremely misleading. There is nothing ‘social’ about individualism; and the market is more about competition than co-operation. Each individual is attempting to get the highest price for his product – in order to use his gains to secure for himself the maximum possible produce of others. He is always both seller and buyer – and both activities involve competition. There is a sublimated war that occurs every time a buyer and seller negotiate terms – and the ‘rules of just conduct’ ensure that this war remains sublimated, and negotiations are conducted peacefully. This is the principal utility of the rules of just conduct. This should not obscure the fact that it is war nonetheless, based on competitive individualism. The market process should be seen as one by which multitudes of individuals ceaselessly compete in order to survive; the word ‘social’ cannot be used to describe the world of strangers included in the extended order; and ‘co-operation’ is but a

blessing of the ‘invisible hand’: no single human will intended it. Or to put it baldly: each of us is trying to obtain more of the goodies available in the market for ourselves, and this is the reason why we are in ceaseless competition with everyone else. Rather than ‘social co-operation’, what transpires in ‘association’, based on the principle of comparative advantage, but every employee negotiates pay hikes and thus competes with his employer for a fair share of the pie.⁶ Even within an organization like a firm, managers compete for the next promotion. Competitive individualism is therefore the essence of the natural order.

Socialists, of course, see ‘society’ where no such thing exists; for them individualism and private property are anathema; and they wish to ‘replace competition with co-operation’. As John Lennon, a leftist, in his otherwise great song *Imagine* put it:

*Imagine no possessions,
I wonder if you can,
No need for greed, nor hunger,
A Brotherhood of Man.*

⁶ David Ricardo’s Law of Comparative Advantage has therefore been rightly called The Law of Human Association by Ludwig von Mises.

Such ideas, which call for ‘society’ being placed above the Individual, all in the name of a ‘Brotherhood of Man’, and for which all individual property must be transferred to the collective, have led countless well-meaning people astray. Extremely poor peasants and workers have been led to economic doom and political totalitarianism by following leaders towards the attainment of such visions. This includes the Indian nation.

Liberals lay emphasis on the uncomfortable truth that humans survive (and must seek survival) as Individuals. As a matter of survival they must compete with others. There is no escape from Competition: we must even compete with our neighbours, the Joneses, whom the Bible calls upon us to love. Liberals emphasize that the extended order of the market is impersonal, being made up entirely of strangers. Liberals teach their children not to talk to strangers. Liberals do not accept an idea as false as the ‘Brotherhood of Man’. As Margaret Thatcher once said, “There is no such thing called ‘society’; there are only individuals and families.” I would add friends. Socialist ideas like co-operation, brotherhood, common purpose and common property apply only to the small tribe; they are contrary to the extended order.

Both Competition as well as Individualism are therefore complimentary liberal ideals, and they go together in quite the same manner that Freedom goes with Justice. It is a principle of justice that each individual is secure in the possession of his properties. It is a principle of freedom that each individual, as long as he obeys the laws of justice, must be ‘perfectly free’ to enter into competition with anyone else. This competition is certainly not ‘perfect competition’ as the false textbooks of Economics teach: such a situation can never arise; and the conditions described by the assumptions of perfect competition are actually those of an ‘evenly rotating economy’ where all competition has ceased.⁷

To liberals, competition is a ‘discovery process’ by which a great society handles the unknown. Since we are constantly buffeted by change, the forces of competitive individualism allows for a variety of responses, only some of which may survive in the end. A commonplace example of this is the automobile industry, where the rising price of oil has prompted the competitive supply of many fuel-efficient cars. Humanity has dealt successfully with the uncertainties regarding the future price of oil only because of free competition between individual firms. If the Indian automotive sector had not been

⁷ For more, see Kirzner, Israel (1998) *How Markets Work* (Centre for Civil Society: New Delhi).

‘liberalized’ in the mid-80s with the entry of Suzuki cars and modern 100cc Japanese bikes, there would have been no competition, and we would still have been driving gas guzzlers like the Ambassador or the Bullet based on carburetor technology of the 50s. There cannot be any progress without competition.

Thus, the extended order of the market economy is kept alive by the activities of innumerable entrepreneurs, whose function is to ‘make provision for an uncertain future’, as Ludwig von Mises aptly put it. You find an umbrella at the first corner store you hit on a rainy day because some entrepreneurs have ‘made provision’ for this uncertainty. If umbrellas had been centrally planned, you would never get one. This vital function of thinking ahead, and making investments for every possible societal need, is something that central economic planners claim to provide, but they fail because they centralize decision-making while entrepreneurs take free, independent, decentralized decisions based on their own, unique individual knowledge. They try to guess what the consumer may need – an uncertainty – and they seek to serve it better than their competitors. This is why many city markets give us a ‘you get everything here’ feeling.⁸ Wherever central planners

⁸ I shall never forget my first visit to Main Street, Pune: As we disembarked from the auto-rickshaw, my guide, a local resident, proudly waved her arm about and said: “You get everything here.”

have tried to replace the market, each and every thing was in short supply.

The idea of competitive individualism as an essential characteristic of the extended order goes back at least to Adam Smith's scathing remarks on the character of businessmen whenever they group together. Indeed, the philosophical foundations of the free market are not based on any positive attributes of businessmen; rather, it is clearly recognized that all that is required for the whole of any great society to benefit is that businessmen remain in ceaseless competition, including that with foreigners. This competition is an integral attribute of freedom; tyranny rules where this competition is absent.

Any government that is just must refrain from interfering with the competitive process. That is, the organization of the government must be firmly based on the ethic of 'impartiality' Max Weber laid so much stress on. The government must never play favours with businessmen. John Locke can also be invoked here, for he said that 'what matters is the manner in which competition is carried out, not its result.'

[That is why the rules of just conduct are abstract and general, as well as 'end-independent']

Competition must take place within these rules, but the end result of the competitive process cannot be predicted and hence should not be aimed at. The rules are our adaptation to uncertainty, meant to apply to all future instances which we cannot foresee.]

Unfortunately, few governments have followed such a precept; and economic history is full of examples of unjust governments instituting monopolies, both private and public, and granting favours to crony businessmen by protecting them from competition, especially that from foreign businessmen. All that is required for competition to be free is that there be freedom of entry into every market. Competition laws and competition authorities are certainly not required, especially in India where the government is itself a monopolist in many crucial areas (like money, roads and railways).

With free trade and open markets, the forces of competitive individualism will bring about the economic benefit of every citizen as a consumer. It needs to be noted that citizens work hard to earn money; when protected businessmen sell them shoddy goods, they are cheated in the most reprehensible manner possible, since this occurs with the coercive powers of the state being used to benefit

not the citizen but the crony. This is gross injustice; good governments should stay well clear of such predatory, venal and collusive behaviour.

The liberal ideals thus far expounded, of Freedom and Justice, and Individualism and Competition, may therefore be placed against the rival ideals of a socialist order, in which collective property is deified, where the government is placed at the ‘commanding heights of the economy’, thereby nullifying freedom, and in which a collective identity (like “society” or “nation”) and egalitarianism replace competitive individualism. The ideals of socialism can therefore be seen to have nothing to do with the natural extended order of the market; indeed, they are contrary to it. We can see why socialism cannot work, and why any organization of government, if based on socialist premises, is bound to inevitably become a predator on the market, rather than a protector.

THE FRAGMENTATION OF KNOWLEDGE IN THE MARKET ORDER

In the market economy, we rely increasingly on both the labour as well as the knowledge of others. We specialize in our own area of competence, with our own knowledge, and by adding to it our own labour,

produce something for others. There is thus the ‘division of labour’ that Adam Smith noticed, and it is accompanied by a ‘fragmentation of knowledge’, something Friedrich Hayek discovered. The butcher, the baker, the brewer, the tailor, the musician, the carpenter – they all operate with distinct bits of specialized knowledge, much of which is uncodifiable, incapable of being put down in books. The processes of market exchanges are therefore a way – and the only way at that – by which widely dispersed bits of knowledge held by individuals are made available to all of humanity via trade.

The most obvious implication is that central planning is bound to fail, because it requires the centralization of knowledge in a supermind. Unfortunately for the socialist, and no less for the society on which he experiments, the central planner, with his statistics and maths, cannot really know how to ‘make provision for an uncertain future’ – which is the function of the entrepreneur – and planning leads to all kinds of shortages. Observe any good or service that is under the planner – power, water, roads, railways – and you will see huge shortages. Observe anything that is provided by competing private players – telephones, consumer goods, airline seats, fruits and vegetables – and you will see abundance. Planning fails because of knowledge failure.

Another implication is that specialized knowledge matters much more than the generalized schooling Indian kids get today. Success in the market economy implies a ‘rational ignorance’ of all matters beyond one’s concern. For example: I do not know how to make *iddlis*. So I rely on the knowledge of the Udipi chef down the road, happy in my ignorance. Ditto for the mechanic who repairs my car. The fact that super-specializations are dawning actually means that as individuals we need less and less knowledge in order to survive today. In primitive times, each of would have had to know how to grow one’s crops, how to build one’s house, how to look after one’s cattle and what not. Today, you can just be a good guitarist and survive pretty well, relying on the knowledge of others for anything and everything. That is, we are economizing on knowledge, and the search for knowledge is getting easier.

Further, free trade is the means by which we can use knowledge developed overseas. We drive modern cars, use mobile phones and fly jet planes, but none of these technologies were developed in India. With free trade, knowledge from all over the world will be available for our use. We ourselves will learn a lot through open borders. Thus, state education in a closed economy – the Amartya Sen - Manmohan

Singh prescription – is a recipe for disaster. We had IITs and IIMs even in the 60s and 70s, and India was a low tech, moribund economy. All the IITs and IIMs could not produce even a decent motorcycle, forget about a car.

This indicates that there is no ‘knowledge problem’ at a national level. All the fragmented bits of knowledge existing in the world will be available to all Indians in an open economy. Individual Indians will have to search for those bits of knowledge relevant to their callings. There is no case for any role of the government in either the production or the dissemination of knowledge. It might help if the government mastered its own subject areas, in order to perform better: road traffic management, for example, is an area where the government needs knowledge.

The conclusion is stark: It is only through individual liberty in the natural order of the *cosmos* that mankind can tackle two very serious problems: the first is the problem of uncertainty; and the second is the problem of finding relevant knowledge. This is the most important reason why mankind must be free.

DECENTRALIZED (OR MOLECULAR)
DECISION-MAKING IN THE NATURAL ORDER

Because we all compete as individuals in the natural extended order of the market economy, and since each of us does so with our own fragments of knowledge, the nature of all decision-making in this order is completely decentralized. That is, we all take our own decisions on what to buy or sell, and at what prices, in collaboration with those we trade with: “It takes two to tango.” To find a better word than ‘decentralized’, we might opt for ‘molecular’, in the sense that atomistic individuals voluntarily combine to trade, making ‘molecules’.

Indeed, this is the only reason why the market works and the order we spoke of can be ‘presumed’. I have often experimented in classrooms by asking a student to name a fruit that is in season that she wants to eat ‘right now’. She names the fruit: apple, banana, mango or whatever. I then ask the class whether this fruit will be available if we visit the market nearest to the school ‘right now’ – and the overwhelming response is ‘Yes’. The reason why this happens without any government intervention is because millions of separate individuals take independent decisions on what fruits to grow, what to buy, what to wholesale, what to retail and so on. So, while one vendor may not have bananas, another surely will. It should therefore be immediately obvious that if this

‘molecular’ decision-making were to be substituted for by a Nehruvian ‘command economy’, an omnipotent authority, and there was a minister for fruit (or rice, or wheat, or electricity or whatever) then the centralized ‘atom’ of the minister’s mind would not contain all the diverse fragments of knowledge that the market relies on to succeed. Knowledge failure would result. Nothing would be available on demand as it is in the natural order.

Since in this volume we are also discussing Law, it might be relevant to point out at this stage that it is in exactly this decentralized or ‘molecular’ way that the law is supposed to be made in a ‘common law’ country – as India is supposed to be. Remember: the King of England does not make law. This was true even among the Anglo-Saxon tribes of yore. Their ancient chieftains were warlords who never made law. When William, the Norman conqueror, took England in 1066, he was told, ‘We don’t want any changes in the laws of the Anglo-Saxons.’ The English people lived in a private law community, and their laws were largely about property and possession, the performance of promises (contracts) and economic compensation for injuries (torts). There were also local customs and traditions that had to be respected: that is, there were many unwritten laws.

If we sweep through the history of the common law, we find that there was little ‘legislation’ till modern times. Throughout their history, the purpose of parliaments has been to vote on taxation that the sovereign demanded – and nothing more. That is, neither the sovereign, nor parliament, actually made law. So who did?

Actually, no one did. Whenever there was a dispute between two people, it came up before an impartial judge who ‘found’ the facts of the case and applied his judicial mind, and his ‘sense of justice’, to it: ‘The law is not made; it is found’ was the guiding maxim. As the common law courts became the most popular avenue for justice, and the ‘legal community’ of lawyers, pleaders and so on came about, the role of the lawyers was to look into past precedents and point out to the judge as to which were in favour of their clients. The judge would either apply the precedent, or make an adjustment to it, thereby setting a new precedent, and the law would take a small step forward. This manner of decentralized or ‘molecular’ law-making is an exact mirror of the decentralized or ‘molecular’ decision-making individuals engage in when they trade amongst each other in markets. Such law is in complete harmony with the natural order.

At the other extreme: Centralized economic planning and centralized legislation go together like two peas in a pod. In fact, the coercion that socialism demands cannot be accomplished without heaps of legislations. If the minister for public morality wants to ban dancing in bars, he will pull out legislation. This manner of centralized law-making actually disrupts our atomistic as well as molecular activities in the natural order – and causes our individual plans to fail.

Having said this, it might be pertinent to point out that all talk of ‘empowerment of the people’ is silly and pointless unless it refers to the liberty to trade freely and voluntarily with strangers and to live in a private-law community wherein the law is not made, but found. It is only in such a social order that the individual is fully ‘empowered’ in the truest sense of the word. Thus, it is not ‘democracy’ we need. It is Liberty under Law.

THE EXTENDED ORDER OF THE MARKET IS BASED ON CIVILISATION AND TRADITION

The market order based on several property and competitive individualism is an urban phenomenon; physical markets exist in cities and towns. The word ‘civilisation’ is based on the Latin word *civitas*, which means ‘city’. The preservation, protection and

furtherance of Civilization is a liberal ideal, something men have fought and died for, quite as they have done for freedom itself.⁹

There are certain specific reasons why cities are so important in the liberal scheme of things, reasons that emerge from both the study of history as well as that of economics. History tells us that the first civilization of the world came about around the Mediterranean Sea because the sea itself provided the transportational backdrop by which trade could take place between the diversely gifted regions of West Asia, North Africa and Southern Europe that lay bunched up around it. No chieftain could control which ship sailed where and with what goods, nor could any controls be exercised over what ships sailed in and what goods were imported. Under these conditions, which meant freedom to trade aided by the institution of several property – that is, a rule that was not enacted by any government – a host of great cities sprung up around this small sea, to which many poor people were attracted by virtue of being able to lead a better life there than as hunter-gatherers or subsistence farmers stuck to the soil. By providing for others, and also by procuring from others what they needed, these free trading cities acquired for their citizens a quality of life that was infinitely

⁹ Britain entered the First World War to ‘defend civilization’.

higher than the one they had before, as hunter-gatherers or subsistence farmers. Not only did they have enough food and wine, they also had art and philosophy, manners and etiquette, and all the other virtues that have always distinguished the civilized from the savage.

What we must note today is that this would not have been possible without two kinds of rules being obeyed: one, on private several property, which gives every individual a protected domain and is thus essential to freedom (which the Greeks recognized, knowing well that the absence of private property means slavery); second, there were accepted rules about the consensual transfer of these properties from seller to buyer.

Of course, civilizations waxed and waned, flourished sometimes and perished in other times, the deaths in almost all cases – from Rome to China – because of coercive policies of strong governments based on wrong premises; but civilization itself has remained forever a liberal ideal, because it is the reason why both individualism as well as several property have emerged in the long history of man.

The study of Economics, on the other hand, points to the fact that because of the high density of population

in these cities, there emerged opportunities of specialization and the consequent ‘division of labour’ that made it possible to sustain even higher numbers within them. You cannot be a rickshaw driver, plumber, dhobi, electrician or receptionist in a sleepy village. This is why *cities are the anthills of human colonists*. It is in a city that one can find the commercial culture that is a hallmark of any civilized people. Gandhi’s idea of ‘self-sufficient village economies’ is therefore the pathway to economic suicide. Gandhianism is against society, against markets and against civilization itself.

Associated with the liberal ideal of cities and civilization, and the civilizing effects of the commercial culture, is the corresponding ideal that recognizes the harsh reality that this culture has evolved over time and is a learned tradition – learnt by imitation – rather than the product of reason. In the market economy we serve strangers and are served by strangers in turn – *without knowing why*. Almost all of us are unaware as to why exactly we behave the way we do when engaged in economic activity. We have never tried to reason why. It is indeed astonishing if we consider that billions of humans have slowly moved out of spending their entire lives looking for the sources of their own physical sustenance and have opted for another way

of life in which they serve strangers instead. We do not know why this has happened precisely because no single human will brought it about; rather, it is the accumulated experience of the past that has evolved into what it is today – and who knows where it will taken mankind centuries hence?

This ideal of preserving past traditions upon which every living civilization has been based sees itself in sharp opposition to all political creeds that dream of replacing the extended order with human control. What has not been created by reason and is not the product of any one mind cannot be replaced by anything of human design: to try to do so would not be based on reason; it would be an *abuse of reason*. Not just the commercial culture, but also money, language and law have emerged spontaneously, without any single mind, or even a group of minds, inventing them.

It is the hubris of ‘scientific rationalism’ that suggests upon people the idea that ‘production for profit’ can be replaced by ‘production for use’ if a market economy is substituted for by a centrally planned command economy. This scientific rationalism does not value the ancient commercial traditions of the people and places its faith in a technocratic elite:

people like Manmohan Singh and Montek Singh Ahluwalia.

Liberals, on the other hand, placing faith in a deep-rooted commercial culture, are strongly opposed to any economic technocracy, for the basic reason that they understand full well the limits to reason. Since knowledge cannot be centralized, central economic planning can never achieve the satisfaction of human wants in as effective a way as the market economy can (and does, wherever it is free). Note how we in India now have an abundance of motorcycles, scooters and cars, and phones, because of free markets; under planning, all these were scarce, though 'black markets' worked.

Another liberal ideal is therefore Abundance – a product of Liberty and Justice, of Competition and Individualism, and of the learned moral traditions of the commercial culture of civilization: an order without design. Under these conditions of 'natural liberty', there are shops everywhere, and all their shelves are overflowing with all the goodies that money can buy, and no one can fathom how or why this happened. There are no scarcities, no rationing, and no famines. The legally circumscribed role of the government is the provision of defence against all enemies of this civilization and the extended order it

fosters, enemies both external as well as internal. This has implications for ‘international relations’ and diplomacy as well as the ‘war on terrorism’. In the former case, there is little point having diplomatic relations with nations that are not a part of our international trade – and thereby of the ‘extended order’ the government must serve to protect. In the latter case, it must be examined whether these terrorists are opposed to governments as they are today or opposed to the market order.

The ideal of abundance is based on an understanding of the market economy as the natural eco-system of man. This is an eco-system that is very different from the jungle. While individuals find ‘niches’ in the market economy in quite the same manner that animals find niches in the jungle, there is a critical difference between the two that becomes clear when we consider the fact that animals usually camouflage themselves in order to survive whereas individuals in the market advertise their wares. Animals spend their entire day looking for food; humans in the market spend their day looking for others to feed. Humans therefore follow a ‘roundabout’ way of getting their own needs fulfilled; and the more roundabout the method, the greater prosperity there is: for example, yogurt is mostly made at home in India whereas in richer nations it is bought off the shelf. Capitalism

means more and more of these roundabout methods of satisfying needs. The more underdeveloped an economy, the less roundabout is the production process (and the less meaningful international comparison of incomes).¹⁰

It follows that animals in the jungle are dependent for their survival on the species they consume, while individuals in the market depend for their survival on those who consume their wares. Animals have to worry about food running out; humans in the market have to worry about demand dropping off. Humans do not have to worry about the supplies of what they eat or the resources they use. They can *assume* abundance. The natural eco-system of man, which is a world of free trading cities, is one in which, if left undisturbed, there will always be more than enough of everything. Allah has been bountiful. (It is noteworthy that this saying arose in free trading cities located in the middle of a very vast desert.)

There is the added advantage of city-life which, through the intensification of the division of labour, keeps adding more and more people productively into civilization; left in the jungle as hunter-gatherers, tribes would have to compete for hunting-grounds,

¹⁰ For an excellent discussion of this issue, students of Economics should see Sudha Shenoy's "Austrian Capital Theory and the Underdeveloped Economies", available as a free download from The "Study Guide" of Mises University at www.mises.org.

and the numbers they would be able to sustain would necessarily be limited.

It may also be mentioned that Malthus was quite wrong in thinking that the growth of human numbers would outstrip food supply: in reality, humans reproduce much slower than grain, vegetables and fruit, fish and poultry, as well as goats, pigs and cows. His theory also left out the very important factor of improvements in technology that raise productivity. Of course, Malthus was talking about overpopulation in England: those days, as Professor Ambirajan mentions, India was then considered underpopulated, with vast territories lying unowned and uncultivated. England was thought to have 'surplus population' that could be easily absorbed in India and other 'empty' colonies. Malthusians in France had similar views about their nation, and advocated sending France's 'surplus population' to Algeria!

Malthus was above all an accomplished classical economist, whatever may have been his views on population. His influence on policy in India was benign in the utmost, as Sir William Sleeman has testified:

Of all the instruction which the servants of the Honourable East India Company have ever brought with them from their parent land to India, that which they derived from the lectures of that truly amiable man, Dr Malthus, on Political Economy, has been, perhaps, the most substantially useful to the country. Of the Civil Servants scarcely one can have discharged his duties for many years in any part of India without having often found the welfare and happiness of thousands placed in dependence upon his knowledge of the great principles of this science, and upon that feeling of assurance in the truth of its conclusions which will make him risk his reputation, and all that he holds most dear, in the enforcement of the measures which these conclusions prescribe.¹¹

Sleeman distinguished himself in operations against *thuggee* – the banditry that occurred on north Indian highways, whereby over 30,000 natives were murdered and robbed annually. Sleeman's painstaking efforts led to over 3000 thugs getting convicted in a court of law (no 'encounter killings'); this prompted another 10,000 of them to surrender to the British government. The British civilian

¹¹ Ambirajan, S. *Classical Political Economy and British Policy in India* (Cambridge U. P.: 1978), p. 1.

administrator knew what he must do because of this very liberal training of his mind.

THE RULES OF JUST CONDUCT ARE NEGATIVE

The natural order that we find in any great center of civilization, based on the rules of just conduct inherited from the past, themselves based on several property and exclusion, are ‘negative’ in the sense that they merely prohibit certain actions as unjust. This law is negative just as the Ten Commandments all begin with a “thou shalt not”. These rules do not command; they merely prohibit certain acts. These rules are therefore abstract and general, based on certain principles (which we have examined), and are expected to apply to all cases in the future that come up before an impartial judge.

The function of these rules is to match intentions with expectations, and to ensure that any ‘legitimate and just expectation’ is not led down. You can sack a recalcitrant employee because lifetime employment is not a legitimate expectation. Similarly, you can refuse a vendor custom, although this may ruin him, because it is not a just expectation to hold that the customer is obliged to buy. Indeed, this sort of ‘negative feedback’ is critical to the game of trade

itself: the trading man improves upon his efforts only because of this negative feedback.

Where just expectations are guaranteed, the individual secures ‘stability of possessions’ (or property), the ‘performance of promises’ (or contracts) and ‘restitution for damages’ (or torts): these assured, he can then participate in the great game of exchange, knowing full well what he can legitimately expect of other participants – and what he cannot. The individual inhabits a protected domain from which to interact with strangers, who are all similarly protected, and constrained. Under such rules, the chances for every participant in the great game of exchange are equalized to the extent possible; this being the purpose of these abstract rules, the ‘private law’. Wherever society follows these rules unhindered, progress is rapid. If India is poor, a great deal of blame must fall on the legal system, which is totally at odds with the rules of just conduct.

The natural order is thus an example of an ‘endogenous order from within’. The order does not come from without, through any outside agency like the government, by fiat or command. If an example from nature is required to illustrate this point, we can take the case of a pile of iron filings exposed to a

magnet: they will form a pattern or order, but the exact pattern or order formed cannot be predicted. We can know the natural laws of magnetism that each individual iron filing will follow, but we cannot predict the overall pattern. Ditto with human society: we can identify the rules individuals follow, we can establish some theorems based on them, but we can never predict beyond that. There is thus a clear understanding among liberals as to what can be accomplished through the agency of human reason and what simply cannot.

THERE IS COMPLETE HARMONY BETWEEN LABOUR AND CAPITAL (and between labour and machinery)

Socialists and communists, self-styled champions of the working classes, have always held that the worker is 'exploited' by his capitalist employer. But if you open a restaurant, you will have to pay the chef and the waiters regularly and unfailingly, even as you wait with fingers crossed at the doorway for the elusive customer to show up. If after a month or so it seems that the local population has decided to give your establishment the miss, you as the entrepreneur will have to take the hit – while all your employees will have received their full wage. The capitalist-entrepreneur is thus the prime mover of economic

activity, since he takes risks. He pays his employees on time because the workers do not share the risk. Only after all bills have been paid and all accounts settled will the capitalist realize any profit. And in many cases he will realize a loss. But the worker never loses. There is no 'exploitation' at all; rather, there is a harmony of interests. The worker gains even more if the business succeeds.

Further, the ability to combine his labour with another's capital is of greatest benefit to the worker. This is true of all workers and all capital-intensive factories: without the machines (which they do not own) the workers would produce much less, and therefore earn much less too. Thus, socialists and communists (and the Gandhian Luddites with their *khadi* ideology) are guilty of misleading workers. In reality, capital and labour co-exist in complete harmony. Further, the more the machines that can be combined with raw labour, the greater the product, and the higher the income of the worker. It is because a modern spinning-mill produces many more spindles of yarn per hour than a million *charkhas* could, that the chowkidar outside the mill earns more than any dude with a Gandhian *charkha*.

The first working class mass-movement in history was completely liberal in its philosophical ideals. The

Anti-Corn Law League led by the Manchesterites Richard Cobden and John Bright mobilized workers throughout England to demand free trade in the 1840s. Marx had not yet penned *The Communist Manifesto*. And English workers, respectful of the truths unearthed by political economists like Adam Smith, firmly believed that free trade meant cheap imports, which translated into better living conditions for them. The Anti-Corn Law League also championed international peace, an end to war, and the freeing of the colonies. Cobden was the most fêted politician in Europe, and free trade leagues mushroomed all over the Continent. Frederic Bastiat was inspired by Cobden (whom he met and whose speeches he translated) to start a French free trade league; and when the Anglo-French Free Trade Treaty was signed in the 1860s, it was appropriately called the “Cobden Treaty”.

If socialism and communism had not raised their ugly heads, 150 years would not have been lost, and the world today would have been a much richer and safer place – and every worker would have been better off. Not only as a worker, but more importantly as a consumer. Remember: the worker does not need a ‘right to work’ (for work is disutility); rather, if anything, he needs a ‘right to the fruits of his work’, which free trade alone can provide. What was the

great point in working and working in our socialist heydays, when the money you earned could not be used to buy anything truly worthwhile?

The Indian Left, with their trade unions and their passion for public sector enterprises (PSUs), have nurtured a small, privileged section of workers as their political clients. In the meantime, they have sacrificed the interest of every other poor Indian labourer. I often lament the fate that befalls our housemaids, without whom our homes would cease to function, and who eke out a miserable existence in our cities of joy. Free trade would vastly improve their consumption. The abolition of rent control would deliver to them cheap and decent rental housing on the market. Housemaids in the rest of the world enjoy a fairly decent standard of living. But the Indian Left opposes the repeal of labour legislation – so as to benefit its clients. They oppose privatisation for the very same reason. They care two hoots for housemaids – even the ones who slave in their own homes. They are false friends of the working classes.

The greatest challenge that lies before Indian liberals today is getting the mass of workers on their side. A private property driven free market internationalised economy is entirely in the interest of every labourer. Cheap imports, including second-hand imports, are

good for poor workers. Freedom of entry to foreign direct investment (FDI) in every sector, including retail, will allow workers who have no capital to combine their labour with the latest capital equipment, hugely improve their productivity, and thereby maximise their earnings. The repeal of all labour legislation will allow free competition between unionised and non-unionised workers, to the benefit of the latter. Similarly, privatisation will free up capital and shift it from unproductive and unprofitable uses to market-based ones – and this will benefit the mass of workers. The resulting de-politicization of economic life will be a boon for the entire economy, including especially the workers, as the odious influence of the Indian Left on economic matters is terminated.

ECONOMIC BOOMS AND BUSTS ARE MAN-MADE: STEADY GROWTH IS ASSURED IN THE NATURAL ORDER

Violent economic cycles – booms and busts, inflations and depressions – have only one cause: government monopoly over money and their authoritarian fixing of interest rates. It needs to be emphasized that in a true market economy, the most important regulator is money, hence it is vital that this money is produced by the market itself – that is,

by competing private banks. It is not the government, but these prudent private bankers, who are the most important caretakers of the market economy. In Chapter 10 below, we will discuss sound money and free banking in greater detail.

At this stage, let us recall an economic ‘law’ that was the backbone of all classical understanding – Say’s Law of Markets, named after the great French classical economist of the early 19th century, Jean-Baptiste Say. In its simplest form, it means that ‘the demand for goods in general are nothing but the supply of goods in general’. I can sell my plums only because someone else has sold his apples and therefore has the means to demand my plums. Markets therefore clear, unless prices are prevented from adjusting downwards by government fiat. There cannot be any systemic ‘overproduction’, nor any systemic ‘shortfall of demand’ that requires government intervention in the form of ‘pumping up the economy’ with printed currency notes.

Say’s Law was therefore the greatest enemy of all the followers of John Maynard Keynes¹², who held that without government ‘demand management’ (read mischief with the money supply) the natural order of a completely free economy would not be able to

¹² This included the Cambridge don, Professor Joan Robinson, who was Manmohan Singh’s teacher!

function, and would be prone to booms and busts: there would be an ‘underemployment equilibrium’. However, after some 60 years of Keynesianism, fiat paper currencies and government central banking, the economics profession has now fully woken up to the fact that Keynes was not only wrong, but also ignorant of much of basic economic theory – like Say’s Law, which preceded him by more than a century.

Once this basic principle is clearly understood, and rehabilitated in textbooks of economic science¹³, it will be abundantly clear that there can never ever be a systemic shortfall in demand (and the consequent *symptom* of overproduction or unsold stocks) in a completely free exchange economy. A baker in such an economy will see his loaves sell only when the butcher has sold his meat, the tailor has sold his cloth, the brewer has sold his beer and so on. There will be an understanding that production matters, and not consumption – as was Keynes’ dangerously false thinking. Savings will once again be understood as a good thing – an understanding that the Keynesians destroyed. Indeed, they destroyed all our understanding of money itself, and made it appear that it was a creature of government, and should

¹³ Students of Economics who want to pursue a deeper understanding of the ideas of Jean-Baptiste Say are advised to read WH Hutt’s *A Rehabilitation of Say’s Law* (Ohio University Press, 1974), a masterly restatement of these old truths.

remain that way. They claimed to be able to offset economic cycles, but in the final tally all the bloodcurdling stories of ‘currency collapse’ that we have been hearing for decades now have their root in their own false ideas. It is only in the natural order that we can be sure of steady economic growth, steady purchasing power, and a steady improvement in the incomes of all – especially the poor.

TOLERATION OF DIFFERENCES: THE LIBERAL AND COMMERCIAL IDEAL

A deep-rooted commercial culture is hugely tolerant of differences. Indeed, hospitality to strangers, good manners towards them, and the extension of security towards their persons and possessions are cultural virtues that have played a major role in allowing the market order to cover more and more lands and peoples. The word ‘cosmopolitan’ has often been used to describe the culture of those cities that exhibited this ideal of liberal civilization, like Bombay or Calcutta. The word *cosmos* is significant. Hayek also mentions an important Greek institution in their early history called *xenos*, or ‘guest-friend’, a person who escorted a visiting businessman in alien territory and looked after his life and his property. In the Rajput kingdoms, this precise function was

performed by the hereditary castes of *charans* and *bhats*. All over India, the common culture is one of *athithi devo bhayo*: the guest is God. These are cultural traits that will greatly assist India in the globalizing world. Such cultural attitudes do not exist in many parts of the world, including the developed, western world. A German Neo-Nazi would be horrified to hear a typical Bollywood song like “*Pardesiya, tujhko maine dil de diya*” – which translates into ‘Hey foreigner, I have given you my heart’ – and would be unable to comprehend a culture that sings songs like these.

In this connection, it may be useful to recount the fact that Hinduism is based on the legitimate pursuit of profit – *Shubh Laabh* – as is Islam. The Prophet Muhammad, peace be upon him, said that ‘he who makes money pleases Allah’. Sikhism, Jainism and Zoroastrianism are all commercial in attitudes and culture. Tibetan Buddhists in India also show a strong commercial bent, seeing their successes in the trade of woolen sweaters and how they have made *momo* a household word in every Indian city. With liberty, they would surely make *chhung* a household word too!

India is a nation of a billion people, all of whom are possessed of a deep-rooted commercial culture and

therefore quite capable of realizing these ideals; if there are exceptions, then such people exist within politics and government. That ‘politics is the last refuge of scoundrels’ is well known: every district administrator knows that he has to watch out most for the politicians, who are the biggest troublemakers. The effect of socialism has been to spread politics into every nook and corner of society, while simultaneously using the coercive powers of government, wielded by administrators, for totally unjust ends, destroying civilization, the extended order, and all the good things these could have brought about. The future requires that politics be compressed to a pinpoint. Instead of the powerful centralized state that Nehru built, we need to build a small organization of government that can adequately perform the tasks liberalism and the market order require of it. In such an environment, all can attain these liberal ideals.

THE MORE THE MERRIER

It needs to be emphasized that the secret of success in the competitive environment of the natural order Garden of Eden is to go on adding more and more ‘friendly strangers’ to the overall order. This can be understood at many levels.

For example: the apple growers of Kulu have very little to gain if they trade their apples among themselves. There are far greater gains to be had if these apples could be sold in far-away cities like Bombay or Calcutta, where no apples grow, and where they are highly prized. If fruiterers in these cities could be included in the Kulu order, gains would significantly increase.

Another example: Suppose we are all competing fruit-sellers in a city market. Do we gain if only our regular local customers drop by? Or do we gain if exceeding numbers of ‘friendly strangers’ drop by for our wares, people from Afghanistan, Uzbekistan, Azerbaijan, Turkmenistan, Kazakhstan and all the other stans, including Pakistan (but friendly strangers only)? If we look deep, in the market, we sellers actually hate each other – we compete relentlessly. Our overall ‘community’ would be enriched (and our purses too!) only if we add more and more outsiders to it. Xenophobia is devoid of economic logic. It is actually uncivilized.

At another level, the more the number of people in a city, the bigger the market, and the greater the scope for highly specialized niches in the social ‘division of labour’. This means more products and services

being added to the general pool from which all can draw: that is, greater wealth.

Further, with more and more migrants, local property prices increase, and the city flourishes. The US housing bubble would never explode if the US declared free immigration. Americans would also have domestic help if the market for services was opened up to all of humanity. Thus, a future of competing cities – competing, that is, for citizens – makes complete economic sense. It is this competition that will keep local city governments on their toes, not ‘democracy’.

What this means for India is that we have huge gains to make from tourism (the biggest industry in the world) – if we remain friendly with all ‘friendly strangers’. Further, we must also welcome foreigners to our real estate markets, encouraging them to settle down within our overall order. Our institutions must protect all individuals, irrespective of faith or nationality. Our country will only gain – in profits as well as real, usable knowledge – if we as a people reject narrow nationalism. Globalization is the way to go.

Of course, it follows that if friendly strangers are good for India, our own children must be even more

valuable to us. They are not strangers – we love them. We value them more than any material wealth we possess. And they will be a better support for us in our old age than any pension scheme the government can think up. There is no ‘population problem’; Malthus got it dead wrong.¹⁴

As far as government is concerned, therefore, the guiding philosophy should be ‘more people mean more taxpayers’. As far as fertility goes, decisions on the number of children should be left to the concerned couples. This is not a book on demography; my core subject is civil government. The critical question in the entire population question is this: Who should decide about the birth of children? The people? Or their government? Since neo-Malthusianism is nothing but a dangerously false scare, and completely against the interest of the public treasury, as also against the most Fundamental Liberty of all human beings – indeed, of all forms of Life – all governments should discard it. The United Nations Fund for Population Activities (UNFPA) should be shut down.

CATALLACTICS: A GAME OF SKILL AND CHANCE

¹⁴ For further reading I recommend *Population: The Ultimate Resource*, a collection of essays opposing modern Malthusianism edited by Barun Mitra, available from Liberty Institute, New Delhi, published in 2000.

Finally, it needs to be stressed that this great game of trade and exchange, which Hayek called ‘catallactics’, is a game based on both skill as well as chance. Since it is a game that enables *all* human beings to survive in peaceful, happy and mutually rewarding co-existence, it still remains a matter of *survival* for each participant. If it were not a matter of survival, none of us would work.

[The word ‘catallactics’ has its root in the Greek katalattein, which meant not only ‘to exchange’ but also, more importantly, ‘to receive into the community’ and ‘to turn from enemy into friend’. The word ‘economics’ is based on the Greek oekonomia, which to Aristotle was just the ‘running of a household’, and the word is unsuitable when used to describe a nation (as in ‘national economy’), for the nation actually comprises hundreds and thousands of small economies. Catallactics is therefore a much better word to describe the study of market exchanges. Aristotle used the word chremastika to refer to the affairs of merchants, but had only scorn for such matters – and for merchants in general! He also did not comprehend the cosmos, the spontaneous order of the market, and was completely blind to it.]

As with every other species, *survival* for human beings requires skill. The great game of *catallactics* is one that rewards excellence and punishes failure. But history is full of examples of men of humble origin who struggled against repeated failure and finally achieved greatness in their chosen fields. Just as athletes build their muscles by physically exercising them, the struggle for survival in the great game of *catallactics* brings out the best attitudinal muscles among those who freely compete with each other. These attitudinal muscles would atrophy if it were ever attempted to impose an alternative order in which we could get all our needs satisfied without personal effort. The great game of *catallactics* is a tough game, for tough people. But it is a game in which many physically handicapped people also survive very well – like Stevie Wonder or Professor Stephen Hawking. The game of *catallactics* is a much kinder game than life in the jungle. But it is still a game. There are winners and losers, and the massive role played by the element of chance is ever present. It is, like cricket, ‘a game of glorious uncertainties’. Like cricket, it is played slowly, over a long period of time. You may score a century or get out for a duck. You do get more than once chance to bat. You are sometimes ‘in form’; in other times, ‘out of form’. You have your share of bad luck. The umpires could be better.

We proceed now to discuss the anti-market attitude of socialists, and how they appeal to primitive instincts. Having followed socialist ideals for 60 years now, the reader can see why these ideas, which are in fundamental opposition to the market order, ended up virtually destroying our ancient civilization based on commerce and tolerance.

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CHAPTER TWO PRIMITIVE MINDS: THE ANTI-MARKET, SOCIALIST MENTALITY

The darksome statesman, hung with weights and woe,
Like a thick midnight-fog, moved there so slow,
He did not stay, nor go.

HENRY VAUGHAN, *The World*

We have just been through an enunciation of liberal ideals: ideals which appeal to reason while also recognizing the limits to which reason can be used to direct human affairs, especially so when these affairs occur within an impersonal and competitive extended order governed by traditional norms and values, and which can correctly be called an ‘extremely complex phenomenon’. It may be recalled that among the liberal ideals listed was Civilization. We can now contrast these with the appeals of socialism.

SOCIALISTS APPEAL TO PRIMITIVE INSTINCTS THAT GOVERNED HUMAN LIFE IN THE SMALL HERD

While civilization is based on competitive individualism, life in the small herd of hunter-

gatherers is based on commonality: the herd follows a common purpose (like a 'kill'), the herd has some possessions held in common, and the herd has a headman, whose instructions must be followed towards the attainment of common ends. Thus, if one member of the herd kills a deer, he must share it with every other member. Such ideas are antithetical to civilized life, where each individual pursues his own ends, seeking permission from no one, and receiving both gains as well as losses, which are to be shared with no one else.

The ideas of socialism therefore are the product of primitive minds, and these attract the following of primitive minds in turn. When combined with democracy, these ideas instill a herd-mentality among the party faithful, all of whom see this politics as the most preferred way of achieving desired ends. The market they do not understand; instead of wealth they study poverty; instead of abundance they study scarcity; and instead of cities they advocate a return to villages and collective farming. These ideas have been justly described as atavistic, appealing to instincts that would have died out had the extended order been allowed to manifest itself freely.

A good example of these atavistic longings is the socialist desire to 'replace competition with co-

operation'. Note that co-operation is the guiding ethic of the small herd, but is completely unsuited to life in a competitive, cosmopolitan city. The Indian co-operative movement has been based on such an ethic, and although co-operatives of all kinds have been milked by political and administrative interests, adherents to socialism still justify their ideas in these terms.

Recall that in ages past, it was primitive minds that could not understand the activities of the trader and were envious of his riches. The trader did not 'work' in the manner of the peasant; he was privy to knowledge and information others were not; and his mysterious gains appeared sinister because they were based on the changing values of a fixed quantity of goods. In the same manner, it is the primitive mind in the modern world that cannot understand the extended order of the market based on competitive individualism and seeks comfort by placing all power in a 'great leader' – just what a small tribe would do.

However, individuals in the market do not pursue common ends. And the market itself is just the means. Such an ethos is incompatible with the ideas that rule a small herd. If the ideals of the socialist, like human brotherhood and collective property, were

ever imposed on the market order, civilization itself would fall apart.

These political tribes use every known kind of imagery to project a 'collective' fused together by their government in order to achieve 'national' ends. The word 'nationalism', like 'socialism', harks of a collective identity. To a liberal, it matters little how far the market order extends: if it extends beyond our shores, so much the better; if it embraces the whole of humanity, nothing could be more desirable than bigger markets. The idea that we Indians are a 'nation' is absurd. To a liberal, it is absurd that humanity is divided into 'nation-states', each under an omnipotent government. Liberals would like political boundaries to fade; liberals would also like all government to be as local as possible, constitutionally bound to protect the extended order of the market, thereby protecting individual property, individual rights, and individual liberty.

The socialist deification of 'collective property' is another great absurdity. In a small tribe it may have made eminent sense to hold some things in common, meant for the use of all – for example, tools and weapons. But in an impersonal extended order such as that of the market economy, nothing is held in common (except roads, streets and parks) and

everything is individually owned. It needs to be stressed that if an experiment was to be undertaken and all property in a city was declared to be ‘common’ and meant for the use of all, the extended order of the market would break down instantaneously. In such a city, everyone would stop work immediately, and the ‘have-nots’ would strip bare every shop as well as all the mansions of the wealthy. If anyone objected, he would be told that a ‘new brotherhood’ had dawned, and he must share his possessions with his newfound brothers. Within days, a flourishing city would become a ghost town.¹⁵ The ideals that govern life in a small herd are unsuitable for an impersonal and individualistic extended order.

The fact that the natural order of the market economy is ‘impersonal’ needs to be emphasized, because socialists are always accusing the market process of destroying feelings of ‘community’, which they cherish and uphold. Liberals are accused of fostering ‘atomistic individualism’. This is once again an appeal to feelings and emotions that governed tribal life. In a city, we live among strangers, we serve strangers, and we are served by strangers in turn. We do not know them, nor do we need to. All that we

¹⁵ There are some historical examples of this happening in some cities of Europe that were bitten by the bug of messianic communism long before Marx. Muray Rothbard has recounted these dreadful stories in his history of economic thought.

need to do is follow the accepted rules of the game. This ‘impersonal’ nature of city life is far removed from the ideas of communitarians, who are looking for something that cannot be found in the world of strangers that city markets cater to. Atavism once again.

In the next section we take a look at real-life conditions during the Spanish Civil War wherein a leading British socialist of the 20th century, George Orwell, found the ‘equality of socialism’. The passage quoted makes it abundantly clear that socialism, with its ‘equality’ and ‘camaraderie’, is completely at odds with the competitive individualism that characterizes the extended order of the market economy.

***INTERLUDE: HOW GEORGE ORWELL FOUND SOCIALIST
“EQUALITY”***

Throughout my adult life, George Orwell has remained an enigma and a curious fascination. I have always believed that his stint in the Imperial Police in Burma (recounted in *Burmese Days*) made him realize what a horrible thing the State is, and inspired him to write such masterpieces against statism as *1984* and *Animal Farm*. But one question forever remained: How could such a man who could see the

State so clearly as evil, ever be a socialist? I finally found the answer during an accidental read of an extract from Orwell's *Homage to Catalonia*. Orwell had gone there to fight in the civil war. He describes the battlefield, how the Anarchists and the Fascists and the Socialists were shooting and bombing each other. He describes his own pitiable condition: hunger, thirst, heat, cold, dirt and filth, lice, bad footwear and clothes, and so on. He then says that he has no regrets, for the experience was richly rewarding to him in one special way: it made him even more convinced about socialism. These are his own words, with my emphases:

The workers' militias, based on the trade unions and each composed of people of approximately the same political opinions, had the effect of canalizing into one place all the most revolutionary sentiment in the country. I had dropped more or less by chance into the only community of any size in Western Europe where political consciousness and *disbelief in capitalism* were more normal than their opposites. Up here in Aragon one was among tens of thousands of people, mainly though not entirely of working class origin, all living at the same level and mingling on terms of equality. In theory it was perfect equality, and even in

practice it was not far from it. There is a sense in which it would be true to say that one was experiencing a foretaste of Socialism, by which I mean that the prevailing mental atmosphere was that of Socialism. Many of the normal motives of *civilized* life – snobbishness, money-grubbing, fear of the boss etc. – had simply ceased to exist. The ordinary class division of society had disappeared to an extent that is almost unthinkable in the *money-tainted* air of England; *there was no one there except the peasants and ourselves*, and no one owned anyone else as his master.... However much one cursed at the time, one realized afterwards that one had been in contact with something *strange* and valuable. One had been in a community where hope was more normal than apathy or cynicism, where the word ‘comrade’ stood for comradeship and not, as in some countries, for humbug. ***One had breathed the air of equality.*** I am well aware that it is now the fashion to deny that Socialism has anything to do with equality. In every country in the world a huge tribe of *party hacks and sleek little professors* are busy ‘proving’ that Socialism means no more than a planned state-capitalism with the *grab motive* left intact. But fortunately there also exists a vision of Socialism quite different from this. The thing that attracts

ordinary men to Socialism and makes them willing to risk their skins for it, the ‘mystique’ of socialism, is the idea of equality; to the vast majority of people, Socialism means a classless society, or it means nothing at all. And it was here that those few months in the militia were valuable to me. For the Spanish militias, *while they lasted*, were a sort of microcosm of a classless society. In that community *where no one was on the make, where there was a shortage of everything* but no privilege and no boot-licking, one got, perhaps, a crude foretaste of what the opening stages of Socialism might be like. And, after all, instead of disillusioning me, it deeply attracted me. The effect was to make my desire to see Socialism established much more actual than it had ever been before.

As the italicized portions show, Orwell found his egalitarian Utopia among tens of thousands of people, all peasants, who shared a ‘disbelief in capitalism’ (because they had nothing to sell and nothing to buy anything with either), ‘where no one was on the make and there was a shortage of everything’, where the ‘normal motives of civilized life’ were absent, and hence there was this mystical air of Equality that so attracted him. Here Orwell found genuine, true ‘comradeship’. However, he uses

the word ‘strange’ to describe the situation. Why did he use this word? It must have been the most apt.

Orwell also shows complete ignorance of the moral basis of market exchange, when he refers to the ‘grab motive’. In market exchange, there is ‘give-and-take’: the only ones who grab are the thieves (who get roundly thrashed) and the cops (who will one day surely get thrashed as well).

Orwell uses the word ‘mystique’ to describe the goal of Equality so cherished by the socialists. And he refers to his ideological adversaries as ‘party hacks and sleek little professors’. As someone once told me: “They are wrong but romantic; we are right but repulsive.” There is something seriously wrong with liberal packaging. Socialists have all these romantic heroes like Che Guevara. Our ‘party hacks and sleek little professors’ have nothing romantic about them. And therein lies the tragedy, for surely the air of freedom can be made to look far more romantic than this romp with tens of thousands of ‘equal’ peasants.

However, it must be said that chasing romantic utopias has proven to be extremely harmful for every society that did so. Reason is cold, reasoning through is hard work, and it involves reading fat tomes by ‘sleek little professors’. But reason is essential.

Reason prevents societies from diving headlong into disaster. Orwell's 'air of equality' is what Jawaharlal Nehru's 'socialistic pattern of society' was all about. The deal was: Give me your Freedom, and I will give you Equality. It was a bad deal, to put it mildly. We Indians only got a VVIP culture: no equality at all. We lost our freedoms in a fruitless quest.

It is also strange that an officer of the imperial police should enjoy 'equality' with peasants, and not 'know' that he was, in many ways, 'superior'. As an officer, you are trained to command: to be 'superior'. Whenever I travel in rural India, I always feel infinitely 'superior' to the peasantry. That does not mean I look down upon them; just that they look up at me.

Finally, Orwell seems to be one of those Brits with what Lord Bauer called 'class on the brain'. He simply hates England and its 'money-tainted air', and all the various classes in society that naturally ensue. He actually hates prosperity and civilization, since it stinks of money. He revels in a poverty of equals. He desires to establish Socialism and put an end to all economic and social differences in one fell swoop. The goal: we are all equally peasants; precisely what Hayek, a sleek little professor himself, called 'the road to serfdom'. In reality, Britain, with its much

maligned ‘class society’ has always been a haven for hard-working and talented members of the working classes, enabling hordes of them to rise to giddy heights. In the 1860s, Samuel Smiles’ classic *Self-Help* recounted hundreds of such instances. In modern-day Britain, Lord Bauer’s essay “Class on the Brain” is a similar demonstration of the fact that the ‘class society’ of Britain is a socialist myth, and that tens of thousands of perfectly ordinary people have climbed to the top aided by nothing more than character, perseverance and ability. Like the Beatles, who started off really poor in the back streets of Liverpool.

Therefore, another lesson to learn is that we liberals must ensure that citizens see the benefits of inequality. We must convince them that the socialists malign something that is not only natural, but also beneficial. For example: Whenever a new product emerges, it is expensive – like the first car, computer or mobile phone. Only the rich can afford it then. It is the custom of the rich that enables these first producers of that good to find markets, improve upon their offerings, expand production scales and bring prices down – so that ultimately everyone can afford that product. The rich are good for the rest of society. If a rich man drops by at a poor man’s shop, the latter is overjoyed.

Orwell is the perfect example of the misguided intellectuals of the 1940s who championed socialist projects at home and abroad, armed not with reason, but with romance and ‘mystique’. Together, they destroyed half the world. Bad ideas also have consequences.

This is not to belittle the ideals of commonness, solidarity and altruism that govern the small tribe. We continue to practice these ideals within the family, and might even extend these to select friends. But these can never be extended to the world of strangers outside. To do so would be fatal. It must also be noted that neither the small group comprising family and friends, nor the big world of strangers outside can properly be called ‘society’. The term ‘society’ used to describe the collective is a nonsense word. Those who use it actually confuse the government with society, and believe that it acts in society’s name. To liberals, government is just an organization with specific assigned functions, chief amongst which are the protection of the market order and the provision of Justice upon which this order depends. There is nothing called ‘society’; there is nothing called ‘sociology’; and there is certainly nothing called ‘social justice’. The words ‘society’

and ‘social’ are viewed with great suspicion by those of a liberal bent of mind.

SOME ELEMENTARY DISPROOFS OF SOCIALISM

There are many disproofs of socialist ideas, chief among them being that without any notion of prices – since prices only exist in the market economy – their planning would fail to allocate resources in any ‘rational’ way. ‘Production for use’ cannot effectively replace ‘production for profit’ because market prices, which guide entrepreneurs into using resources ‘economically’, govern the allocation of resources in a free market; without prices to guide their actions, government planners will fail miserably. The chief function of the price system is that it enables accounting for profit and loss, along with the associated function of providing a ready reckoning as to where capital ought to be invested and from which activities it should be withdrawn. Without prices, no one can know whether capital is not well invested, nor as to which resources should be used in what proportion. There would be no indication as to what is more scarce and more valuable. There would also be no way to tell where capital would be better employed, and chances existed for increasing the percentage of return.

Without prices and the economic calculations that derive from them, it would be impossible to know which are the most pressing needs of society and which are not. Under socialist planning, scarce resources would be used to produce things that people would not want. The ‘economical’ use of scarce resources to produce those goods maximally desired by the people would be impossible for any socialist planner, because he would not have market prices upon which to base his calculations.

Once again we see a total lack of understanding of a ‘very complex phenomenon’ like the market – a lack of understanding so deep that socialist minds can only be called ‘primitive’. Only primitive minds would seek to replace a *cosmos* with an organization, and attempt to substitute a self-ordering process with one of human design. But this is precisely what Nehru’s ‘command economy’ was all about: replacing a natural order based on end-independent rules with a man-made order based on the commands of a political boss. These commands were issued either as orders to the bureaucracy or framed as legislation binding on the people, thereby substituting the ‘rules of just conduct’ upon which the natural order works with man-made legal interferences. Socialism depends on legislation to carry out the leader’s commands; the natural order relies on

evolved rules which impartial judges find through an intellectual exercise.

The very attempt to substitute an end-independent system of inherited rules with a ‘teleocracy’ based on legislation and commands, an attempt that was bound to fail anyway, speaks of a total lack of comprehension of what civilization is all about. Only primitive minds that are extremely naïve and uneducated would believe in following a ‘great leader’ towards such an end, placing so much confidence in the leader’s gray cells as to allow him to plan an entire economy, and command each and every economic actor.

As we have already discussed, planners fail for an associated reason that they centralize decision-making, while entrepreneurs in the market – basing their ‘knowledge’ on prices – take disaggregated decisions. Many entrepreneurs succeed and make profits, but many others fail and make losses. This happens because of the many uncertainties that are ever present. The market process based on competitive individualism allows ‘society’ to tackle the uncertainties of the future, because those who survive in business by guessing correctly make profits. If this decentralized decision-making was replaced by a central planner, and the planner made

one mistake (which he must) the whole of ‘society’ would suffer.

But perhaps the greatest disproof of socialist and communist ideas was the one mentioned in passing by Murray Rothbard in his *The Ethics of Liberty*, where he says that collective property does not exist: whatever goes by that name is very much private property, under the control of individuals or groups who *claim to represent the people*. Just as all the ministerial bungalows in New Delhi’s Lutyens’ Zone are the private property of our ministers (we, the people, cannot picnic in their gardens), so too are the PSUs that their ministries control. Only a prehistoric mind believes that simply because an entity has been transferred from private to public ownership it has somehow acquired a different character and that the ‘public’ has somehow gained. Socialism and ‘social ownership of the means of production’ appeal to such naïve and immature minds. These ideas make politics and government a game of spoils, thereby corrupting the organization that should serve to honestly uphold the market order and the civilization it bequeaths.

Today, in India, the socialist government is on the back-foot as far as running state-owned enterprise is concerned for there is strong public opinion in favour of privatization. Similarly, public opinion favours

markets, and central planning is increasingly viewed as anachronistic. Under these circumstances, the socialists have released yet another bogey to befuddle the people, and that is the bogey of ‘social justice’, which is, yet again, an appeal from primitive minds made to even more primitive minds.

As Hayek put it, when the word ‘social’ is appended to the word ‘justice’, which we have seen to be a prime liberal ideal, on an equal footing with Liberty, the latter word loses all its meaning. Hayek calls ‘social’ a ‘weasel word’: the weasel is an animal that feeds on eggs by sucking out their contents, leaving an empty and intact shell behind. Similarly, when ‘social’ is added to ‘justice’, all the meaning in the latter word is sucked out, and only a hollow shell remains.¹⁶

THE PRIMITIVE APPEAL OF ‘SOCIAL JUSTICE’

As we have already discussed, the great game of *cattactics* is one in which both skill and chance count a great deal. Outcomes can therefore vary widely, without having anything to do with moral criteria like ‘merit’. As with any other game of chance and skill, like cricket, the only things that can

¹⁶ Hayek has a long list of words which, when the word ‘social’ is placed before them, lose all their meaning: the ‘weasel effect’. See his *Fatal Conceit: The Errors of Socialism*.

be 'fair' are the rules, which place all the players on an even footing. Just as sometimes you can be bowled for a duck and have no 'moral claim' to a century because you trained the hardest, so too in the market can you go bust, despite all your hard work and earnest preparation.

In the market we keep seeing excellent products, well-run companies, fine restaurants, great books, well made films and the like failing. I recall a mint that was launched to compete with Polo: The Mint With the Hole. This new mint was All Mint: No Hole and its ad-line said "You need a hole in your mint if you need a hole in your head". I tasted the product, and it was excellent. Yet, the product failed, and the mint with the hole is still with us. Can anyone be blamed for being 'unjust'? Can anyone ask for compensation based on 'merit'? Has there been any 'social injustice' to the All Mint No Hole Company?

What this implies is that the outcomes of the market process cannot be called either 'just' or 'unjust'. And, more importantly, if someone fails, it cannot ever be said that 'society has been unjust'. Where society has not been unjust, there is no case for society coming together to correct the perceived injustice. The rules of cattles are fair rules, whose only purpose is to increase to the greatest extent the chances for all.

Their purpose is not directed towards any kind of ‘justice’, however defined. Justice is not the objective of the impersonal extended order; its only objective is to increase the chances of human survival – and the purpose of life is life itself. In other words, the call for ‘social justice’ leads to a loss of faith in an impartial justice system, prompting the widespread use of legislation in order to benefit known groups.

It is worthwhile recollecting that when *homo economicus* goes about in the urban market economy trying to obtain desired objects, he follows ‘rules of just conduct’ that have been learnt over many generations. ‘Justice’ and ‘injustice’ therefore become *attributes of individual human conduct*. The rules of just conduct, by themselves, are negative: they prohibit certain actions labeled unjust. They are never ‘duties’ or ‘obligations’ towards others.¹⁷ In a free community, therefore, individual actions can be deemed ‘unjust’, but the entire order cannot be so.

It is also not true that the rules of just conduct do not permit injury: we can certainly refuse to buy something, even though we know that the vendor of the good will get bankrupt and suffer if we do so. We can certainly sack a poor employee. The rules are all

¹⁷ The only exception I have found is regarding ships in the high seas, which are obliged to help shipwrecked people.

about living up to the ‘just expectations’ of others, ignoring their ‘unjust expectations’. These rules therefore grease the wheels of everyday life, and we interact with strangers, buy and sell, without friction. Where legislators do not understand these rules and pass new legislation against the spirit of these traditional rules, they add sand to the wheels of life, and friction ensues. One good example of this is ‘labour law’, which has brought about its own ‘inspector raj’ while also ensuring that masses of labourers are unemployable.

The rules of just conduct are also ‘abstract’, in the sense that they apply to all future instances, without specifying the precise circumstances in each future case. Such abstract rules are therefore a way by which humanity makes allowance for the uncertainties of the future. Seen in this light, the individualistic, competitive and impersonal extended order of the market economy is one whose chief contribution to mankind lies in its management of the unknown and the unknowable. The ‘fragmentation of knowledge’ allows each of us to benefit from the specialized knowledge of others; and the abstract rules of conduct allow us to respond in known ways to unknowable future circumstances. Similarly, the information compressed into a price set by the market allows us to take quick and accurate decisions on

economizing without requiring too much ‘knowledge’. The market economizes our use of both labour as well as knowledge. That is, as the division of labour extends itself into more and more highly specialized roles, the ‘fragmentation of knowledge’ that simultaneously ensues means that each of us requires *less* knowledge in order to survive as compared to, say, a self-sufficient villager.

The socialist misconception of the extended order begins with what can be called either ‘anthropomorphism’ or ‘animism’, since both words mean attributing a human soul to a natural event. Socialists see both ‘society’ as well as ‘economy’ not as collections of individuals but as living organisms possessed of a human soul and – more importantly, a human ‘will’. Socialists can be found seriously asking the question: Who will run the economy? Anthropomorphism and animism are extremely primitive ways of thinking, and these demonstrate a profound lack of understanding of the market order. The extended order does not possess either a will or a mind of its own. No one ‘runs’ it, and no one is required to do so. The rules that people follow in pursuit of survival in the extended order prohibit unjust actions on the part of individuals. The limited task of government as an organization that serves the extended order is to bring the unjust to book.

However, with ‘social justice’, ‘redistributive justice’, ‘economic justice’ and other such nonsensical formulations, socialists make their government act against those who gained by following the rules of just conduct, on the pretext that those who failed to make significant gains need to be ‘justly compensated’ for their failures. The appeal is at once animistic and anthropomorphic, conceiving the impersonal extended order as having a human soul and ‘will’, identifiable with their ‘great leader’, who will ‘wipe every tear from every eye’¹⁸.

The appeal of ‘social justice’ is at once naïve and childlike and primitive as well. It is as if mother has not put as much on your plate as she has for your siblings; it is an appeal to the tribal headman to share out the kill more evenly. Politicians who try to behave like tribal headmen attempt to even the scales by all sorts of subsidies and concessions, many of which are granted with the coercive force of legislation behind them. In the process, the great ideal of Justice loses its majesty and becomes a political puppet.

It needs to be stressed that a Robin Hood government that takes from the rich and gives to the poor can

¹⁸ This expression was used by Gandhi to describe his ideal of government. It was repeated verbatim recently by prime minister Manmohan Singh.

never succeed in helping the poor in any meaningful way. The wages of the poor will only rise if they can combine greater amounts of capital with their labour. If the rich, who can save, are taxed heavily, they cannot add to their capital. When the money taxed from the rich is spread out evenly among the poor, all is consumed, none is saved, and the stock of capital is destroyed. There is ‘capital consumption’ instead of ‘capital accumulation’. The poor stay poor, chasing the ‘mirage’ of social justice but finding nothing in it.

Thus, liberals and socialists have very different conceptions of justice, and this ‘conflict of visions’ is adequately dealt with in Thomas Sowell’s eponymously titled volume. Readers may also like to peruse his *Preferential Policies*, a slim book that demolishes many sacred myths regarding such ideas, such as reservations for ‘other backward castes’ (OBCs) with which the government is juggling now, based on ‘social justice’.

The critical point that Sowell makes is that the *processes* by which we survive in the extended order of the market are socially benevolent, but the *processes* that are unleashed when ‘social justice’ takes over the lives of ordinary people are actually malevolent – because they politicize all outcomes. Politics then becomes a question of ‘who gets what,

when and how’, and such politics ends up misusing the coercive powers of the government towards a very political end, which is the winning of votes. As politics assumes an inflated importance, and the more it has a say on deciding economic outcomes, the less real Justice prevails. The government, which should be impartial, becomes a tool for the ‘redistribution’ of gains, in the process satisfying the primitive urges of many small groups of identifiable interests, while at the same time hurting the interests of many others *who cannot be easily identified*. Once a government embarks upon such predatory processes in order to make a known small group benefit at the expense of an unidentifiable large group, the liberal ideal of Justice gets buried and the clear distinction of the relative spheres of government and market gets blurred. Instead of upholding the extended order and applauding those who succeed by obeying its rules, the government becomes a tool used by dropouts, failures, parasites and tramps and all those businessmen who fear competitive individualism. Government becomes a Robin Hood and Santa Claus combined with a mafia don, heavy taxation ensues, wasteful bureaucracies are spawned, and the successful are unjustly penalized. Whereas the liberal ideal is a small government enforcing the impersonal and abstract ‘rules of just conduct’ that make markets work, a government that has ‘social justice’ as its

bulwark soon becomes large and unwieldy, hijacked by all kinds of small, vocal interests. The 'general welfare' is not promoted. Rather, particular interests are.

It is not that liberals neglect the important issue of the poor. Liberals place great faith in private voluntary institutions of charity. But liberals do not approve of governments (read politicians and bureaucrats) taking over this important task. As Tibor Machan pointed out, 'generosity is a virtue of civil society', and this virtue gets eroded when governments take on the task of helping the poor – an important task they perform all too inadequately. This generosity is something that Indian civil society possesses in huge amounts. As Peter, Lord Bauer pointed out in the early 60s, widespread beggary on the streets of India and Pakistan is not a proof of poverty; rather, this beggary exists because the predominant communities in both these countries, Hindus and Muslims respectively, believe that they earn spiritual merit when they give alms to the poor. In these very same countries there are no Sikh, Parsee or Jain beggars because these communities channel their help to their poor in different ways, and also encourage self-help. That is, there is a surfeit of generosity here in India, and a role of the state in helping the poor is not only unnecessary but also harmful.

Once again, the socialists are appealing to a primitive instinct – that the leader of the tribe must share the kill fairly. Such ideas are actually harmful for the extended order of the market, not least because they pervert the institution of government and make it an organization that serves purposes other than for which it was rightly and justly set up. If justice loses its meaning, the market order cannot survive. This is the most serious objection to the socialist idea of ‘social justice’. As Frederic Bastiat put it in *The Law*, when we make the law, we do so to protect ourselves and our properties. Since we do not as individuals possess the power to take anyone’s property away, we cannot make a law that allows anyone, including the authorities, to take anyone’s property away. To do this would be ‘legal plunder’ and, what is worse, it would be based on ‘false philanthropy’.

So far, we have outlined the basic characteristics of the extended, natural order of the market based on several property and competitive individualism and contrasted liberal ideals with those of socialists. The discussions showed huge differences in the role that government would play in either of these contexts. In a liberal order, the government has a small, but important, role – serving as a protector and defender of individual property, individual rights and

individual liberty. Socialist ideas enlarge the role of the government to such an enormous extent that the State becomes what Bastiat had predicted it would: “that grand fiction by which everyone tries to live off everyone else.”

COLLECTIVIST METHODOLOGY AND THE 'ABUSE OF REASON'

Mankind's knowledge of the external world has been built up slowly over millennia, beginning with the measurement of the simplest regularities – like weights and other measures and the earliest calendars and almanacs. Our knowledge of music was also based on a study of regularities. Then came metallurgy, medicine and surgery, as we followed these steps into uncovering wholes and revealing structures that lay within: that is, from the big to the small. And all based on regularities: experiments that can be repeated. Such knowledge can be represented symbolically (as with music) and mathematics is the appropriate language of such sciences. When an automobile is advertised as having an engine that delivers 200 horsepower, the mathematical expression is appropriate, and it refers to something that can be measured again and again with the same meaningful result.

Thus, the great physicist Sir Isaac Newton was awakened by an apple falling on his head – and since apples and all other objects regularly fall to the ground he could think up the theory of gravity and then measure it – obtaining a mathematical constant, the force of gravity. The purpose of the mathematics and the measurement it entails was to arrive at the value of this constant.

However, understanding ‘society’ has proved more difficult, because there are neither regularities nor constants. Man has been buying and selling, taking loans and disposing of properties for millennia – but economic thought appears very late in human history. The main reason for this delay in thinking correctly about economic issues is because there are no regularities to be measured: prices fluctuate wildly; businesses rise and fall; fortunes are made and lost, etc. The ‘scientific method’ that Newton applied to physics is totally inapplicable here.

While socialist planners measure, study and teach economic regularities (like the gross domestic product or the growth rate) and use mathematics in order to ‘model’ regularities which they have imagined, their extremely complex analyses yield not a single valuable insight into market processes or into the mind of the purposeful, rule-following individual

economic actor. There is not a single mathematical ‘constant’ that they have uncovered in economic life. They apply the mind of a primitive almanac maker to a very complex phenomenon that they do not understand. In reality, as classical scholars like Adam Smith were well aware, this field of inquiry is a ‘moral science’ because every individual makes a *deliberate choice* between many options, some of which may be immoral. Mathematics cannot be applied to philosophical investigations in such sciences.

There is a need for a science of society because the elements, individuals like you and me, follow rules. The subject matter of investigation in this case must be the acting, thinking, purposeful, rule-following individual, from whose revealed actions we are able to construct theorems about the whole – the big picture. This big picture is not given to us when we start; we must begin with the individual element and thereafter construct the big picture.

The study of history is always conducted along these lines. If he needs to know the ‘big picture’ of, say, the industrial revolution, the historian will begin by collecting evidence of the elements. He will study the politics of the age, the literature, the theatre, the social reformers, the capitalists and their investments,

the problems of urbanization and factory labour, and so on until he has amassed enough information to construct a reasonable picture of the age he is studying.

Now, the physical sciences are an area where investigations occur the other way around. Here, the big picture is given, and then the individual elements are analyzed. The pathologist who examines your blood is looking for the element cholesterol in order to find your susceptibility to heart disease. All scientific investigations are made in this way.

Socialist, collectivist and other totalitarian creeds consider themselves ‘scientific’ because they mimic the method of the physical sciences: they start from the big picture and discover the elements. There is thus a ‘national economy’, measured as the ‘gross domestic product’, from which the individual elements are discovered, like the ‘growth rate’, so that the central planner can pretend to aim his interventions accurately and obtain feedback about results. Statistics are collected and analyzed – but a better understanding of society and economy is never achieved. It is an ‘abuse of reason’. It can also be called a ‘pretension to knowledge’.

There is also a ‘scientific’ history of theirs that claims to have unraveled the hidden laws of human progress – the idea that socialism or communism are inevitable; that capitalism has inner contradictions which will lead to its demise. Such a method towards historical investigation is very different from the traditional approach outlined above. The Marxist historian is starting with the big picture – like, say, feudalism, about which he already has a ‘theory’ – and only thereafter does he look for the elements. Once again, an ‘abuse of reason’.

The collectivist methodology in the social sciences extends beyond economics and history. It encompasses the ideas of philosophers like Rene Descartes and Jean-Jacques Rousseau who spoke of recreating the world anew, with new institutions, new laws and new morals, all based on reason. Anything not amenable to reason was to be discarded. This line of thinking was carried forth into law, with the result that a ‘legal positivism’ began to reign, by which all law had to emerge from a duly-constituted legislature. Law was till then held to be something that comes from the past. Learned lawyers and even more learned judges found the law through an intellectual exercise that involved the search for past precedents. Law progressed piecemeal with two lawyers arguing their clients’ cases and the final

judgement either confirming an old, established precedent or setting a new one. It was unthinkable that law could be made any other way. Under the positivists, law-making became confused with voting, and the law became a product of democratic assemblies. It was forgotten that the House of Commons remained for centuries a body whose sole purpose was to vote supplies, without any legislation emanating from it. If this was not enough, a new 'sociology' was begun, by that 'madman' August Comte, as Mises testified he was, with the intention of recreating society anew based on this spurious 'reason'. More and more abuses of reason followed, plunging humanity into greater and greater errors.

In all these areas, which comprise the social sciences, the collectivist pretence to scientific knowledge needs to be thoroughly exposed today. In reality, they have been blind imitators of the physical sciences, and have achieved not a single valuable insight into the working of society in the voluntary natural order. Instead of using reason, they have abused it, multiplying error upon error and, what is worse, destroying the *values* upon which the extended natural order of the market depends for its sustenance. Once again, this has occurred because they were looking for regularities where there were none; and they were studying and measuring wholes

without understanding the parts, the elements, the individual human beings. The ‘scientific’ methodology of collectivism (which must be by definition collectivist) is actually primitive in conception and is better called ‘scientistic’ than ‘scientific’ proper. It mimics science. It does not understand society, so cannot explain it. It is the method of the early almanac maker, searching for regularities – but in this case looking for them in vain. Its results are not enlightenment but befuddlement, and in effect all that this ‘knowledge’ has yielded is totalitarianism.

Thus, while liberals undertake investigations into social phenomena using ‘methodological individualism’, socialists study the same phenomena by applying what Ludwig von Mises called ‘polylogic’. To the liberal social scientist, the prime focus of his attention is the purposeful, rule-following, acting individual. The liberal understands the elements first, and then attempts to understand ‘society’. On the other hand, the socialist begins his analyses with groups, into which individuals are forcibly fitted: polylogic. To the socialist, it is not the individual, but the ‘class’ that matters most to his analysis.¹⁹ If you are a blue-collar employee in a

¹⁹ Another example of polylogic is racism. Indian fascism, “hindutva”, is also based on polylogic, seeing the interests of all Hindus as one, united against a “class enemy”. Polylogic in any form has horrendous political consequences.

factory, you are ‘working class’, and your interests are assumed to coincide with every other member of your class while also being in complete antagonism with those of every member of every other class, especially the capitalists. There is even a ‘theory of history’ based on this polylogic.

In reality, every blue-collar worker in a factory is competing with every other one for promotion to the rank of supervisor. And all the blue-collar workers are gaining by being able to use modern tools and machines in factories invested in by capitalists using their own savings. Without the tools and machines the workers would produce much less individually, and this low productivity would mean low income. Left to themselves, the working classes would never be able to invest in the plant and equipment that aids their work today. There is thus ‘economic harmony’ between individuals and classes. In a book Hayek edited, *Capitalism and the Historians*, many distinguished conservative historians have defended the early factory system of the English Industrial Revolution and testified that the modern industrial working class we see there today would never have come about without these early factories. Further, even in those early days, a factory worker was doing better than he would have as a farmhand.

The greatest tragedy of the errors of polylogic is that they destroy the mechanisms by which all the people in an open society associate, thereby wrecking social order. Workers are taught to distrust their employers, and abandon honest work for dishonest and disruptive politics. The long-run effect is to scare away all investments, reducing the mass of workers to subsistence levels, seeking survival through just the ‘hammer and sickle’, the only capital they are left with: the de-industrialization of West Bengal under communist rule occurred precisely because erroneous polylogic was fed to the industrial working class.

THE FATAL CONCEIT

The ‘methodological individualism’ that liberals use in seeking to understand society, is actually based on introspection – or, as it might have been called in another age, meditation. To the thinker, the first individual he comes across is his own self; he analyses how the processes of his mind work; he analyses his own ‘experiences’ in market exchanges; and only then does he attempt to make generalizations about others, or society. The central assumption always remains: Since my mind works like this, the minds of others must do so too; others have minds just like my own. Hayek repeatedly affirms this to be his method; and his book on

theoretical psychology, *The Sensory Order*, uses these very procedures of introspection and meditation to understand the human mind. There is thus respect and appreciation of all human minds, lettered or unlettered, and recognition of all kinds of knowledge, whether backed by college degrees or not. There is also, in the mind of the liberal thinker, an immense amount of awe at the splendour and wonder of the *cosmos* of the natural order. To Frederic Bastiat, for example, the harmonies of economic life were an affirmation of his faith in God – he was an avowed Catholic – and therefore a faith in Man, who is God’s greatest creation.

[Hayek’s contributions to theoretical psychology are entirely based on his understanding of how his own mind works. His conclusions therefore differ greatly from the theories of that other Viennese, Sigmund Freud, which were based on investigations into the sick minds of neurotics. Hayek repeatedly asserts the ‘primacy of the abstract’ and reveals the understanding that our minds work by assimilating abstract concepts and then processing them in ways unknown to us whenever new challenges present themselves to our minds. Law is nothing else but this – abstract and general concepts that have to be applied endlessly to new circumstances – and that is why justice is a universal ‘moral sentiment’, because

human minds have been assimilating and processing these abstract concepts for millennia. There is thus a ‘superconsciousness’ in our minds, rather than the Freudian notion of a ‘subconscious’ powered by primitive drives of sex and aggression – a ‘ghost in the machine’. The typical ‘aha experience’ is evidence of this Hayekian superconsciousness. As a writer or extempore public speaker I often find my mind generating ideas in ways I cannot fathom, based on the inter-relationships between abstract concepts embedded in it: the superconscious. This makes every mind unique, but it also provides us a better understanding of the most critical aspect of the mind’s functions: thinking. Education should therefore aim at enriching minds with more and more of these abstract concepts. Instead, the aim seems to be to cram minds with information and data, without concepts.²⁰]

Let us contrast this liberal faith with the credo of the collectivists and planners. Among them, there is only a blind belief in the omniscience of their leader and master, their planner and great legislator; and, with it, a complete contempt for the rest of humanity, whose individual knowledge and whose individual minds

²⁰ I recently met a young girl who had scored over 90 per cent in her Class 12 CBSE board examination. This included over 90 per cent in Political Science. When I inquired as to what she had been taught about socialism, she said, “The were 6 disadvantages, but I don’t remember them.” And not even 2 months had passed since her high-scoring exam! Everything is immediately forgotten: the Zeigarnik Effect.

are not worth a jot. Those who think in these terms do not value the ‘knowledge’ of the bar dancers in Bombay who were outlawed; or the ‘knowledge’ of the vendors of street food in Delhi, who are about to be outlawed too. They have faith in a Knowledge Commission the government has set up; they support a government-run education ‘system’; and their faith in the central planner’s knowledge knows no bounds, since the entire public treasure is being spent by him to ‘generate employment’ in villages while millions of city-dwellers are being denied the liberty to survive using their own minds, knowledge and skills. This is not just ‘conceit’, as Hayek mildly put it. It is a rare kind of moral and intellectual depravity. It is also an attempt to rule over people not by appeals to truth and morality, but by deliberate guile and duplicity. I hope all parents will realize that this government of socialists is a great enemy of the minds of their children, and opt for home-schooling. Their centralized educational ‘system’, based on the assumption that their leader’s mind is infallible, must be shut down. Let us first free every young mind.

Serious, thinking people must also wake up to the fact that, while India is full of ‘scientific’ knowledge – doctors, engineers, technicians, softwarewallahs and the like – we are woefully behind in the social sciences, and the reason for this must be because a

gigantic Indian Council for Social Science Research is run by the government.

As has been explained above, there are fundamental differences between the search and measurement of regularities that traditional science consists of and the methods of any true science of society, which must search for an order that is completely hidden. As a reading of Frederic Bastiat's classic essay "What is Seen and What is Not Seen" makes abundantly clear, the true science of society must uncover what no one sees, must look for secondary effects on people who are not immediately present, and must also consider the time frame, distinguishing long-term effects from the immediate ones that are obvious to all. Human society has made huge strides because of scientific progress, yes; but all its present ills are because of errors in the science of society. This is because the science of society is still very much in its infancy. It has developed very late in human history precisely because it requires a very different kind of mind – the mind of a 'puzzler' rather than that of a 'master of his subject', as Hayek put it. He also noted with alarm that the schools and university systems encourage mainly the latter type of mind, which can store vast

amounts of information and is therefore able to score the highest marks in examinations.²¹

We think highly of scientists like Newton and Einstein; we must place thinkers like Bastiat and Hayek on a much higher plane. What their brilliant minds uncovered is of far greater worth than any scientific discovery made so far, because it is in their teachings that all the secrets of lasting prosperity, harmony, progress and peace are revealed. This true and valid science of society should be carefully absorbed by all serious people, of all professions and vocations, because each and every individual has a vital stake in seeing these ideas prevail. A doctor in socialist India was as poor as any engineer, both waiting in vain for their Bajaj scooters or DDA flats – because the science of society was all wrong.

LIBERALISM AND THE WORKING CLASSES

It is important to note that during the eighteenth and nineteenth centuries, especially the years between the publication of Adam Smith's *Wealth of Nations* (1776) and that of Samuel Smiles' *Self-Help* (1860), the working classes of Britain were imbued with liberal ideas and ideals. It was during this period that

²¹ See "Two Types of Mind" in Hayek's *New Studies in Philosophy, Politics, Economics and the History of Ideas* (Chicago U. P.; 1978).

Richard Cobden and John Bright launched the ‘Anti-Corn Law League’, and led the working classes to demand free trade. This was the first ‘mass movement’ in history. Millions of pamphlets advocating free trade were published and distributed amongst working people, who rallied to the cause, knowing that free trade meant gains for them as consumers – especially the fact that bread would be cheaper. The prevailing wisdom among workers was the central idea of Adam Smith: that individual wealth consisted in cheap goods obtained through trade, which would improve the consumption and add to the properties of all poor people; and that national wealth consisted of the sum of individual wealth; that the ‘wealth of the nation’ did not consist of the gold in its banks (the earlier, fallacious “mercantilist” belief). Among the people of England then, Political Economy was widely studied, and its conclusions were widely appreciated, including among the working classes, who considered it a very useful field of knowledge.

Thus, when we read Samuel Smiles’ *Self-Help* today, we find in this Victorian moralist’s celebrated work repeated exhortations to the working classes to exert themselves hard, to persevere, and to be inspired by the successes attained by others who were even worse off to begin with. There is not a trace of envy

for the successes of others – a typical socialist trait; instead, the successful are heroes who inspire.

The very first paragraph of Smiles ridicules the notion that governments and legislation can contribute anything meaningful to nations; and that genuine national progress depends totally on individual efforts. The entire book of this moralist is liberal in outlook, and it clearly demonstrates how deeply liberal England was in Victorian times – and this includes the working classes. It is said that this book adorned the shelf of every working class home, placed right next to the Holy Bible! Liberalism constituted the moral consensus of the nation. All this changed with the coming of the 20th century, which witnessed what one historian called the ‘strange death of liberal England’.

The challenge before India’s liberals is to garner the support of the poor, the downtrodden and the masses of workers, who have been led astray by the unrealistic promises of the leftists. It is they who constitute, as a group, the biggest potential beneficiaries from free trade, economic freedom and an equal and impartial justice under the rule of law. They must be convinced of the truths of liberalism and its concomitant, individualism. They must be taught to look upon their interests as individuals, and

to beware of the idea of a monolithic ‘society’. If this programme of mass education is taken up systematically and thoroughly, it is bound to yield huge benefits for the overall liberal project. The idea of liberty under law requires that the numberless masses be possessed of a clear conception of how the law works, and how it protects the individual, and to what extent. Only then will the collectivists beat a retreat, because public opinion will reject their ideas. For, as we know, everything ultimately depends upon opinion.

In this connection, an Indian edition of Samuel Smiles’ *Self-Help* is available from Liberty Institute. Professor Ambirajan informs us that this book was widely read in India in Victorian times, and also available then in many Indian language translations. It is this ‘morality’ that should power liberalism in a post-socialist India that is seeking a new moral consensus.

We now proceed to examine a historical period, during which England was possessed of ‘rule of law’ based entirely on liberal precepts. It will be argued that it is because of this that the English were the first nation to advance from feudalism to capitalism. That is, where a people stumbled upon better rules of the game, the results were better and they not only

flourished and prospered but also managed to overcome other peoples who lived under bad rules and were thus weak and poor. The roots of the British Empire lie ultimately in the common law. There will be many lessons for the governments of poor Third World nations to learn from this brief history of the common law.

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CHAPTER THREE

THE ORIGINS OF THE ‘RULE OF LAW’ IN ENGLAND BEFORE THE MAGNA CARTA – AND ENGLAND’S TRANSITION FROM FEUDALISM TO CAPITALISM

True law is right reason, consonant with nature...

Cicero

*So far, Western countries have been happy to take
their [property] system for producing capital entirely
for granted and to leave its history undocumented.*

That history must be recovered.

Hernando de Soto, The Mystery of Capital

The liberal ideal of the ‘rule of law’ (as opposed to ‘rule of men’, which can be arbitrary and capricious) arose in feudal times, and was stumbled upon by the English people when they found they had to place their monarch under legal restraint. These restraints upon government simultaneously gave them precious liberties, and it is these liberties under law that

enabled their nation to be the first in the world to move from feudalism to capitalism.

This ‘liberty under law’ did not mean freedom from all restraints; rather, it meant an *equal restraint upon all, including the government*. It is this stunning idea, born out of both courage as well as moral convictions, which the English unknowingly stumbled upon in their desire to put an ‘irresponsible absolutist’ of a king firmly in his place. A certain ‘legal spirit’ has marked all English institutions ever since.

[The fact that the English possessed both courage as well as moral conviction must be emphasized. In Indian history, emperors, kings and even petty nawabs and princes have always administered rough justice. Never have the Indian people shown the courage to legally restrain arbitrary rulers.]

This legal spirit was already deeply ingrained in the Anglo-Saxons, for was it not they who appealed to the Norman conqueror, William, as early as 1066: “We do not want any changes in the laws of the Anglo-Saxons”? As Hayek has argued, and as will be argued below, the historical role played by the *better rules of the game* that the English played by cannot be underestimated: it may indeed be the sole factor

that explains England's early lead over the world. The Peruvian economist, Hernando de Soto, in his *The Mystery of Capital: Why Capitalism Triumphs in the West But Fails Everywhere Else*, has drawn worldwide attention to the fact that poor people in poor nations possess property; what they do *not* possess are legal titles to these properties which would enable these to be used as collateral and thereby allow them to raise commercial capital with which to participate in market competition. De Soto cites his research on the early days of the USA, when homesteads, farms, ranches and even gold miners obtained property titles. De Soto calls for more research to show this principle to be true: that the 'capital' in 'capitalism' happens only when all fixed properties are governed by legal, 'representative' titles. In this chapter, we examine the origins of the 'rule of law' in feudal England, where the common law always protected property. It can therefore be said with some certainty that this may perhaps be the most important reason why Britain was the first nation in the world to advance from feudalism to capitalism. And it is this lead, and this legal system, that then enabled the British to build the greatest empire ever seen. It is the same common law that went on to build America, Canada, Australia and New Zealand – apart from Hong Kong and Singapore.

LAW AMONG THE ANGLO-SAXONS

The Angles and Saxons were Germanic tribes that had settled in Britain. At first they were led by chieftains who were warlords; later some kings emerged, who were warlords too. Neither the chiefs nor the early kings had any role in the making of law, which was all based on the customs practiced by the people. Bruce Benson in his *The Enterprise of Law* gives us some idea of the laws under which the early Anglo-Saxons in Britain lived:

Anglo-Saxon laws were very concerned with protection of individuals and their property. In particular, offenses against individuals are minutely provided for by the laws which delineate the economic payment appropriate for homicide, various kinds of wounds, rape, and indecent assaults. Similarly, theft was extensively treated in the codes. The law of property was unwritten so little specific detail can be found, but right of possession was clearly the primary concept of property law: it is possession that has to be defended or recovered, and to possess without dispute, or by judicial award after a dispute real or feigned is the only sure foundation of title and end of strife. A right to possess, distinct from actual possession, must be admitted if there is any rule of judicial redress at all; but it is only through the

conception of that specific right that ownership finds any place in pure Germanic [and, therefore, Anglo-Saxon] law. Those who have studied the modern learning of possessory rights and remedies are aware that our common law has never really abandoned this point of view.²²

This is not a picture of ‘primitive communism’. Whereas histories are always of great kings and their epic battles, let us begin this history by attempting to peer into the minds of these rugged individualists of ages long past. What sort of people would live by customary laws that protected every individual, his life, liberty and properties?

One reasonable conclusion can be drawn at the start: that the tribes were too big and getting bigger. Individualism therefore arose. And with it came the law, because in any group, large or small, it is too inefficient to allow disputes to be settled by any other means, like physical fighting. This, the first blessing of a rise in numbers also explains why these groups were able to multiply in the first place: because of the good rules that prevailed among them. The idea that ‘every freeborn Englishman is the king of his own

²² Benson, B. *The Enterprise of Law* (Pacific Research Institute for Public Policy, San Francisco, 1990) p. 22, quoting, in part, from Sir Frederic Pollock and Frederick Maitland *The History of English Law*, vol. 1, p. 57.

castle' evolved very early in the history of the Anglo-Saxons.

Customary law only happens when obligations are reciprocal: you respect my property and I respect yours; you help me catch the thief that stole my belongings and I will render similar assistance whenever injustice is inflicted upon you. This is two tough, armed guys agreeing upon a compact. This manner of people voluntarily making law is still alive with us today in contracts, where the 'contract law' only exists because two people have voluntarily accepted to make a particular contract into a 'law' binding on them both. A people who live by customary law based on mutual and voluntary reciprocities are a truly 'natural society'. They are thus able to include even greater numbers into their order, with all the attendant benefits. The spectacular success of later generations of Anglo-Saxons is explained by this 'legal spirit' that propelled their behaviour. The innate 'sense of justice and fair play' that the British were famous for has very ancient roots and must be considered a vital part of their culture.

It is not surprising when Benson notes in the passage above, that 'offenses against individuals are minutely provided for by the laws which delineate the

economic payment appropriate for homicide, various kinds of wounds, rape, and indecent assaults'. Indeed, in such societies economic compensation for the victims of injustice would necessarily be the highest form that justice could take. Tort laws have an ancient foundation.

This idea of law emanating from the competing claims of individuals to justice in a society of rugged individuals whose warlord kings and chiefs never 'ruled' them in the sense that they made positive law – and even today the House of Commons makes law and not the British monarch – shows the very *voluntary* and *reciprocal* nature of the resulting social order, which was completely 'natural' in the sense that no single human mind made it or willed it. If there is anything that can meaningfully be called 'society', then it is something that spontaneously arises as many, many individuals voluntarily agree to impose upon their own conduct the same rules that others have agreed to impose upon themselves. If the English became a Great and Open Society, the credit must go to their law, and to the manner in which it slowly evolved, in total harmony with the natural order, without any great lawgiver ever arising in their midst. It is their law that enabled the large tribes of the Anglo-Saxons, wherein each member was a rugged individualist, to grow and eventually

incorporate more and more different kinds of people into the overall order: an empire that straddled the globe, but which was always ‘an empire of laws and not of men’.

This very Anglo-Saxon brand of rugged individualism made the law and enforced it with voluntarism as well as reciprocity on the frontiers of America: De Soto’s *Mystery of Capital* tells the tale that any avid viewer of Wild West movies (as I was as a boy) would know only too well. It is this rugged individualism that marks the Western world, whether in business, sports or entertainment. It is all hidden today under the heavy garb of civilization, but we still see it peering out among the ‘born to be wild’ heroes that the west routinely throws up – like the rock stars of the 60s and 70s. This individualism can only exist in relatively free societies; in Communist China under Mao everyone had to wear the Mao coat, and fashion designers were therefore non-existent. No Chinese then could show off his individual preferences or make his own ‘style statement’. Negate the individual, place a mythical collective above him, and you open the floodgates for tyranny.

This makes it all the more surprising that this very same Western world should have succumbed to the tempting allure of government law-making and

enforcement, of a ‘caring government’ funded by onerous taxation, and the huge interference that man-made legislations impose on peaceable individuals. As Hans-Hermann Hoppe notes in his compelling *Democracy: The God That Failed*, from the primitive Anglo-Saxon right down to fairly modern times, the Englishman always knew well the difference between ‘government’ and ‘society’. Government meant the king; liberty meant freedom from the king, living by commonly accepted norms and laws. This vital distinction between society and government was blurred by democracy and its deceptive allure of a ‘government of, for and by the people’. It is this that has produced the misleading doctrine of ‘parliamentary sovereignty’ and the endless legislations that have followed from this error. Law making and enforcement became a ‘sovereign’ function, funded by taxation (which the Anglo-Saxons always opposed), with ‘retribution’ becoming a form of justice that cost the taxpayer even more, without delivering the ‘economic restitution’ or ‘just compensation’ to the victim, which was the better justice of old. Many, many precious liberties were also lost.

It is further surprising that the modern West often displays attitudes that reveal a deep apprehension about including the entire human race in the overall

order: there are committed opponents to globalization in the West, racism is not in short supply, and the silly fears of being ‘flooded’ by immigrants from strange lands are ever-present, even in ‘empty’ lands like Australia and Canada. It seems to have been missed that the present success of the West is based on a long tradition of incorporating more and more ‘friendly strangers’ into the overall order. The City of London at the time of the Norman Conquest was already home to Italians, Jews, Frenchmen and Flemish traders. It was cosmopolitanism that powered this great and ancient city.

THE ‘ORGANIC’ ORIGIN OF LAW

The idea of a ‘natural order’ in human society implies that the true task of social science is to uncover the reasons behind this order: how did markets, money, language, morals and law originate? We have already discussed some of these issues; let us now proceed to an understanding of how law too has ‘organic’ origins.

It was Carl Menger who was the first to enunciate this as the true task of an ‘exact’ science of society:

How can it be that institutions which serve the common welfare and are extremely significant for its

*development come into being without a ‘common will’ directed towards their establishment?*²³

Menger was therefore the first to find that, if a ‘common will’ is ruled out, then the answer must lie in individual wills. Now, individual wills follow individual self-interest – so the answer must lie in ‘atomistic’ theorization of the self-interested individual, and its ‘unintended effects’. In a later essay we will come across Menger’s theory of the origin of money, derived from the trading activity of the purposeful individual; in this, let us pause briefly to examine what this great mind has contributed to our understanding of law. In brief: individuals realize that they benefit in their individual capacity if there are ‘limits to despotism’. In his own words:

Each individual, even if not directly harmed, feels threatened most seriously in his interests by acts of violence, especially the weak individual, who is always in the majority compared to the strong one.

Under such circumstances are formed convictions of the necessity of certain limits to despotism.... Probably this occurs initially only in the minds of the wisest in the nation, namely,

²³ Menger, Carl (1883) *Investigations into the Method of the Social Sciences with special reference to Economics* (New York U. P. 1985) p. 146. The German word for ‘common will’ that Menger used is *Gemeinwillen*.

of those who can recognize their permanent interest beyond the short-sighted interest of the moment. But with increasing insight it gradually occurs in the minds of all those who find an advantage in the limitation of individual despotism. Among these are even the strong individuals, whose interest requires the conservation of what their power has achieved.

The conviction of the necessity of such limits to despotism was not, therefore, originally realized in the nation thought of as an organized unit. Still much less was it realized as a result of the reflection of an individual, or even of a national council, aimed at the welfare of all. It arose, rather, in the minds of individual members of the population with the increasing awareness of their interest, the individuals' interest. What benefits all, or at least the far greater majority, gradually is realized by all....

Everybody in the beginnings of society is directly aware of the significance of the rules for his own well-being. Every individual recognizes that he is benefited in his interests by their observation on the part of the members of society and that he is threatened in his interests by their violation.... The protection of what everyone recognizes as his interest becomes the interest of every individual....

*National law in its most original form is thus, to be sure, not the result of a contract or of reflection aiming at the assurance of the common welfare. Nor is it, indeed, given with the nation.... Rather, it is older than the appearance of the latter. Indeed, it is one of the strongest ties by which the population of a territory becomes a nation and achieves state organization.*²⁴

Later, Menger mentions that law can also come about by ‘authority’ – the man in power. But that certainly was not the case with the Anglo-Saxons. Whereas ‘authority’ may have produced law in India, the rugged individualism of the Anglo-Saxons, with a direct interest in their private properties, led to the evolution of ‘common law’.

Let us now proceed to understand the English idea of the ‘rule of law’. It is a concept born in feudal times, so we begin with an examination of the conditions under which feudalism came about in the west.

LIFE IN EUROPE IN FEUDAL TIMES

Professor A R Hogue, in his classic *Origins of the Common Law*²⁵, provides a description of the

²⁴ Menger, Carl op. cit. Appendix VIII “The ‘Organic’ Origin of Law and the Exact Understanding Thereof”, p. 225-227. Italics in the original.

²⁵ Liberty Fund: Indianapolis, 1985, first published 1966.

troubled times during which feudalism appeared in Europe:

Feudalism in Europe developed over a very long period during which central governments were powerless to meet problems of defense and to maintain order. Late Carolingian rulers of the ninth and tenth centuries resembled brothers quarreling over the ownership of a field while their neighbours were lighting grass fires all over it. During the ninth and tenth centuries Europe suffered repeated raids: Norsemen came to the coasts and river valleys in long ships; Magyars rode their small horses out of the grasslands of central Asia; Muslim pirates crossed the Mediterranean from Africa to pillage the shores of France and Italy. Destructive raiders struck deep and unpredictably into the heart of Europe. Their hit-and-run tactics, employed by small forces, meant that each locality had to defend itself as best as it could.

Under these frightening conditions, men turned helplessly to a strong patron, a lord, a defender, someone who could provide land for subsistence and security in time of danger. Such a man may have a few experienced fighters at his command. He controlled one or more

primitive but useful strongholds, fortified by an encircling moat and earthworks surrounded by a palisade. Understandably enough, in the iron age of feudalism, the principal military figure of a locality would easily assume certain political powers over the lands and people of the countryside which he undertook to defend. Although he might not take the title of king, being content with that of count or duke, he would administer justice according to the custom of the locality, collect taxes, and possibly treat with neighbouring lords like a sovereign authority.

The emphasised text shows that the feudal lord's 'duties' were basically defense and the administration of Justice – 'according to the custom of the locality'. This was an age when men-at-arms, men of the sword, ruled. There was no other way. This is something that was dictated by the conditions of the times: that is, this was Nature at work. Professor Hogue says that the feudal lord would also employ some 'experienced fighters'. These were the 'vassals' of the lord. They were all *free* men-at-arms, and the word 'free' must be stressed upon because vassalage was not slavery at all; it was completely *voluntary*. The free man-at-arms could *choose* his lord and, as Professor Hogue puts it, "it cannot be emphasized too

strongly that a man who may choose his lord is a free man.”

These vassals were all fierce fighting men and, to fight in those days, they had to themselves be in possession of a lot of expensive equipment ranging from swords and armour to the war-horse.²⁶ A common serf or villein could never afford all this military equipment, just as very few of us today can afford to buy a tank. Thus, when a lord received (and accepted – because the lord was also free to refuse) a vassal, it was his duty to see to it that the vassal could now maintain himself. For the purpose, the vassal was assigned some land, a fiefdom, especially where both land and peasant cultivators were plentiful. This fief might be for a limited period – like a short contract during military service – or it might be more permanent.

The vast differences that might arise in the nature of land tenure, which is why ‘the customs of the locality’ mattered so much, are best understood in this quote from Professor Hogue, for it takes us back to a time when customs mattered most. First came the homage and oath of fealty from the vassal and its acceptance by the lord:

²⁶ A fierce fighting-man in feudal times was thus very different from a modern-day soldier, who simply “follows orders”. He owned his fighting equipment, and he chose his own superior. The modern soldier is but a mere mercenary. As Donovan put it: The modern soldier is the “Universal Soldier”; that is, he is not a “free” soldier.

Rendering homage and swearing fealty were parts of a solemn public ceremony. The free man wishing to become the vassal of a lord appeared unarmed and bareheaded in the presence of the lord. Kneeling before his lord, he placed his hands between those of his lord. Next, with formal oath he swore fealty, promising he would be faithful to his lord against all other men. Then the lord, in equally solemn words, accepted the homage, raised the vassal to his feet and kissed him.

If the lord decided to pay money to the vassal for his maintenance then that was that. But if land was given, which was the usual case in those early days, customs could take various forms. Professor Hogue describes two such customs.

[The word 'seisin', which appears in the quote below, and many a time thereafter through the text, is the magic Property Title of English Feudalism. Seisin is defined by Professor Hogue as: "the possession of land enjoyed by a person who is 'seated' on the land, who is in a position to take what that land produces. Seisin of a freehold is occupation by one other than a tenant in villeinage, a tenant-at-will, a tenant for a term of years, or a guardian."]

In this definition itself we find many different kinds of land tenure. While granting seisin to a vassal, customs could take forms like:

There might be a symbolic act, an act of investiture by the lord, who would place in the hands of the vassal, the feoffee, a bowl of earth or a small bundle of twigs, something representing the fief and the transfer of seisin from lord to vassal. An even stronger claim to the fief might be established by taking the vassal to the land and there putting him in possession, in seisin, which meant that the vassal would be “seated” on the land, in a position to live there, to enjoy its revenues and produce, and to collect its services and rents as the tenant of a freehold.

Note that both the ceremony of paying homage and swearing fealty by the vassal and its acceptance by the lord as well as the ceremony of grant of seisin are **public ceremonies**. There was no paper those days, hence no title deeds of the kind we have today. The public ceremonies were designed such that there would be enough witnesses to testify before a Court of Law if anything was called into dispute. Note too, that in those days, these oaths were taken extremely seriously. In modern ‘swearing-in’ ceremonies, oaths

of office are not considered as sacred as they were then.

LEX TERRAE: THE LAW OF THE LAND

It is easy to see that such a pattern of overlordship by military masters holding on to patches of land inclusive of peasant farmers and tenant cultivators would create a vast range of 'rights' in land: from freehold to short leases, and that Justice in feudal times would necessarily have to mean identifying these land rights 'according to the custom of the locality'.

In such an environment of unwritten rights, it was only natural that 'the law was not made; it was found'. The courts applied abstract legal principles; there was no legislation; and it is because of these historical traditions that the common law became a 'judge-made law'. Law was never given from above by, say, the King; and Parliament did not exist. The advantage that 'finding the law' gave to all Englishmen was that their properties, their ancient customs and their traditional liberties were always secure. As that great early common law judge Bracton put it:

While they use leges and a written law in almost all lands, in England alone there has been used within its boundaries an unwritten law and custom. In England, legal right is based on unwritten law which usage has approved... For the English hold many things by customary law which they do not hold by lex.²⁷

When the Magna Carta was signed in 1215, this common law based on private property very much existed in England. The term *lex terrae*, or ‘law of the land’, which appears in Chapter 39 of the Magna Carta, was but the Common Law. Professor Hogue quotes Walter Ullman on the term *lex terrae*:

We may justifiably call the lex terrae the early thirteenth century expression for the common law. Taken in this sense the concept loses a great deal of its vagueness and refers to ordinances, rules, decisions of the courts, in short to that body of legal rules which had its roots deep in the soil of native feudalism, notably the land law – hence the land law and the law of succession, personal property and tenure were the earliest developed laws – and which derived its binding character from the

²⁷ Quoted in Hogue, A. R. (1966) *Origins of the Common Law* (Liberty Fund).

*(explicit or implicit) consent of the feudal tenants-in-chief.*²⁸

Between the conquest of 1066 and the signing of the Magna Carta in 1215, England suffered civil war under Stephen; but his successor, Henry II, who was crowned King of England in 1154, laid solid foundations for the Common Law to grow and flourish.

At one point, Professor Hogue refers to Henry II as ‘the founder of the common law’, but we should be a little circumspect over awarding him such a grand title. When crowned King of England at the age of 21, “Henry faced the problem of restoring order to a demoralized kingdom filled with the unlicensed castles of masterless barons who had profited from decades of civil war and weak rule under Henry’s predecessors.”

Henry was simultaneously duke of Normandy, duke of Aquitaine and count of Anjou. He had no easy task in France either, bringing Normans, Bretons, Poitevins and Gascons under a single administration, maintaining law and order and collecting his feudal dues and services. Professor Hogue says Henry II was “constantly on the move throughout his lands.”

²⁸ Walter Ullman, *Principles of Government and Politics in the Middle Ages* (New York; 1961) pp. 166-67.

Where he was, there was his capital; and he amazed his own subjects as well as his enemies by the rapidity with which he traveled, encumbered by his household and the packhorses carrying documents, records and supplies for transacting the business of government. In an age when twenty-five to thirty miles a day was the normal distance on horseback, Henry II once covered one hundred and seventy miles in two days.²⁹

Henry spent twenty-one of his rule of thirty-four years on the Continent. But even the mere 13 years he managed to devote to affairs in England left a lasting legacy. Henry II has gone down in history mainly for the unhappy episode of the murder of Thomas Becket, carried out by three knights who took words uttered in anger to be their king's command – but “like every other medieval ruler in Europe, Henry confronted on all sides the claims of the Church of Rome, which asserted that spiritual authority was superior to secular authority throughout Christendom.” Henry II should be remembered more for his ability, in those trying times, to restore the Rule of Law in England, which sorely needed doing then. He did not “murder” Thomas Becket, nor did he

²⁹ Citing C. H. Haskins, *The Normans in European History* (Boston, 1915), p. 92.

“order” this murder. He should *not* go down in history as a criminal. He was an excellent king.

HENRY II AND THE RESTORATION OF THE COMMON LAW

Treating the reign of his predecessor Stephen as a period of ‘unlaw’, because of the civil war, Henry II harked back to the days of his grandfather, Henry I, in his first declarations of “the recognized rights and customs of the kingdom”. In the Assize of the Forest (1184), Article 1, Henry declared, “full justice shall be had as was had in the time of King Henry, his grandfather.” Thus, he was not the ‘founder of the Common Law’; he ensured its re-institution through his Royal Courts, whose decisions he backed with the full force of royal authority.

The solemn oath to ensure Justice lay at the heart of medieval kingship. In his coronation oath, the medieval king assumed a three-fold responsibility:

- Protection of the Church
- Preservation of the Peace, and
- The administration of Justice.

Nothing more.

So, Edward II, at his coronation ceremony was asked, *inter alia*, “Sire, will you, so far as in you lies, cause justice to be rendered rightly, impartially, and wisely, in compassion and in truth?”

And Edward answered, “I will do so.”

Professor Hogue reminds us that Edward’s promise was in keeping with medieval political thought, which supported *The Doctrine Of Sovereignty Of Law*, a doctrine that prevailed throughout the length and breadth of Latin Christendom during the Middle Ages: the doctrine that “the king is under The Law, and he must rule justly and ‘for the common profit of all the realm’. If he fails to do this he is no king but a tyrant.” *Lex, Rex*. “There is no king where will rules and not The Law.” “The Law is the highest estate to which the king succeeds, for both he and his subjects are ruled by it, and without it there would be neither king nor realm.”

Professor Hogue also quotes the German scholar, Fitz Kern’s other extremely important observation: “Not only the laws of the realm, but also rights of property

were considered laws which the king could not curtail on his initiative alone.”

While medieval political thought certainly did not believe in absolute monarchy, for sovereignty lay in The Law, it “imposed no restrictions on the monarch as he devised administrative procedures for the rendering of Justice. In the field of administration the King was supreme; he had no peer.” And it is this freedom that Henry II used; first, of course, for the protection of “seisin” – a word we have already encountered and whose importance to the “body politic” of feudalism cannot be underestimated, for in that magic word lies the military might necessary for survival then; the economic and legal system in which agriculture took place; and the position or status of a person in that age. Only one in possession of a seisin was a freeholder, whose only lord was the King. There was then ‘no land without its lord’ and also ‘no man without his lord’. The freeholder of a seisin was a very important man in the feudal scheme of things; he was the lord of his own land, King of his Castle, and his only lord was the King. Only holders of seisins were “freemen”; all others, whose tenures lay with barons or even lower, were “unfree”.

These “gross inequalities” of Feudalism have appalled socialists, but everyone accepted these as in

the Nature of things then; it was the accepted order of the day. Medieval political thought in England, expounded by John of Salisbury in *Policraticus*, looked upon the feudal state as more than just an aggregate of persons, but a living organism, a “body politic”: the king as the head, providing direction; the noblemen and the knights were the arms, the military might; the peasants, ‘forever cleaving to the ground’, were the feet, and so on. Henry II enjoyed long conversations with John of Salisbury, a regular visitor to his court.

Henry II naturally started off by making the protection of seisin the centre of all his Legislation between 1164 and 1179. Knowing well that there would be no written titles available to settle possession rights, he ensured that juries comprising *sworn* neighbours would be present at court. In his Assize of Novel Disseisin (1166) he promised that “the king *himself* will protect by royal *writ* and inquest of neighbours every seisin of a free tenement.” From this developed the doctrine that no man need answer for his free tenement without a royal writ. That is, if anyone challenged a possessor’s right to hold a certain free tenure, the possessor could secure a royal order commanding the dispute to be tried before a royal court, which would consider evidence presented by a jury of neighbours in the

county where the dispute arose. The Law was not “made”; it was “found”.

These royal writs, issued by the Chancery, *initiated legal action*. Each writ was “an order from the king, under the Great Seal, addressed to the sheriff of the county in which the cause of action arose... commanding him to cause the party complained of to appear in the king’s court at a certain day to answer the complaint. Every writ was founded on some principle of law, *regula juris*...”

In quick time, the number of royal writs multiplied, and Englishmen could approach the royal courts for Justice in a number of ways: for example, to enforce an agreement, there was the writ of Covenant; to collect a sum of money lent but not returned, there was the writ of Debt and so on. A list of writs compiled in 1189 (Glanvill) mentions 39; there were more than 400 by the end of Edward I’s reign (1307).

An actual example of a royal writ of *Praecipe* runs as follows:

King to sheriff: greeting. Command: *Praecipe*: that justly and without delay he render to R. one hide of land in such a vill. Whereof the said R.

complains that the said N. *deforces*³⁰ him. And if he does not do this, summon him by good summoners that he be before me or my justices on the morrow of the second Sunday after Easter at such a place to show why he did not do it. And have there the summoners and this writ.

Witness: Ranulf de Glanvill

At Clarendon

Essential elements compressed into the writ are:

- The aggrieved party takes the initiative and seeks aid from the royal courts. He also pays for seeking royal action. Thus, this is the business of government! This is how good kings get rich! They do some good work called going after all the bad guys – by *upholding* The Law.
- The writ reveals a concern on the part of the king that men throughout the realm shall enjoy undisturbed possession of Property to which they have a right; further, that to accomplish this purpose the royal authority will act, when called upon, through the royal Chancery, the sheriff, and the courts of justice.

³⁰ Thus, the PURPOSE and OBJECTIVE of The Law is to PREVENT and PUNISH those who MISUSE FORCE.

- The sheriff, a royal agent, will execute the decision of the court.

The *Praecipe*, better known as the writ of Right, was extensively used to test which of two claimants had the better right to a freehold. It was a “solemn and dignified action.”

Henry II accomplished a great deal for the Common Law and the English people by his sincere efforts at “rendering Justice rightly, impartially, and wisely, in compassion and in truth”:

- He restored Law and Order in a ‘demoralized kingdom’.
- His writs of Chancery and the work of the royal courts were soon to become the most popular avenue for seekers of Justice. Other courts, like those of the barons or the manors, lost business – and it was business because all courts charged fees – and the Common Law *out competed* them all.
- By going into the counties through royal agents like sheriffs, he bypassed the feudal lords and lessened their importance. The

kingdom was united under the king's Justice.

- Henry II also began the practice of sending his best judges on circuits throughout the land, hearing local complaints at the local venue, rather than impelling everyone to travel to London for Justice. This, plus his use of juries, made every single Englishman aware of how the Common Law worked.
- The widespread awareness of the Common Law yielded a bountiful harvest in terms of 'lay judges' who could settle disputes, 'justices of the peace' who served the countryside admirably for a long time – and from whose ranks many eminent parliamentarians emerged – and the vast numbers of ordinary Englishmen who fanned out throughout the British Empire spreading the knowledge of the 'system' of Justice embodied in the Common Law. This is surely why the English *gentleman* – who is a “businessman” and not a “soldier” (the difference between Babur and The East India Company) – abroad always enjoyed a reputation for high standards of “justice and fair play”.

- Finally, by the time the number of royal writs had multiplied to over 400, it became obvious that laymen seeking Justice would need professional pleaders and legal scholars to advise them, and that there was money to be made in this. Hence the birth of legal scholarship and the legal profession, in the Inns of Court in the City of Westminster, very close to the royal courts, and hence familiar with every case and every decision. These Inns of Court were all ‘private corporations’.³¹ From these there emerged a professional community of pleaders, attorneys and students, from amongst whom judges were chosen. This was a legal community with ‘an interest in *perpetuating* a legal system which they had mastered during training in the Inns of Court.’ This is another reason for the continued growth of the Common Law through the ages. The dearth of good judges, which Henry II faced, soon disappeared.

Henry II did not receive a very healthy exchequer from Stephen: barely £22,000 a year. He

³¹ Professor Hogue notes that the histories of these Inns of Court “were not all fortunate”; many have disappeared. Now, only four remain: Gray’s Inn, Inner Temple, Lincoln’s Inn, and Middle Temple.

accomplished all this essentially because of *The Enterprise Of Law*. The royal courts charged substantial fees for invoking royal authority. Henry II, and many, many of his successors to the throne, did not pay a single penny to any Royal Judge! But since they were all engaged in the good business of government, which lies in the upholding of The Law, every Royal Judge, for centuries thereafter, got extremely rich; and so did the good king.

And Henry *competed* in the business of justice, best conducted through The Enterprise of Law. The barons for long resented the capacity of the Chancery to go on issuing new writs, as this deprived them of cases and fees in their own courts. Similarly, as the word “inns” implies, the Inns of Court were “hostels, clubs, chambers as well as schools of legal education” – and all of them were “private corporations”. The inventiveness of the Chancery clerks in issuing new writs was encouraged by the fact that each new writ brought in more litigation which meant not only more income for the legal community, from courts and judges to lawyers, but also more and more avenues of Justice for the English people, making them turn increasingly to the Common Law.

A good example is the writ of Trespass, which came about around the year 1252, by which action could be taken in cases of trespass against land, trespass against the person, and trespass against goods; the word trespass implying “by force and arms”, i.e., the misuse of force. Before this writ was framed and accepted, a man might be expected to act on his own behalf in defence of his body and property. Professor Hogue cites the Northumberland assize rolls of 1255, wherein there is mention of one Gilbert de Niddesdale, who met a hermit on the moors, “beat him and wounded him and left him half dead, and stole his garments and one penny and fled.” Gilbert was caught, but when the hermit demanded his penny back he was told to observe the custom of the land: to recover stolen property a man must behead the thief with his own hands. The records state that, determined to recover his penny, the hermit mustered the strength to get it by the custom of the country!

The action of Trespass, thus, provided every Englishman relief from rough justice and the necessity of defending one’s lands against usurpers: with one appeal, he could now invoke the *majesty of royal authority* – the “long arm of The Law” – on his side. Englishmen rushed to the courts with all kinds of actions of trespass – an example of how ‘the enterprise of law’ worked for the *consumer*.

THE VALUES UPHELD BY ENGLISH FEUDALISM

We in India must marvel at this tremendous achievement of feudal England, that in those times when men of the sword ruled, this nation could achieve the 'rule of law'; that too, based on a law that was not legislated or even written. Ultimately, it was this law that held their society together: each and every Englishman was bound by the law, as was their monarch and all his royal officials. Professor Hogue describes how the law worked for everyone rather beautifully:

Englishmen in the Middle Ages accepted, as they do now, the need for rules governing such recurring relations as those between buyer and seller, landlord and tenant, guardian and ward, creditor and debtor. Rules of common law touch a farmer's property rights in a crop of wheat planted in a rented field or the right to use a public roadway. Nor is the common law a stranger in the marketplace; the fishmonger as well as the banker may invoke its protection. The bond, then, between law and society is close and intimate; the history of the common law is matter-of-fact and rests ultimately on the

*relationships of people who have taken their differences before a court for settlement.*³²

Note that Professor Hogue is talking about the Middle Ages, when there was no Parliament. The City of Westminster probably did not exist. There was no legislation whatsoever. There were royal courts, writs, and judges who applied abstract legal principles and searched for the law by looking into past precedents as well as traditions and customs. If we were to search for the abiding values of those times, we would find them to be Liberty, Property and Justice. In the ranks and privileges of feudal society, Equality would have been nonsensical and was therefore never even dreamt of. These values, Liberty, Property and Justice, are supreme liberal values to this day.

It must also be emphasized that the *presumption* behind the actions of the royal governments of Henry II and his immediate descendants, which preferred to ‘find’ law rather than to ‘make’ it, was that the Anglo-Saxons were already in a state of ‘natural order’ and that the task of government is to find the rules by which this natural order is maintained; and thereafter, to uphold these rules. This is how the king worked to ‘preserve the peace’. Constitutionalism, as

³² Ibid.

will be discussed in the next chapter, arose out of the need to put the government under legal checks. The constitution governs the government; the common law governs the people. Thus, the King is Under the Law.

English people in the Middle Ages always looked at legislation with suspicion, as something that was an instrument of the King, used to interfere in their affairs; they saw the common law as their safeguard.

Finally, a word on how ‘serfdom’ really was under the Common Law. Today in India, we keep hearing of the ‘protection of the rights of tenant farmers’ as, say, with the Marxist government of West Bengal’s much trumpeted *Operation Barga*. What was the condition of tenant farmers in feudal England?

THE COMMON LAW AND TENANT FARMERS

When Henry II’s royal courts commenced activities, they restricted themselves to protecting just seisins or freeholds for one very good reason: the dearth of good judges. The royal courts simply did not possess the capacity to take on all the litigation in the land, in that complex web of feudal land tenures. For the leaseholder then, other than the baronial or manorial court, the only action possible was under Covenant, if

he had a signed and sealed agreement. But what if the landlord colludes with a third party to disturb the tenancy and the third party ejects the tenant? The leaseholder possesses no seisin, so cannot use Novel Disseisin. Nor has he any agreement with the third party, so cannot use Covenant. In 1235, a royal judge, William Raleigh, invented the writ *Quare ejecit infra terminum* by which the leaseholder could compel the buyer to appear before court who deprived him of his land before the expiry of the full term of the lease (hence *infra terminum*).

With this writ, lease arrangements became popular, especially as a means of raising capital while also avoiding ecclesiastical prohibitions against usury. A tenant at a manor which fetched, say, \$20 a year, and who urgently needed \$200 for some enterprise, could find a rich merchant who would agree to take the tenancy for 15 years in exchange for \$200. The merchant expects to recover \$300; but since there is no interest, the charge of usury cannot hold.

There was one hitch to the leasehold still: what if the one who disturbed the possession of the lease was not a buyer? The writ *Quare ejectit infra terminum* ran only against a buyer.

Soon a new writ appeared called Ejectment – *de ejectione firmæ* – quite like Trespass, by which action could be taken against *anyone* who disturbed possession of the full term of the lease by the leaseholder. Initially, the courts awarded damages but did not restore the possession of the leased land. But by the close of the fifteenth century even this had changed, and the courts were awarding both damages as well as ensuring recovery and repossession of the leased land. Professor Hogue says that “by the fifteenth century [English]men were saying that the termor (leaseholder – for a fixed ‘term’, hence ‘termor’) was ‘possessed’, while the freeholder had ‘seisin’.”

Thus, leaseholders were secure in their possessions too. The Justice of Private Property under the Common Law ensured that.

Finally, my reader must have seen quite clearly how this security in Property is the *single factor* explaining the ‘mystery of capital’ in England; that is, how England was the first country in the world to experience the industrial revolution, thereby moving ahead from feudalism to capitalism.

Very simple: Even a tenant could use his leasehold to raise capital if he needed it. The creditor was also

assured undisturbed use of his lease during his full term. This made it possible for those with capital to safely lend money (and avoid charges of usury); and, of course, it made it possible for ordinary tenants to raise substantial sums to try their hands at enterprise. And all this was achieved only because their Kings conducted the good business of government very well indeed.

Of course, the people demanded Justice of their monarch, and justice to them meant protection of their properties and liberties. They were also a fierce people, prepared to fight tyrants and unjust rulers. It is this courage, born out of righteousness, that made them stumble upon the best 'rules of the game'. Under the rules which Englishmen played by, the 'capital' in 'capitalism' happened fairly early. The East India Company was set up in 1600 with the grant of a legal Royal Charter, and it raised capital for its ventures. It also governed its servants and its territories under law, and was answerable to Parliament. India was under Mughal rule then, justice was arbitrary, and while there was plenty of commerce there were no legal property titles and hence no capitalism. This situation continues in socialist India, as the following quote from the Sixth Five Year Plan (1980-85) proves:

A systematic programme would be taken up for *compilation* / upgradation of land records.... In states where the *backlog is heavy*....³³

This, in essence, is the difference between the rule of law enjoyed by Englishmen eons ago and that suffered by the Indian people today. After 15 years of ‘voodoo liberalization’, it has become abundantly clear that property is the name of the game. Poor people own property in India: mustard fields close to our teeming cities have enormous value today – but those who have farmed them for generations often do not have clear titles to them. Their property is ‘dead capital’, in the words of Hernando de Soto, and lies outside the banking system. If India is to have good government, then property titles must be given the priority they deserve. We proceed to examine how capitalism arose in feudal England, and how the common law played its signal role again.

CAPITALISM & THE COMMON LAW

Between 1154 and 1307, the 150 odd years between the coronation of Henry II and the death of Edward I, England was a rapidly changing society. In 1154, land was held primarily for military purposes, and the

³³ Sixth Five Year Plan, Government of India, Planning Commission, para 9.100 (iii) p. 115. Emphases added. It may be mentioned that the Seventh Plan document also raises the same issue and repeats the same promise: see paras 2.64 to 2.78.

rents and revenues earned from these lands secured the military might of Feudalism. But by 1307, much had changed, and land was just another form of wealth, to be bought and sold, mortgaged and leased, and used as collateral. The Common Law kept pace with the rapidly changing nature of Property titles; changes that reflected the gradual emergence of Capitalism from beneath Feudalism – all because of Private Property rights, the only factor that explains the ‘mystery of capital’.

This period also saw the rise of the merchants and their importance in the overall scheme of things: they had scarcely mattered in the old order of Feudalism. In Chapter 5 there is an account of the institution of Lord Mayor of London and how a different kind of “body politic” – other than the sort in the ideas of John of Salisbury in the court of Henry II and men of that age – was emerging. It soon became customary for towns to purchase charters from the Crown for self-government. These ‘boroughs’ had their own courts where Property matters within the urban area were dealt with. In these towns, therefore, Property was for long something easily tradeable in the market, to be bought or sold or mortgaged or leased.

The towns were not only inhabited by English merchants; there were many, many important foreign

merchants as well. Lombard Street in the City of London, where banking began, is named after the area in Italy where these first bankers came from. Hansards came from Lübeck and other Hanseatic League cities. Merchants came from France, Holland and other parts. As far as the king was concerned, the foreign merchants who mattered most to him were the bankers, from whom he often borrowed large sums of money. It was therefore necessary for the king to also see to it that these bankers were secure in their loans in England. After all, these foreign bankers were taking a great risk by lending to the monarch, for “no writ runs against the king”, but surely the king, in Justice, should see to it that they are protected in their other commercial loans?

The writ of Debt was there from the time of Henry II. Because of the existence of this remedy, it had become customary to record all loans in writing and get these documents attested, so that evidence would exist if default occurred and the writ of Debt had to be used. It was seen that there was no reason to debar foreign bankers and merchants from this remedy. However, by the time of Edward I, that is, in barely 150 years, the remedies available to merchants and townsmen in securing their loans had been hugely strengthened. Indeed, the Statute of Merchants (1285) created a new tenure called “merchant statute”;

further, it was also declared that if the debtor fails to pay, then the creditor could “elect” to take over half his lands till the payment of the debt, and this too created a new tenure, called *elegit*. There were also provisions for taking over the debtor’s Property, and even putting the debtor in prison on a diet of bread and water. The Debtor’s Prison is an old institution under the Common Law.

Politics also played an important role. Barons under Simon de Montfort had revolted during the reign of Henry III, considered by many to be a “dupe of alien councilors”. Henry III had been led into a costly and fruitless campaign in distant Sicily by his foreign advisors – and when he turned to the English barons and prelates for money to conduct his government, they were determined to win important concessions. The barons pressed for an elected council out of their ranks to advise the king and have a say in the appointments of major royal officials. They believed this was as the only way to ensure good government. These ideas of the barons were incorporated into the Provisions of Oxford (1258), which Henry III had sworn to abide by. The reforming barons were breaking with the traditional medieval view of kingship and royal prerogative, which viewed the king as supreme in administration, but they could not succeed. Within a couple of years, dissension broke

out among the barons and many left Montfort. In 1261, the pope absolved Henry III from his obligation to maintain his oath to the Provisions of Oxford. Before civil war could break out, the matter was referred to the arbitration of the king of France, Louis IX, whose Award at Amiens (1264) was entirely on the side of the idea of medieval kingship, declaring the Provisions of Oxford to be null and void. This was a signal for civil war.

Montfort won the battle of Lewes (1264) where he took young prince Edward hostage. But the very next year, Edward, then just twenty-six, escaped, joined forces with Gilbert de Clare, Earl of Gloucester, and in the ensuing battle at Evesham (1265) Montfort was killed, putting an end to the idea of baronial control over royal prerogative.

After the death of Henry III, it was this very prince Edward who became Edward I of England. He believed in the medieval doctrine of kingship, wanted to exercise all his prerogatives, but was careful not to voice his opinions too strongly in that environment, preferring to be happy just exercising power. However, Edward too was interested in campaigns in distant lands, for which purpose he seized wool from merchants, imposed huge taxes on the clergy and so on... and in this way managed to ruffle feathers all

over the “body politic”. Edward had emerged victorious against Montfort. He was a typical feudal king of that age, who delighted in the most violent and strenuous physical activity – like joust, or mock battle. His anger is the stuff of legend: the dean of St. Paul’s died of fright in Edward’s presence! It goes to the immense credit of the feudal “body politic” then that they forced a brute like Edward to confirm the Magna Carta quite a number of times, and declare that no taxes would be imposed “without the common consent and for the common profit of the realm”. Professor Hogue calls Edward “a reluctant constitutionalist”, and that is indeed what he was. Sometimes he is also referred to as the “lawyer king”, but it should be borne in mind that it was pressure from all sides of severely antagonized “body politic” that forced his hand. Apart from reconfirming the Magna Carta several times, Edward was also forced to make major concessions to the demands for Justice from townsmen and merchants, and the clergy.

Although the City of London had for long had its Lord Mayor, the other towns and boroughs were not so important in the politics of the age. They may have purchased their charters of liberty, but they were never represented. That is, until Simon de Montfort, in rebellion, summoned a parliament in 1265, the period between the battle of Lewes and the battle of

Evesham, to which, for the first time, representatives of the towns, merchants, were summoned. Montfort was, of course, just trying to get as many possible interests on his side. So, when Edward faced wide hostility to his rule, he too had to reconcile the merchant community, who, after Montfort, were a legitimate part of the ‘body politic’ of the nation.

Edward I’s Statute of Acton Burnell (1283) and subsequent Statute of Merchants (1285) took major steps to ensure Justice to all merchants, including foreign merchants and bankers, in the security of their loans and properties and other business interests. As already mentioned, these statutes created two new kinds of land tenure, which secured creditors even further. Some misuse crept in when the Statute of Merchants was put into effect, so Edward limited “recognition” of lands under this statute to dealings between merchants and merchants, in a fixed number of towns, all growing commercial centres. These towns – Newcastle-upon-Tyne, York, Nottingham, Exeter, Bristol, Southampton, Lincoln, Northampton, Canterbury, Shrewsbury and Norwich – show that England was a rapidly growing centre of urban commerce. London was not the only urban area, although it may have played a dominant role. Indeed, the Lord Mayor of York also holds the title

‘lord’ without Royal Letters Patent: it is a title out of local custom and usage.

After this initial burst of urbanization, with the rapid growth of commerce, all made possible only because the common law on property and debt, capitalism developed quickly under the skin of feudalism. With security in land tenures of all kinds, and security in debts, England rapidly progressed to becoming the world’s first country to experience the “industrial revolution”. Thereafter, even newer industrial cities came up, like Manchester, Leeds, Sheffield and Birmingham, and feudalism faded away completely.

It must also be mentioned that throughout the Middle Ages, the royal courts treated merchants as a special community with their own customs and rules – the law merchant, or mercantile law. Mercantile law was developed independently by the merchants themselves, and applied and improved upon among themselves, voluntarily. This is the reason why capitalism successfully took off in the cities of Europe: because the best rules were allowed to evolve naturally, without a legislature or a king attempting to enforce his own rules (which would definitely have been worse rules, since such an authority would be totally ignorant of the many different conditions under which commercial

exchanges occur). Thus, the law merchant was also a creature of the spontaneous forces of the natural order – hence its success.

It goes to the credit of one great English judge, Lord Mansfield, Chief Justice of the King's Bench between 1756 to 1788, who succeeded in incorporating the law merchant within the common law; or in other words, in making what had been a *special* customary law fit into the *general* rules within a larger system. Mansfield took a deep interest in commerce and whenever a case touched commercial matters, he secured in his court the participation of jurors who were well versed in every detail of the commercial transactions involved. Thus, through his efforts, the common law came to bear on matters like business transactions, shipping and insurance. The period 1756-1788, during which Mansfield worked was a time of the flowering of British trade, during which America was lost and India was gained, during which Adam Smith published *The Wealth of Nations* and Gibbon came out with his *Rise and Fall of the Roman Empire*. The common law, which had adapted to capitalism in the thirteenth century, did so again.

Mansfield's approach to law was completely in accord with the idea that the law was to be "found".

It was not to be “made”.³⁴ It is ironic that it is precisely during this period that Mansfield was “finding” law, the idea of “parliamentary sovereignty” gained currency, especially through the influential works of Blackstone. Soon, a flood of legislation would appear in Britain. And Law would be “made”. And Englishmen would forget all about the glorious word “Liberty” in their quest for socialist equality and other pointless pursuits. In America too, the influence of Blackstone would dominate the legal fraternity: Abraham Lincoln always had a copy of Blackstone’s *Commentaries* under his pillow. All this excessive and inflated legislation is best called “democratic despotism”, completely against the common law. The common law made capitalism possible, but modern capitalism in the western world has left the common law behind, preferring to be ruled by the diktats of legislatures.

Let us now turn to a great moment in history, when Liberty was the Only Word: the signing of the “Charter of Liberties” in 1215, a document later ages went on to call the Magna Carta. It is a testament to the courage of the English, and to their formidable ‘legal spirit’. In those harsh feudal times, very few

³⁴ Today, many new areas are emerging, like the Internet age with ‘convergence’ of all kinds of communication technologies. In such areas, it would be preferable to use Mansfield’s approach of *finding* The Law using knowledgeable jurors rather than expecting some perfect Legislation from The State. Severe flaws have already been found in the IT Act.

people were lettered, and there were no books and pamphlets for popular education on political issues. The ability of the English to found lasting institutions even in such early times deserves to be admired. But before that, the English experience must be carefully studied.

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CHAPTER FOUR

CHARTER OF LIBERTIES: CONSTITUTIONALISM AND THE MAGNA CARTA

The original idea behind constitutions is that of limiting government and of requiring those who govern to conform to laws and rules.

K. C. WHEARE, *Modern Constitutions*

The good work of Henry II allowed his successor Richard the luxury of remaining an “absent king”. Richard was always away, on Crusades and other great battles, but “the Lionheart” was still much liked and admired, and rebellion was never considered. Further, the royal courts were continuing their good work, the kingdom was in internal peace and order – and Richard did not have much to worry.

Things came to a head under the next monarch, John, an “irresponsible absolutist” in the words of Professor Hogue. While Richard was trusted and even admired by his barons, John became a much hated figure. He was strongly suspected of the murder of his nephew, Arthur of Brittany. He also mistreated hostages: on one occasion he hanged the sons of twenty-eight Welsh chieftains. His Justice was so shoddy that once, a baron by the name of Robert fitzWalter marched to his court

with 500 armed knights to seek justice! This same Robert fitzWalter was to lead the baronial forces that made John sign the Great Charter.

John failed on every other front as well. He provoked Philip II of France into war, and in the process lost all of Normandy, Maine, Brittany and Anjou. When he tried to regain Normandy, his forces were routed, earning him the nickname “Softsword”. He quarreled with the pope – but ended up capitulating in disgrace. So when he turned to his English subjects to raise money, the barons revolted. They rounded up their forces and marched to London, the principal walled town of England then, where they were warmly welcomed. Then, along with the Londoners, they accosted their king and forced him to sign their charter at Runnymede. In a subsequent essay we will examine the institution of Lord Mayor of London and what a critical role it has played in Britain’s constitutional development. But in this essay we will confine ourselves to looking at how things were at the time when the great charter was signed. This historic occasion is beautifully described in a passage from Jerome K Jerome’s classic *Three Men in a Boat*. Runnymede lies on the river Thames between Staines and Windsor. Jerome & Co. have just passed Staines and are proceeding to Windsor when the author sees Runnymede and this prompts him to reflect on that glorious day in 1215 when Englishmen won their Liberty. It must be mentioned that Jerome says he has

written this “especially for inclusion in schools”. Since no school curriculum has ever contained this passage, I hope I am now doing something that would bring great joy to the spirit of Jerome, for he truly was a “jolly good fellow”:

The sun had got more powerful by the time we had finished breakfast, and the wind had dropped, and it was as lovely a morning as one could desire. Little was in sight to remind us of the nineteenth century; and, as we looked out upon the river in the morning sunlight, we could almost fancy that the centuries between us and that ever-to-be-famous June morning of 1215 had been drawn aside, and that we, English yeoman’s sons in homespun cloth, with dirk³⁵ at belt, were waiting there to witness the writing of that stupendous page in history, the meaning whereof was to be translated to the common people some four hundred and odd years later by one, Oliver Cromwell³⁶, who had deeply studied it.

It is a fine summer morning – sunny, soft and still. But through the air there runs the thrill of coming stir. King John has slept at Duncroft Hall, and all the day before the little town of Staines has echoed to the clang of armed men, and the clatter

³⁵ A dagger.

³⁶ After the execution of Charles I, Oliver Cromwell ruled over England as “Lord Protector of the Commonwealth”. He was a Puritan. He ensured that which ever parliament he could summon then did not pass Legislations affecting the traditional Liberties of the English people. If they tried, he refused to sign them; sometimes he even threw the parliament out!

of great horses over its rough stones, and the shouts of captains, and the grim oaths and surly jests of bearded bowmen, billmen, pikemen, and strange-speaking foreign spearmen.

Gay-cloaked companies of knights and squires have ridden in, all travel stained and dusty. And all the evening long in the timid towns – men's doors have had to be quick opened to let in rough groups of soldiers, for whom there must be found both board and lodging, and the best of both, or woe betide the house and all within; for the sword is the judge and jury, plaintiff and executioner, in these tempestuous times, and pays for what it takes by sparing those from whom it takes it, if it pleases it to do so.

Round the camp-fire in the market-place gather still more of the Baron's troops, and eat and drink deep, and bellow forth roistering drinking songs, and gamble and quarrel as the evening grows and deepens into night. The firelight sheds quaint shadows on their piled-up arms and on their uncouth forms. The children of the town steal around to watch them, wondering; and brawny country wenches, laughing, draw near to bandy ale-house jest and jibe with the swaggering troopers so unlike the village swains, who, now despised, stand apart behind, with vacant grins upon their broad, peering faces. And out from the fields around, glitter the faint lights of more distant

camps, as here some great lord's followers lie mustered, and there false John's mercenaries crouching like wolves without the town.

And so, with sentinel in each dark street, and twinkling watch-fires on each height around, the night has worn away, and over the fair valley of old Thames has broken the morning of the great day that is to close so big with the fate of ages yet unborn.

Ever since grey dawn, in the lower of the two islands, just above where we are standing, there has been great clamour, and the sound of many workmen. The great pavilion brought there yester eve is being raised, and carpenters are busy nailing tiers of seats, while 'prentices from London are there with many coloured stuffs and silks and cloth of gold and silver.

And now, lo! Down upon the road that winds along the river's bank from Staines there comes towards us, laughing and talking together in deep guttural bass, half a score of stalwart halberdmen – Baron's men, these – and halt at a hundred or so yards above us, on the other bank, and lean upon their arms, and wait.

And so, from hour to hour, march up along the road ever fresh groups and bands of armed men, their casques and breastplates flashing back along the long low lines of morning sunlight, until, as far as eye can reach, the way seems thick with

glittering steel and prancing steeds. And shouting horsemen are galloping from group to group, and little banners are fluttering lazily in the warm breeze, and every now and then there is a deeper stir as the ranks make way on either side, and some great Baron on his war-horse, with his guard of squires around him, passes along to take his station at the head of his serfs and vassals.

And up the slope of Cooper's Hill, just opposite, are gathered the wondering rustics and curious townsfolk, who have run from Staines, and none are quite sure what the bustle is about, but each one has a different version of the great event that they have come to see; and some say that much good to all the people will come from this day's work; but the old men shake their heads, for they have heard such tales before.

And all along the river down to Staines, is dotted with small craft and boats and tiny coracles – which last are growing out of favour now, and are used only by the poorer folk. Over the rapids, where in the after years trim Bell Wier lock will stand, they have been forced or dragged by their sturdy rowers, and now are crowding up as near as they dare to the great covered barges, which lie in readiness to bear King John to where the fateful Charter waits his signing.

It is noon, and we and all the people have been waiting patient for many an hour, and the

rumour has run round that slippery King John has again escaped from the Baron's grasp, and has stolen away from Duncroft Hall with his mercenaries at his heels, and will soon be doing other work than signing charters for his people's liberty.

Not so! This time the grip upon him has been one of iron, and he has slid and wriggled in vain. Far down the road a little cloud of dust has risen, and draws nearer and grows larger, and the pattering of many hoofs grow louder, and in and out between the scattered groups of drawn-up men, there pushes on its way a brilliant cavalcade of gay-dressed lords and knights. And front and rear, and either flank, there ride the yeomen of the Barons, and in the midst King John.

He rides to where the barges lie in readiness, and the great Barons step forth from their ranks to meet him. He greets them with a smile and a laugh, and pleasant honeyed words, as though it were some feast in his honour to which he had been invited. But as he rises to dismount, he casts one hurried glance from his own French mercenaries drawn up in the rear to the grim ranks of the Baron's men that hem him in.

Is it too late? One fierce blow at the unsuspecting horseman at his side, one cry to his French troops, one desperate charge upon the unready lines before him, and these rebellious

Barons might rue the day they dared to thwart his plans! A bolder hand might have turned the game even at this point. Had it been a Richard there! The cup of liberty might have been dashed from England's lips, and the taste of freedom held back for a hundred years.

But the heart of King John sinks before the stern faces of the English fighting men, and the arm of King John drops back onto his rein, and he dismounts and takes his seat in the foremost barge. And the Barons follow in, with each mailed hand upon the sword-hilt, and the word is given to let go.

Slowly the heavy, bright-decked barges leave the shore of Runnymede. Slowly against the swift current they work their ponderous way, till, with a low grumble, they grate against the bank of the little island that from this day will bear the name of Magna Charta Island. And King John has stepped upon the shore, and we wait in breathless silence till a great shout cleaves the air and the great cornerstone in England's temple of liberty has, now we know, been firmly laid.

The emphasized portions of this text, which must be the product of a fertile imagination tempered with study – like Shakespeare – for there are no eye witnesses to the event available, illustrate important facets of Feudalism:

- First, that armed men forced themselves on townsfolk demanding board and lodging. This was feudalism, an age of armed might, with nothing to do with the justice of trade. The term “uncouth forms” is used to describe the soldiers. It is noteworthy that the rule of law emerged in such times.
- The “village swains” looked stupid in front of these armed men: such weaponry could never be afforded by a peasant.
- King John had only French mercenaries around him.
- The “wondering rustics and the curious townsfolk” gathered around to witness these events without a clue as to what was happening: this was feudalism, when townspeople did not matter; but do note that Londoners had made their presence felt, decking up the place with expensive cloths and flashy glitter only they could afford. The then Lord Mayor of London, William Hardel, was among the barons present.
- The long passage describing a scene of “glittering steel and prancing steeds” depicts the dominant militarism in feudal times very accurately.

Certain provisions of the Magna Carta are worth recounting:

- London and all the other towns and boroughs obtained the liberty to trade freely by land and sea, and to maintain their ancient liberties and customs. These liberties played a crucial role in the furtherance of England's commercial culture and the development of a 'body politic' within feudal covers where local government was bourgeois.
- Englishmen had the right to brew their own ale – and this explains the ubiquitous English 'pub'. These pubs were where people met and talked and drank in an age before tea and coffee were known, and this 'public culture' must have played an important role in the open and public nature of English politics.
- The barons retained the right to execute the terms of the Charter; a committee of twenty-five barons was to lead the entire realm into action against the king if he failed to keep his promises: thus, *they had the right to revolt against an unjust ruler*. William Hardel, Lord Mayor of London then, was on this committee of barons.

- Chapter 12 of the Charter declares: “No scutage or aid [taxes] shall be imposed in our kingdom except by the common council of the kingdom” – which became the rallying cry of democracy: “No taxation without representation”.
- Chapter 39 of the original Charter states: “No free man shall be taken or imprisoned or dispossessed or outlawed or banished, or in any way destroyed, nor will we go upon him, nor send upon him, except by the legal judgment of his peers or by the law of the land.” This is a powerful endorsement of what today we call ‘the rule of law’ or ‘due process’. There were no ‘human rights’ but there was the royal writ of *habeas corpus*.
- Chapter 39 of the charter mentions the term *lex terrae*, or “law of the land”, which can be taken to mean the common law, especially the land laws and the laws of succession. That is, property existed before the law. It is because there is property that there is the law.

Thus, we see the purpose of a constitution: to place the King under the Law. After signing the Magna Carta, King John (and his successors) could no longer be ‘irresponsible absolutists’: on the contrary, they found themselves bound by the Law. Professor Hogue says: “From the beginning the Charter was an expression of

the law which the king and his judges and other officials were *not permitted to ignore.*”

Whenever monarchs would tend to act willfully thereafter, Englishmen would call upon them to reconfirm the Magna Carta, as for example Edward I had to many a time; ultimately, the charter was confirmed over thirty times during the Middle Ages. Each confirmation was an assertion of the *Principle of the Supremacy of The Law*: “The King is under God and The Law”. *Lex, Rex*. The rule of law means that every arm of the government conducts itself as per the law. As was recounted earlier: it is not that Englishmen then lived lawless lives – not so! They lived law-abiding lives under the common law. Capriciousness marked the behaviour of their monarchs and his officials, and the entire history of British constitutional development is about getting the Crown under control. Of course, now, with Blackstone’s doctrine of “sovereignty of parliament”, it is parliament that is in need of being checked: “democratic despotism” is even worse than the “irresponsible absolutism” exhibited by King John. We will turn to the subject of modern democracy and its deviation from the ancient principles of the rule of law in a later essay. For now, let us remain with the Magna Carta, and consider it as the best example of a ‘limiting constitution’ – one that limits the government – that any nation ever had.

WHEN THE GOVERNMENT IS BOUND BY A LAW THEY DID NOT LEGISLATE

There are two important points about the rule of law in feudal England that need to be noted at this stage: the first is that the Anglo-Saxons successfully managed to maintain their ancient traditions, customs, properties and liberties from any legislative incursion, agreeing to be bound by a system of law that was largely unwritten, and which consisted in ‘finding’ the law. This was the system of common law, and property lay at the heart of it. Debts and contracts were protected, and there was relief in torts. This common law system can therefore be said to have systematized the ‘rules of just conduct’ as well as the patchwork of property rights upon which a ‘natural order’ was based. The Anglo-Saxons remained in their ‘natural order’. This natural and pre-existing order was *presumed* by the government and then protected by it. The common law succeeded because it was ‘right reason, consonant with nature’.

The second point worth noting is that, after ensuring that their natural rhythms were left undisturbed by their new Norman kings, the Anglo-Saxons then proceeded to place all future government under legal restraints. The Magna Carta set a precedent that was invoked over 30 times during the Middle Ages. What this means is that from 1215 on, their kings were all ‘bound by a law they did not legislate’. At one stroke, all arbitrariness in

kingship was removed. Under these two legal conditions, a strong civil society is bound to emerge, powered by the emerging forces of capitalism. The reason for this is simple: under these two legal conditions, every Englishman was secure in his rights and liberties, knowing full well that none, including the authorities, could justly interfere in his business. Each could plan out his individual affairs secure in the knowledge that if any injustice was meted out to him by any other, including the authorities, he was assured of speedy redress. He could safely proceed to raise capital with his property and 'play the game'. All this was achieved without much scholarship: there were no economists, no lawyers, and no political scientists. Almost everyone was illiterate. The Anglo-Saxons, in their own way, were 'noble savages'.

While it is important that government be constituted to protect and preserve the natural order, it is more important that the government also be made to obey the laws of justice. In England, at that early date, both these objectives were achieved. They had good law, natural order, property, liberty and justice, and constitutional government to boot. As Hernando de Soto has admirably demonstrated, the success of modern-day USA was also because of these very same legal conditions, imported into the USA from common law Britain. Australia, Canada and New Zealand also progressed towards modern capitalism because of

similar legal conditions. The first white settlers in all these nations were poor migrants, looking for a better life. The importance of the ‘rules of the game’ cannot be underestimated. Where the rules are good, the people inevitably prosper. Where the rules are bad, none can play the game well.

FREE CITIES AND CIVIL GOVERNMENT

Civil society, civilization, civility – all these have their root in cities. The English people also achieved institutions of local self-government for their cities and towns, led by London. In these self-governing towns and cities, the townspeople administered their own laws (the law merchant), elected their own mayors and sheriffs, and conducted trade and business all equally bound by the ‘rules of just conduct’. This early emergence of ‘civil government’ is an important English achievement, with London leading the way. Jerome’s description of the signing of the Magna Carta mentions the Londoners of that day:

The great pavilion brought there yester eve is being raised, and carpenters are busy nailing tiers of seats, while ‘prentices from London are there with many coloured stuffs and silks and cloth of gold and silver.

The quote itself shows that London was where the wealth was. Londoners dazzled the feudal lords not with military might, which they did not possess, but with their wealth. As they achieved their constitutional liberties, and established sound institutions of local self-government, there emerged in the feudal 'body politic' a new participant: the wealthy urban merchant, who was also possessed of the liberty to independently organize his civic affairs. This very 'bourgeois government', which I would prefer to call 'civil government', at the level of the city or town, had far reaching implications for the development of capitalism, which was soon breaking through from under feudal covers. We have already noted that when the Magna Carta was signed, an important role was played by the Londoners in harbouring the rebel barons; and that the then Lord Mayor of the city, William Hardel, was on the committee of 25 barons empowered to raise the kingdom in revolt if the king failed to carry out his word. It has also been noted that the title 'lord' was not given by the king, but by the people, and is a title that comes from long usage and custom. Till today the Lord Mayor of the ancient City of London (the one square mile) is ranked as an Earl, second only to the monarch. Till today, the King of England cannot march his army through the streets of the ancient City of London without the permission of the Lord Mayor. Since this book seeks to examine 'civil government', the civic character of this ancient institution must be investigated.

From this investigation, which is the subject of the next essay, the reader can derive ideas on politics and civil society in a market order that are in stark contrast to how cities are governed in socialist India.

A visitor to the huge urban agglomeration that London is today will scarcely notice the boundaries of the ancient city – though it has its own, separate police force. He will see the palaces of Westminster where Parliament meets – but back in those days the City of Westminster did not exist. When it finally came up, outside the ancient city, London had an identity and geography distinct from that of Westminster.

Since we in India ape the ‘Westminster-model of democracy’ but have no institutions of urban local self-government worth speaking of, it seems to me that we have copied a system without its essence – which is Liberty. The next essay outlines a brief history of the institution of Lord Mayor of London. We can thereafter reflect on another important liberal ideal – that local government must play a very important role in any overall system of governance. We have already seen how far India’s socialist state is from the high ideals set by liberalism; now, its excessive centralization must also be seen to be totally illiberal – and completely un-English as well.

In modern terminology, the idea that local government must matter most in any scheme of good governance is known as the ‘principle of subsidiarity’. In essence, it means that the role of the government is subsidiary to the role of the people as free, individual citizens. Thus, if anything is required for that society, it should first be up to the citizens to be able to provide it, either as businessmen or as voluntary agents. Similarly, if any dispute occurs, the affected people and their neighbours and friends should be the first called upon to solve it. Only thereafter, if there are services that free citizens cannot supply, should these tasks fall upon the government – and that too, upon the local government, that which is closest to the people. Whatever local government cannot adequately perform should be made the task of higher tiers of government, thereby ensuring a very small role for the central authority.

Although the ‘principle of subsidiarity’ was unknown then, it is precisely this that the Anglo-Saxons practiced. The only reason they stumbled upon such a system of political rule is that they placed very high value upon both Liberty as well as Justice as political ideals and, more importantly, they saw the government as something totally separate from themselves. They saw it as coercive and intrusive, and they resented its taxation. It is only under feudal conditions that the separateness between governors and governed stands out most starkly, for all to clearly see. In the modern age, with

democracy and universal adult suffrage, the distinction between government and people gets increasingly blurred – as by the popular myth that ‘government is of, for and by the people’. Professor Hans-Hermann Hoppe, in his excellent work *Democracy: The God That Failed* has dwelt long on this theme: that under a rule of feudal monarchs the people clearly see their separateness, and therefore claim their liberties, demand protection of their properties, and resent taxation. In modern democracies the contrary idea is ever-present, that anyone can switch from being a citizen to a governor by popular choice. This ‘popular participation’ is a kind of opium that dulls the minds of the people. They fail to see why it is in their interest that the government should be circumscribed to a small but basic role, as an organization separate from society but crucial to its success. Under feudalism, there were ‘royal families’ and only their members could govern. They were easily viewed as distinct, separate people.

The Anglo-Saxons were not anarchists. They wanted a monarch, but they wanted Justice and Liberty as well. The Norman conqueror had killed their native King Harold in battle, and he was their new king by virtue of his military prowess. This was the ethic of feudalism. But the Normans were alien in their ways, and even their language was different. Such events have taken place in the histories of many a people, including the Indian people, particularly in the north, but only in

England has the response been so splendid and courageous.

In the ultimate analysis, it meant that their sovereign was forced to raise his sword against their own enemies, internal as well as external, while allowing their 'natural order' to flourish. The sovereign was also 'bound by a law he did not legislate'. The English people managed to put the feudal lord's military skills to good use in the overall societal division of labour. They made their government into a monopolist on the use of just force and used that force towards just ends – thereby ensuring for themselves lives lived in freedom and justice.

It was the same subsidiarity at work in the English system of local self-government, especially that for urban areas. We can draw a picture of the people of London in the 12th century, with their own Lord Mayor and Sheriffs, their own financially viable (and honest) civic corporation, and their own 'worshipful companies' of liveried tradesmen. They ran their own businesses freely and managed their own civic affairs independently of the government, which was the king. The role of the king was subsidiary to the role of the people. This is the birth of 'civil government'. And that is the subject matter of the next essay.

CHAPTER FIVE
ONE SQUARE MILE OF LIBERTY
A History Of The Institution Of Lord Mayor Of
The Ancient City Of London
and the Crucial Role it has played in the Evolution
of the Westminster model of Democracy

*... from the errors of other nations, let us learn
wisdom, and lay hold of the present opportunity – To
begin government at the right end.*

THOMAS PAINE, *Common Sense*

William the Conqueror took England by the sword in 1066 AD, killing the native King Harold in the Battle of Hastings. When he arrived, the City of London was already an impressive sight, with more than 100 churches raising towers and spires into the sky, 13 great religious houses, hospitals, convents and priories, and many great houses of the wealthy merchants, who traded wool and hides for wine, silks and velvet. The population was about 40,000, and it was a cosmopolitan population, including many Frenchmen, Italians and Jews. The Conqueror noted the “restlessness of the vast and fierce populace” and granted the City its first Royal Charter in 1067 – the beginning of constitutional self-rule.

Initially, the City’s official ruler was a royal servant, and the sheriffs were royal law officers and tax gatherers. For the mass of citizens there was the ‘Folkmoot’, a public meeting-house that dated back to Anglo-Saxon times. Things began to change towards

the end of Henry II's reign, when Londoners began to form themselves into a "commune" – a sworn association of citizens. This had already happened in several continental towns, beginning with Rouen. In London, around the port of Dowgate, there was a flourishing community of merchants from Rouen who called their leader "maior". There is no exact date of the formation of the London commune and its first "maior" but official recognition was granted in 1191, and tradition has it that Henry FitzAilwyn was the first Lord Mayor, who took office in 1189.³⁷ From the very beginning we see the Lord Mayor of London coming to the financial aid of the monarch, for one of Henry FitzAilwyn's first actions was to make a collection for the ransom of Richard the Lionheart, who was captured on his way back from the Third Crusade. From then on, every monarch realized that the wealth of the merchants of the City was not to be taken lightly, and that the Lord Mayor could be an important ally. After all, the monarch knew fully well that he did not create wealth; the merchants did.

Londoners obtained the right to elect their own Sheriffs in 1199, but the right to elect their own Mayor came in King John's reign. This "irresponsible absolutist" was facing a rebellion from the barons of England and he attempted to woo Londoners on to his side by granting them a charter to elect their mayor in May 1215. This concession was not enough to win over the City, where many supported the rebel barons and hated King John. They opened the gates of the City and let the barons in. A month later, having taken refuge in Windsor Castle, King John was forced to meet the barons, backed by Londoners, on the open fields of Runnymede and seal the Magna Carta. William Hardel, Lord Mayor of London then, was on the committee of 25 barons appointed to ensure that the monarch carried out the charter in full. Clause 13 of the Magna Carta specifically deals with London, stating "That the City of

³⁷ It is interesting to note that these first communes were bourgeois institutions, belonging rightly to 'civil government'. When the word is borrowed by Communists, the commune becomes anti-market and anti-bourgeois, a component of 'party government'.

London shall have all its ancient liberties by land as well as water” and that “all other cities, boroughs, towns and ports shall have all their liberties and free customs”. Thus we see the birth of the Third Estate – the Commons – comprising the merchants of the cities and towns, led by London, who had extracted from their monarch constitutional protection for their ancient liberties as well as the right to self-government. This marks the constitutional beginnings of ‘civil government’.

How was the Lord Mayor of London elected? Well, eligibility to the office required that the candidate should have served at least one term as Sheriff – and the City always had two Sheriffs. If someone was seen to have done a good job as Sheriff, he stood a chance of becoming Lord Mayor. The citizens organized themselves into “Livery Companies”, each representing a trade – like the Fishmongers, Grocers, Fruiterers, Vinters, Gardeners and so on. These met in Guildhall, their own parliament, and it is there that elections were conducted. The public meeting place dated back to the traditional Anglo-Saxon ‘folk moot’ combining with the Continental idea of a ‘commune’ of sworn citizens. The word ‘parliament’ came from the French language of the Norman conquerors, meaning a ‘speaking place’, with its root in the French word *parlez*, meaning ‘to speak’, as in ‘parlour’. Guildhall, then, was the City’s own parliament, disparagingly referred to as ‘a parliament of shopkeepers’ by latter-day socialists. But it was a parliament nonetheless. And although there were elections, this was not ‘democracy’, for the study and admiration of Classical Greece had scarcely begun. The City was run by an oligarchy, with the wealthiest merchants and the wealthiest livery companies calling the shots. It could be called a plutocracy; but I would still prefer to see these developments as the rise of ‘civil government’ based on what we call the ‘principle of subsidiarity’ today.

The history of the relations between monarchs and the City for the next few hundred years shows up many episodes when the King

would interfere in the City's affairs; but each and every time, once relations normalized, the City would regain its liberty and protect it. Monarchs would interfere for a variety of reasons, ranging from misgovernance to the need to quell revolt as, for example, when Simon de Monfort, with a strong band of London militia, took on the King's forces at the Battle of Lewes in 1264. The royalists routed the rebels but it is interesting that at the public reconciliation between the King and the barons in St. Paul's, the then Lord Mayor of London, Thomas FitzThomas, addressed the King thus: "My Lord, so long as you are willing to be to us a good king and lord we will be faithful to you and true." Secure in their constitutional position, the wealthy merchants of the City of London demanded fidelity of their monarch as a condition for loyalty. The Commons was not to be taken for granted.

THE WEALTH OF LORD MAYORS

An important reason why the kings of England had to respect the Lord Mayor of London and seek him out as an ally was that these men were extremely rich, while the King, whose only comparative advantage lay in war, very often wasn't. Then, the King very often did not have money: for example, on February 29, 1286, King Edward had a balance of £2 8s. 1d.; and again on July 16, 1289, Edward had only £2 13s. 8d in his treasury.

Almost every early Lord Mayor of London lent large sums of money to the Crown, and one, William Joynier, was financially ruined by the enormous debts owed to him by the King – so much so that he himself ended up in a debtor's prison! Lord Mayors not only loaned money to the Crown, they even paid the salaries of select royal servants. Andrew Buckerel, while Lord Mayor of London, paid the expenses of the Coronation of Queen Eleanor when she married Henry III in 1236. Lord Mayors also held high office under the King, serving as Royal Chamberlain and Keeper

of the Exchange in charge of the Royal Mint. Their financial expertise made them invaluable to the conduct of government.

There is a simple reason why the richest merchants of London had to go on, for over 800 years, volunteering to undertake this important civic responsibility: because feudalism demanded all this pomp and pageantry. They could certainly not impress the King with military might³⁸; but they could certainly startle him with their Wealth. Hence the lavish banquets, all the finery, the gold and glitter, the fabulous Lord Mayor's Barge to take him to Parliament by river, the great annual Lord Mayor's Banquet, which still continues, whose turtle soup was famous till the environmentalists, I suspect, stepped in. The only desire of these merchants was just *laissez faire*: leave us well alone. The motto of the ancient City is *Domine Dirige Nos*, which means "The Lord Guide Us" (not that the government, or the king, or any planner, should guide us.)

One particular Lord Mayor of that era has gone down in history and legend – Richard "Dick" Whittington, who first became Lord Mayor as a royal nominee in 1397, but was subsequently re-elected twice in 1406 and 1419, such was his popularity. His career reflects a feature that is seen throughout the history of the mayoralty – that most of them started off poor, being younger sons who would not inherit their father's estate and thus had to make their way in the world by pursuing business in the City. Indeed, William Sevenoake, who followed Whittington to the mayoralty, was found as a baby in the streets. In the case of Whittington, the legends of his dire poverty are probably untrue, as his father was a wealthy knight.

³⁸ One Lord Mayor died falling off his ceremonial horse; another had to have 2 servants holding him while he rode his ceremonial mount. The Fishmonger's Hall still displays a dagger used by one of their forebears who leapt off his mount, dagger drawn, and fatally stabbed one of the King's enemies. This is the only known instance of a Lord Mayor displaying skills required on the battle-field.

There is another feature in the career of Dick Whittington that characterizes the mayoralty throughout its fascinating history – that these wealthy Lord Mayors bequeathed a great deal of their fortune to charity and also gifted their city many public works which were useful to the citizenry. Whittington built almshouses for the poor, a college for secular priests, and Guildhall till today has a paved floor and glazed windows with his name on them that are his bequest. He gave libraries to Guildhall and Greyfairs. He also built a public toilet known as Whittington’s longhouse in Vintry Ward which had two long rows, each with 64 seats, one for men and the other for women, built over a gully which flushed into the Thames with every tide. Whittington’s longhouse was in use till the 17th century.

Another important feature of the mayoralty was that it was never ever an office of profit. The expenses of the office always far exceeded the incomes derived from it and many refused it, for fear of being unable to bear the financial burden. Usually those who refused were fined, but occasionally some were imprisoned and forced to hold office! Indeed, nominating unwilling persons as mayor or sheriff became a useful means of raising money for the City, because of the huge fines that could be collected. When Mansion House, which now houses the mayoralty, was built, many quipped that it was “built for those who wanted to be Lord Mayor out of the pockets of those who did not!” The greatest expense was on entertainment, for the Lord Mayor was expected to keep an open house and offer the most lavish hospitality. A year of magnificent living was enough for even the richest man, and that is why most mayors have served only single terms, and the term in office has always been very short – just a year. It is also on record that when men would hesitate to take office, their wives would egg them on, for they coveted the title of ‘lady’. As Chaucer put it:

*They had the capital and revenue,
Besides their wives declared it was their due,*

*And if they did not think so, then they aught,
To be called 'madam' is a glorious thought,
And so is going to church and being seen
Having your mantle carried like a queen.*

An added problem was that, while serving as Lord Mayor, it was impossible to “mind one’s business” for the duties of the office were onerous and time-consuming. As first citizen, the preservation of peace and the maintenance of law and order in the City was his responsibility. He had to supervise the work of all elected officials. He was also chief magistrate and judge, dealing not only with law-breakers but also the most complicated commercial cases. But if a wealthy man gave his time and his money to public affairs even for just a year, the non-monetary rewards were considerable. The Lord Mayor ranked as an earl “as well as in the King’s presence as elsewhere”. In the City he had right of precedence over all save the King. From the reign of Edward IV many were knighted. But as history shows, they were never royal lackeys. The proof of this lies in the fact that the title Lord Mayor was never granted by royal letters patent. It is a title enjoyed by virtue of its long usage. The citizens gave their mayor the title “Lord”.

THE TUDOR PERIOD AND AFTER

The Tudor period marks the greatest growth of the City of London and the establishment of stable relations between monarchs and the City. The institution of Lord Mayor was now firmly established. And it was a great and grand institution. Contemporary accounts state that there was no public officer in the whole of Europe grander than that of the Lord Mayor of London. It was also said of the Londoners that they would have no king other than their mayor. The extraordinary wealth of the mayors was the stuff of legend. For example, when Bartholomew Rede was Lord Mayor in

1502, an Italian merchant attended one of his lavish banquets and offered him a precious stone for 1000 marks and, while making the offer, commented that the stone was beyond the purse of the King. Rede immediately bought the stone, had it ground to dust and drank it with his wine, telling the Italian, “Speak honourably of the King of England, for thou hast now seen one of his subjects drink 1000 marks in a draft.”

Valerie Hope, whose *My Lord Mayor* (London: Weidenfeld & Nicolson, 1989) is my principal source, says this about these great mayors:

Their active promotion of trade and exploration and their spirit of adventure in these matters made them instrumental in the founding of the British Empire. Through their legacies they made a huge contribution to the care of the poor and the sick and with the founding of schools they influenced the development of education all over the country. They built chapels and churches. They provided for road and bridge repairs, for the provision of water, for the cleansing of ditches. They founded hospitals and almshouses.

History bears this out. Rowland Heyward, Lord Mayor in 1598, chaired the meeting held to discuss the formation of the East India Company. Sir John Swinnerton, Lord Mayor in 1612, was one of the founder members of the East India Company in 1599, and the Company's offices were initially located in the house of Christopher Clitherow, Lord Mayor in 1635. Most Lord Mayors during the days of the Empire were on the boards of firms like the East India Company, the Muscovy Company, the Levant Company, the Merchant Adventurers, and all the various other firms that had opened to trade with the Far East, the Middle East and the new colonies of America. The Virginia Company, for example, could only succeed because a Lord Mayor, Sir Humphrey Weld, ventured seven ships. We have already encountered the

charitable works of Dick Whittington and he set an example that every Lord Mayor would subsequently follow: it became customary for them to leave in their wills one-third to charity. On their role in promoting education, three examples stand out: one, the expression “The Three R’s” was coined by a Lord Mayor of London, Sir William Curtis; two, the case of Hugh Clopton, Lord Mayor in 1491, who hailed from Stratford-upon-Avon, and left behind a large sum of money for the school where, 100 years later, William Shakespeare was to study; and three, the case of Ann Radcliffe, widow of Thomas Moulson, Lord Mayor in 1634, who was the first major donor to Harvard, and after whom Radcliffe College is named.

Of this era of great Lord Mayors, there are three stories that speak tellingly of their position vis-à-vis the King. One is the story of Sir Robert Vyner, Lord Mayor in 1674, who was a goldsmith-banker and had lent considerable sums to the Crown. It is said that at his inaugural banquet he got drunk and “overfond” of the King, Charles II. When the King got up to leave, Sir Robert seized his arm and insisted, “Sir, you shall stay and finish t’other bottle.” Charles had to give in, but with good humour, saying, “He that is drunk is as great as a King.”

There is also an interesting story of a Lady Mayoress: when Sir William Humfreys was Lord Mayor during the reign of George I, he had the honour of entertaining the King and the Royal Family at his feast. It had been a custom that the Lady Mayoress receive a kiss from the first royal lady on this occasion, so when the Princess of Wales failed to deliver this salutation, the furious Lady Mayoress ordered one page to pick up her train, threw her bouquet to another and stormed out.

Perhaps the most interesting story is of William Gill, Lord Mayor in 1789, during the reign of George III. A great thanksgiving service was held in St. Paul’s when the King recovered from his

first attack of madness. The Lord Mayor received the King at Temple Bar and, as is custom, surrendered the Pearl Sword. The King returned it, saying, “My Lord, the sword cannot be in better hands.”

This medieval ceremony, of the Lord Mayor of London surrendering the Civic Sword to the King when the latter visited the City lies at the heart of our understanding of civic independence. It is something like the Lord Mayor saying, “I, Lord Mayor of the City of London, upholder of the Civic Sword, accept you as King.”

MAYORS DURING “WESTMINSTER” DEMOCRACY

It was during this period that the office of prime minister became important and the first political parties – the Whigs and the Tories - were formed. Quite naturally the City was dragged into this politics. In the City, the Common Council was predominantly Tory, though the Court of Aldermen was Whig controlled for long.

Before entering this period, it must be noted that the constitutional position of the Corporation of London had already been firmly established at the time of the Glorious Revolution in 1688, when the Protestant William of Orange took over the throne. After taking up residence in St. James’ Palace, William called an assembly of all those who had sat in Parliament under Charles II. At this assembly, where it was agreed to call a Convention Parliament, thereby placing a seal of approval on the Revolution, the Corporation of London, with the Lord Mayor, all the Aldermen, and 50 members of the Common Council, sat as a separate estate of the realm, being the only body in the country unaffected by the lack of legal government.

Under the Georges, however, the City was the principal focus of opposition to the policies of the government. The first prime

minister, Robert Walpole, was supported by Whig landowners and he devised a kleptocratic scheme by which he would benefit his supporters at the expense of the City. In order to reduce the tax on land, he decided to impose excise duties on wine and tobacco such that wine and tobacco would be kept in bonded warehouses and sold only through specifically licensed shops. The City opposed Walpole's policies throughout. During this period very few Lord Mayors were knighted. Humphrey Parsons, Lord Mayor in 1730, said that he avoided coming near the King for fear he might be knighted, for "he was sure his wife would never bed him afterwards". Parsons ran a successful brewery in Aldgate and his black brew is mentioned in Goldsmith's *Description of an Author's Bedchamber*.

According to Valerie Hope:

The division between the City and the Court was marked by indifference to honours on the part of the Londoners themselves and by the scorn which was heaped on the 'cits' by the fashionable world of West End. However, the aristocracy were often happy to marry their children into wealthy City families, many of whom were not averse to such a social rise, as was portrayed by William Hogarth in Marriage à la Mode.

Apart from opposition to Walpole's Excise Bill, the City and its Lord Mayors opposed the operation of press gangs in the City, which were used to kidnap men and force them to serve the Navy. City opposition to Walpole had made London the champion of independent political opinion, and the new coffee houses which had opened all over the City were places where the mass of citizenry discussed the politics of the day. Through the Common Council citizens issued instructions to their MPs, urging them to see to the removal of government sinecures, a repeal of the Septennial Act and other constitutional reforms. The City also

forwarded petitions on behalf of American colonists and supported their cause. The Common Council, by custom, presented the monarch with a “loyal address” every year and it is noteworthy that the summer address of 1742 snubbed George II by totally ignoring his victory at Dettingen, where he personally led the British Army – the last King of England to do so.

By now it was clear that too much was wrong with government and radical reforms were required. In the City the opposition movement was deeply concerned with parliamentary reform, demanding shorter parliaments, a fairer suffrage and an end to rotten boroughs. It is during this period we come across the most colourful as well as controversial Lord Mayor of London, John Wilkes.

Wilkes is unique in that he had a strong following in the London mob and, with this support, championed the Bill of Rights. He was hated by the establishment, with George III referring to him as “that devil Wilkes”. While an MP from Aylesbury, Wilkes was arrested under a general warrant for publishing an anonymous attack on the King’s foreign policy. By the end of his career he had ensured that general warrants could no longer be used to prosecute libel. His battle for justice aroused intense popular concern and the slogan “Wilkes and Liberty” was displayed everywhere in London. When he was elected from Middlesex, the House of Commons rejected the choice of the electors and ordered a fresh election. He was re-elected thrice and all three times the House of Commons would not admit him. By the end of his career he had got his expulsion from the House expunged from the records and had ensured that never again could Parliament keep out a member who had been properly elected. Wilkes also played a major role in ensuring that debates in the House of Commons were published. Till then they had been kept secret. He and his supporters, with their Bill of Rights, pursued a programme of parliamentary reform that was a forerunner of later achievements, including universal

suffrage. Wilkes found the limited franchise unjust and had said that the vote should be given to “the meanest mechanic, the poorest peasant and day labourer”. His name is fondly recalled in America, where he is considered a champion of liberty. Wilkes was elected Lord Mayor in 1774 and “delighted crowds” of Londoners unhitched the horses from his coach and drew him to Mansion House in triumph. He had been rendered almost penniless by his political struggles, but he conducted his mayoralty with great splendour despite the fact that the expenses (8000 pounds) far exceeded the income (4000 pounds).

In the 19th century too, Lord Mayors played an important role in standing up for their liberties and demanding constitutional reform. Sir James Shaw, Lord Mayor in 1805, stood his ground at the grand funeral for Lord Nelson in St. Paul’s. The King was too ill to attend and the Prince of Wales attempted to take his place in front of the Lord Mayor but Sir James insisted on his right to precedence over all save the King.

Mathew Wood, Lord Mayor in 1816, also proved to be an exceptional man. He had to deal with one of the most serious public outbursts against government repression, the Spa Field Riots. As chief magistrate he performed his duty in controlling the mob, even at grave risk to his own life: he was fired upon by the rioters. But once the riots were under control, he expressed his sympathies with the demands of the citizens and a City petition in 1817 declared that their desire was “to see the House of Commons in conformity with pure constitutional principles, a fair and honest organ of the public voice, exercising a controlling power over the servants of the Crown and not an instrument in their hands to oppress the people.”

It was because of the constant pressure of City radicals that finally the Reform Bill was passed, rotten boroughs abolished, parliamentary representation more evenly distributed and the

suffrage widened. After the passage of the Bill, the great Birmingham reformer, Thomas Attwood, who was presented the Freedom of the City, said that the City of London “has ever stood in the van of the people in their fight for liberty.”

LONDON & THE “CITY OF LONDON”

In all these years, London’s growth was phenomenal. The ancient City measured just one square mile and only that was the Lord Mayor’s territory. But outside this area, a great deal of development had occurred. Apart from the City of Westminster, where Parliament sat, there was the fashionable West End, where the rich lived; and there were a host of boroughs inhabited by the poor. Valerie Hope says that by 1700, the population of the City numbered 2,00,000 while there were 6,00,000 people in the rest of London. When the first official census was taken in 1801, the City’s population was 1,27,621, while that of the rest of London was over 8,60,000. The 1811 census revealed that nine-tenths of Londoners lived outside the ancient City. A motley collection of parish vestries administered this area. The Lord Mayor and the Corporation of London refused to extend their administration beyond the established ancient ward boundaries, preferring to concentrate on an area they could control. There was thus no overall policy for sewerage, burial grounds, housing or police. Various monarch’s made proposals for the incorporation of the suburbs with London but received no support from City leaders. When Robert Peel founded the Metropolitan Police in 1829, the City refused to let the “Bobbies” in (they were called “Peelers” first) setting up their own force 10 years later. The City still has its own police. This is civic independence, zealously guarded.

In 1852, for the very first time, a Royal Commission was set up to investigate the City’s affairs and “its findings did not reveal any scandal.” Indeed, the officers of the City, notably the Chamberlain (Treasurer) Sir John Key were found to be extremely competent.

Investigation into the affairs of the Livery Companies also found no irregularities, and noted that their charities were very well administered.

In the meantime, London kept on growing. With horse-drawn omnibuses, and then with the railways in 1836, more and more people were able to live further and further away from the City and commute to work. The Census of 1901 revealed that the population of the City was just 26,897 whereas 4,509,166 people inhabited Greater London. Today, the City has a night-time residential population of less than 6,000 and a daily commuter influx of over 3,00,000. Obviously the Lord Mayor's role has changed and many view the institution as archaic and ceremonial. Sidney and Beatrice Webb, in their analysis of local government, described "the dull decorum of the Aldermanic bench" and "the daily grind of the Justice Room." But Lord Mayors did much more. For instance, they inevitably spent time raising money in the City for worthy causes. One of the first of the Lord Mayor's Relief Funds was for the Indian Mutiny. Another was for relief during the Bengal famine. Lord Mayors also played an important role as an international figure representing the business interests of the City, traveling abroad in style, pomp and splendour. There are also numerous instances of charitable works, mostly in education for the poor. Far from being a "mere magistracy" or "dull decorum" as the Webbs put it, Hope feels that even the modern mayoralty reveals "personal endeavour and achievement, lavish hospitality, raising of funds for victims of disasters, concern with education, and liberal philosophy."

The ancient City of London measuring just one square mile is today one of the most important financial centres of the world, generating invisible earnings of over 8 billion pounds a year. It continues to elect its own Lord Mayor every year and no government has been able to meddle with its liberties, customs and traditions. A Government Commission into the City in 1960 said

that “its wealth, its antiquity, the enormous part it has played in the history of the nation, its dignity, its traditions and its historical ceremonial make the City of London an institution of national importance.”

LESSONS FOR URBAN INDIA

There are probably millions of lessons to be learnt from the history of the City of London and its institutions, but perhaps the most important one is this: it took just one square mile of carefully guarded Liberty to tame war-mongering, tax-hungry, absolutist monarchs and bring about constitutional democracy, the rule of law, and unrivalled prosperity. The process may have taken 800 years, but if Rome was not built in a day, then neither was London.

For India, there is another very important lesson in this: that without free institutions of urban self-government our socialist democracy will forever remain a kleptocracy. The socialists, whenever the word “local government” was mentioned, trumpeted the cause of Panchayati Raj: Gandhi’s vision of village republics. But villages are poor and their Sarpanches can never ever stand up to the State in the manner that the Lord Mayor of London was able to do throughout his history. Sarpanches are all inevitably clients of the State, totally dependent on the government for finances. And Panchayati Raj has just politicized village India. On the other hand, under the socialists, every Indian city and town has seen its municipal administration collapse, and urban local self-government has never been pursued. Municipal governments, throughout India, are corrupt, ignorant and inept. They are also run by the bureaucracy and whatever democratic inputs they receive are largely powerless and ceremonial. If Indians desire an improvement in their lives, they must emulate the merchants of London and take control of their cities and towns. We can be an extremely wealthy nation of over 400 free trading cities and towns

if we learn a lesson from what just one zealously protected square mile of Liberty could achieve.

The other important lesson is that the “Westminster model” of democracy came long after the City of London’s ‘civil government’. Thus, before saying that “India possesses the Westminster model of democracy”, Indians must first build many, many mayoralties of the “London model”. London must come before Westminster, as it did in history.

This essay has also been written to give the reader an idea of civic politics and the bourgeois politicians it throws up. In the history of the Lord Mayors of London it was seen that this was never an office of profit: those who were elected invariably suffered financial losses in holding the office. Only very rich people could afford to be Lord Mayor. This reminds me of what a German told me when I asked him the question: How do you select a Mayor? His reply: Like how you would select a king. He should be a rich businessman, a pillar of the local community and economy, a man who offers gainful employment to many, and whose judgement and fidelity can be trusted. These are the kinds of people who become ‘politicians’ in civil government. These may be contrasted to our own socialist politicians, who are professionals in politics, whose only ‘businesses’ are state-owned enterprises. It becomes clear that India still has a long, long way to go.

However, the idea of subsidiarity is fast taking over the minds of many thoughtful people. It has become a buzz-word in the European Union. I was in the old part of Frankfurt-am-Main when I noticed that the ancient building of the city’s mayor (or *bürgermeister*, as the Germans call him) had three flags fluttering atop: one was the flag of the EU, the other was the flag of Germany, and the third was the flag of the City of Frankfurt. When cities fly their own flags civil government happens.

With this, I conclude our look into English history, the origins of their common law, the monumental achievement of the Magna Carta in terms of constitutional government and the rule of law, and the rise of civil government in the City of London long before the ‘Westminster model of democracy’. From these discussions it should be abundantly clear that liberal ideals propelled the English then. It should also be clear that if we in India want civil government based on liberal ideals we must start from the bottom up: by instituting these in our cities and towns. Panchyati Raj must be jettisoned for bourgeois mayoralities.

We now proceed to discuss two separate periods in India’s recent history: first, the governments of the ‘princely states’ that ruled much of India till 1947; and second, the ideals of the British colonial administration. It will be seen that whatever good these governments achieved in their time was also based on liberal conceptions of the role of government in society. These will be explored in the next two chapters. The objective of these histories is not only point out the liberal bent of India’s recent rulers, both native as well as colonial, but also to juxtapose them against our current centralized socialist government, which has degenerated into a ‘predatory state’ because it is a government not based on any valid principles. These histories of India’s recent past are far more instructive than any exposition of liberal theory could ever be.

CHAPTER SIX

CRIMINAL JUSTICE: A RETURN TO MERRIE OLDE ENGLAND?

Submerge the police in society.
Jean-Baptiste Say

Let us now turn to an sphere where the Anglo-Saxons failed to maintain their traditions, and so lost their sense of justice – and that is the area now called ‘criminal law’. At the outset, let us recall how the ancient tribes of the Anglo-Saxons lived under their customary codes:

*Anglo-Saxon laws were very concerned with protection of individuals and their property. In particular, offenses against individuals are minutely provided for by the laws which delineate the economic payment appropriate for homicide, various kinds of wounds, rape, and indecent assaults.*³⁹

I have emphasized two parts of the text quoted above, and therein lies the key to understanding the great change that has slowly occurred in the Anglo-Saxon world.

The first of these tells us that *offences were against individuals*. There were no offences against the State. The laws, customs and codes of the Anglo-Saxons were designed to protect individuals and their properties, and therefore those who broke these laws were deemed guilty of having committed offences against individuals. This gave the individual various liberties to participate in the judicial process: for example, he could collect the evidence himself; and second, and more importantly, he could also conduct his own prosecution. Neither of these important liberties had been taken over by the State, as they are today.

³⁹ Benson, B. *The Enterprise of Law* (Pacific Research Institute for Public Policy, San Francisco, 1990) p. 22. Emphases added.

The second portion of the text I have emphasized tells us that there were no ‘punishments’ of the kind we know today, that are monopolistically meted out to criminals by governments, in the mistaken belief that all crimes are against the government. Instead, the codes of the Anglo-Saxons concerned themselves with ‘restitution’: that is, the ‘victim’ of the crime must be suitably compensated by the apprehended and convicted criminal, in terms of money. The criminal also had to make good all the costs incurred in the trial. There were therefore a set of economic incentives in place that achieved a host of ends that today’s criminal justice system fails to meet, even in those countries where it works passably well. First and foremost: the aggrieved party was sure of receiving financial compensation, and he therefore had the incentive of pursuing the trial – and not avenging himself outside the law. Second, even for the criminal, the very fact that he had economically compensated his victim made it easier for him to re-establish his place in society, buying back the ‘peace’ he had broken. Furthermore, over time, there were various private services available for apprehending criminals: as, for example, ‘bounty hunters’, or ‘thief-catchers’, who would perform these services in return for a share of the economic compensation that would inevitably be awarded to the victim. In the modern world, similar economic incentives will allow insurance companies to play a major role in crime prevention and detection. Private investigation, private security and private prosecution will also flourish if these economic incentives are put back in place. This is especially true for India, where the criminal justice system is an ugly, rotten disgrace-to-the-human-race. But first, let us quickly understand the slow, historical process by which the Anglo-Saxons lost these important individual liberties and the State came to take over criminal justice. It is a lesson on how centralized government keeps on and on increasing its own powers, to benefit itself.

FROM CUSTOMARY TO ROYAL LAW: THE GREED OF KINGS

It needs to be emphasized that the Anglo-Saxons lived under their own laws, as ‘private law communities’, and that their first kings arose *not* out of the need to maintain *internal order*, which existed on its own, but out of the pressures of constant warfare. Viking raiders attacked incessantly from the 7th century, and when they had left many dynasties destroyed, there came the Danes, against whom the only recourse of the Anglo-Saxon kings was to buy peace by paying them a tribute (Danegeld) in exchange for leaving their castles and lands well alone. In these 200 years prior to the Norman conquest, both the Anglo-Saxon people and their kings were much

impoverished. Of course, the condition of the average non-noble ‘freeman’ had deteriorated to a far greater extent than that of the nobility, who had managed internal consolidation. But the need for easy revenue was paramount in the minds of these kings, and it is this need that forced their hands into the area of criminal justice. From these ancient beginnings, we will trace the transformation of the Anglo-Saxons into a ‘public law state’, which is where they have arrived today.

We have noted that economic compensation lay at the heart of the ancient Anglo-Saxon justice system; in other words, there were ‘fines’. In time, the Anglo-Saxon kings appointed ‘elders’ (called ‘ealdormen’, later ‘earls’) as their representatives in a shire. In his riveting history of these developments, Bruce Benson, in the study cited above, quotes Pollock and Maitland to the effect that ‘the early codes make it clear that the ealdorman, and the king in need, may be called in if the plaintiff is not strong enough himself; in other words, the contumacious denier of justice may be dealt with as an enemy of the commonwealth’. In a legal system based on economic restitution, or fines, this came to mean special fines to be paid to the king in order to invoke his authority. Of course, for the community, there were gains to be had in this arrangement, for a strong offender might resist his neighbours, but would certainly not attempt to resist the king. Further, the strong offender had the incentive of settling his fines at the community court; if he was dragged to the king’s justice, his fines would increase considerably. Thus arose a special fine called *wite* that accrued to the king in respect to an offence. Whereas, Pollock and Maitland maintain that in those days the king’s business “is not to see justice done in his name in an ordinary course, but to exercise a special reserved power which a man must not invoke unless he has failed to get his cause heard” in the jurisdiction of his local community, Benson asserts that “this institutionalization of a king’s role in the justice process, and in particular a *payment* to the king for performing his role (*wite*), was one of the first steps in what would soon be a rapid extension of the king’s role in law.”⁴⁰

The first step that the kings took was to declare the violations of certain laws as violations of the “king’s peace”. In all such violations, economic restitution, that is, the payment of monetary fines, was due to the king. In early Anglo-Saxon law, every freeman’s house had a “peace”, and if it was broken, the violator had to pay. Then, the “king’s peace” lay only over his own house; but gradually the king began to extend his “peace” to wherever

⁴⁰ Ibid. p. 26.

he traveled, to churches, monasteries, highways and bridges. Eventually, the “king’s peace” was invoked by sheriffs ‘wherever suitable’, even to festivals like Christmas, Lent, Easter etc. Since violations of the “king’s peace” meant payment of *wite* to the king, there was an inbuilt incentive mechanism for the king to go on expanding his domain; and not only that, of farming out this role to his henchmen, like the sheriffs, thereby “buying their support”. Benson notes that “the populace did not always accept these changes gracefully, because they meant that the true victim of an offense claimed as a crime against the king received little or no restitution.” It is here, in the *wite*, that the root of the modern criminal justice system of public law lies. However, today it is a loser of revenue, not an earner. And the position of the victim has been completely lost.

This gradual transformation of a natural order society, where custom ruled, and where obligations were at once mutual, voluntary and reciprocal, and which therefore had all the right incentives in place to secure compliance, to the total horror story of today, can be traced back to the very first step: and that is, the new Norman kings making justice an important generator of revenue. The end result was that what was once ably handled by the local community became the king’s prerogative, and that too for the only reason that the king wanted to collect fines from those who broke his “peace”. Soon, every shire had a ‘reeve’ – later called ‘sheriff’ – and this royal law official was given his share of the takings. In this manner, not only did centralization increase, but a distinct group of vested interests were allowed to develop in the system of justice.

However, even at this early stage, the damage had been done. The disruption of the natural order meant that the voluntary and reciprocal arrangements of the Anglo-Saxon communities had broken down irretrievably. Since the responsibility for pursuing offenders, apprehending them and producing them before the court still lay with the local community, for hundreds of years the main task of the sheriffs was to force communities into performing this role, and fining entire groups for not doing so: the sheriff, of course, got a share of the fines thereby collected. This quote from Pollock and Maitland indicates the great injustices that must have been perpetrated on ordinary English people as a result:

A very large part of the [king’s] justices’ work will indeed consist of putting in mercy men and communities guilty of neglect of police duties. This, if we have regard to actual results, is the main business

*of the eyre... the justices collect in all a very large sum from hundreds, boroughs, townships and tithings which have misconducted themselves by not presenting, or not arresting criminals... probably no single "community" in the country will escape without amercement.*⁴¹

As is only inevitable, when a service that was once provided by the community voluntarily was lost because of erroneous 'commands' from above disrupting the natural order, it gradually emerged that the government must take over and provide this function – and therein we have the origin of the public police.

My reader may now express a serious objection: have I not just praised Henry II as the 'founder of common law'? Am I now condemning the same man, and his successors? My earnest hope is that my reader take a balanced view of these great personages and the times they lived in. My earlier discussion of the common law factored in 'feudalism', and discussed it in detail, but in this essay we must note that prior to the Norman invasion, this manner of feudalism did not exist in England. With feudalism, with barons as the king's 'vassals', with royal courts and judges, and with sheriffs in every shire, the good feudal king would attempt to unite his kingdom in his rule. But what would be his method? As allies he would have to enlist the support of powerful notables, with whom he would share his revenues, and also grant them special privileges. This is the precise story of how customary law gave way to authoritarian law. In other words, the royal government was not just providing justice, it was also facilitating the transfer of wealth to its closest supporters. This dubious role of the centralized state is still with us – and lies at the root of all our present-day disaffections with governments. It has come about because, through a gradual step-by-step process of intrusion, law has become an instrument of coercion, whereas once it was a means of facilitating voluntary interaction. Authoritarian law destroyed the incentives that once existed within the community to uphold the law and apprehend law-breakers. This started the process by which the authorities that began this meddling had to go on and on adding more and more intrusions to tackle the problems created by their first ones. And let us not forget that wealth was being constantly transferred to these very authorities, including their king, and therefore these authorities had the perverse incentive to go on and on meddling. Over the centuries, in fact, criminalization increased in England – prompting further authoritarian

⁴¹ Ibid. p. 62, citing Pollock and Maitland, *History of English Law*, vol. 2, pp. 521-522.

interference. In a land where prisons did not exist, they began to overflow – and criminals were transported en masse to colonies. When people finally lost the incentive to pursue their own prosecution, the government had to take over this function – and by now all crimes were against the state. Criminal law and criminal trials developed in a manner that had no roots in tradition, till we have now reached a situation that whereas Old Bailey settled over a dozen cases every day even up to the 18th century, just one case can take up several days of a court’s time today. Bruce Benson has provided a brief but instructive history of these lamentable developments.⁴²

JUSTICE MUST BE BROUGHT BACK FOR THE VICTIM

Let us now turn our gaze onto our own country, India. Having understood that the English messed up their traditional notions of law and justice in a major way when it came to ‘crime’, we have to now face up to the fact that the Indian police are a creation of the British, an organization they set up in 1861, shortly after the Mutiny, when the government of India had been transferred from the Company to the Crown. In other words, the Indian police were set up as agents of the Crown. In independent India, policing has continued in much the same way that the British left it; indeed, things may just have gotten much worse. I will not waste invective on this organization that is nothing more than an agent of our predatory socialist state. Rather, I will try to show by way of some illustrative examples that a return to the principles by which the Anglo-Saxon tribes governed themselves in their natural order will be a far better avenue for justice than the decrepit system the British left behind. This is a system that has failed in their own homeland. In ours it is only an instrument of oppression, providing nothing of any benefit to the citizenry. We must think completely anew.

As my first example, let me take the case of deaths in traffic accidents on Indian roads. These total more than 100,000 annually; more than 500,000 are injured. In all our cities and towns, road fatalities are faithfully reported in the newspapers every day, day after day. It is usually also mentioned that an apprehended driver has been charged with the criminal offence of ‘causing death by rash and negligent driving’. Of course, we never hear of successful prosecutions! And there is never anything even remotely called ‘justice’ to be had for the victim (if injured) or for his family (if killed).

⁴² Ibid. See especially Chapter 3, “The Rise of Authoritarian Law”.

Note that in the natural order of Indian society, just as among the primitive tribes of the Anglo-Saxons, economic compensation is viewed as eminently just. When minor accidents occur, money inevitably changes hands, the negligent one compensating his victim, while every onlooker concurs that ‘justice’ has indeed been done. In other words, the idea of restitution, the basis of tort law, is an essential component of our ‘natural sense of justice’, just as it was among the Anglo-Saxon tribes of yore. What do we have to gain if these ancient principles of law are applied to all road traffic accidents?

In the first place, and most importantly, the victim will occupy center-stage. These will be ‘offences against individuals’, who will have to be compensated. Since ‘third party insurance’ is mandatory in India, insurance companies will be drawn into the picture and will become a powerful voice for better standards of road safety. That is, not only will real ‘justice’ transpire, but, for the sustenance of the new system, all the right financial incentives will be in place to see that, instead of completely useless government bureaus monopolizing the area on the plea that the ‘crime’ is against the state, very big companies with very deep pockets will develop an economic incentive in seeing that roads are well designed and built, drivers are licensed through an honest and objective assessment of their driving capabilities, and modern systems of traffic management are installed. If we leave things the way they are, in the hands of the ‘traffic police’, there will be no hope of any improvement in our situation, ever.

As a second example, let me take a famous case of homicide: the murder of Jessica Lal. She was tending the bar in an ‘unlicensed’ Delhi establishment when she was shot dead, in the presence of many witnesses. It should have been an open-and-shut case, but it dragged on endlessly, finally resulting in an acquittal for the key accused, who was politically well-connected. The ensuing public hue-and-cry, and widespread media sympathy, led to a retrial and a conviction – but not without proving that this business of ‘public prosecution’ is a horrible joke on the ‘public’. How would such a case have been dealt with under traditional Anglo-Saxon law?

Once again, the offence would have been against individuals; in this case, not only against the deceased, Jessica Lal, but also against the owners of the establishment where the offence occurred, whose ‘peace’ was broken. All the victims, the survivors of Jessica Lal as well as the owners of the bar, would collect the evidence on their own and also take charge of the

prosecution. Since they would have an economic incentive in seeing justice done in their favour, the accused would surely have been found guilty of the offence and would have to cough up huge damages very soon. Further, it would not be a ‘criminal trial’ with all its complicated and time-exhausting procedures of ‘proving guilt beyond doubt’; rather, it would have been a simple tort case, to be decided ‘on the preponderance of evidence’, that too, evidence that the victims had collected and presented, without counsel if need be. Further, the complex ‘laws of evidence’ applicable to criminal trials would be redundant, and these intricate but trivial issues would not occupy court time. Neither the police nor the public prosecutor would be involved – but justice would accrue to all the victims; that too, in double-quick time.

These economic incentives would work their wonders throughout the length and breadth of Indian society. If, indeed, this was the ‘system’, all such establishments would tend to insure themselves against such offences. The insurance companies, when accepting such policies, would have their say in the appointment of credible private security agencies. Thus, if another such homicide did occur in a bar, it would be the duty of the private security agency to first explain its negligence in allowing entry to an armed intruder. If found negligent, this private agency would have to pay up. The array of right economic incentives that will be put in place under these traditional principles will therefore allow for a great deal of ‘crime prevention’ – something that escapes the attention of the government police totally.

There are many, many other ‘offences against individuals’ that occur in India with unfailing regularity – from deaths or blindings in ‘hooch tragedies’ to harms inflicted by spurious medicines to injuries and deaths caused by poorly maintained or badly constructed dwellings – that can be easily handled under the rubric of ‘restitution’. If this is done, our society will be able to free itself from the British-created police and their ‘criminal justice system’. Neither can be ‘reformed’. If we institute these drastic changes, we will be rid of those who merely exploit their current powers to their own advantage, and every victim of every offence will get ‘justice’. There will also be no such thing like what is today called a ‘victimless crime’ – such as gambling, prostitution, or the sale of cannabis. Liberty will reign supreme.

I will conclude this section with some comments on India’s public prosecution system, in a case with which I was personally acquainted. My childhood friends, the sisters Pushpa and Prabha Nair, lived with their little

brother in a Delhi apartment, their parents having passed away some years earlier. One day, they returned home to find that their brother had been murdered. However, a fistful of hair was found in the dead boy's hand and, knowing that this would be very useful in identifying the guilty party, the sisters were careful to hand over this crucial incriminating evidence to the police. As the trial proceeded, with painful slowness, they were deeply disturbed to find that the prosecution kept failing to produce this clinching evidence. In desperation, they asked me if I could help. I telephoned Maxwell Pereira, then a very senior official of the Delhi Police, and he agreed to give the sisters an audience. When they told him of their predicament, he called in a flunky and fired him for this lapse – and assured them that the hair would definitely be put up as evidence in court at the next hearing. However, it was not. And the accused got away. The sisters now live in a private apartment block in Gurgaon with very tight private security; they also have two Dobermanns. Like them, the rest of us must also move away from public law, public police and public prosecution.

Benson has an interesting tidbit on the position of the public prosecutor under the common law:

Public prosecution in England required a legal fiction, however. Under common law, prosecution is still private: "English common law maintains that police officers are not distinct from the general body of citizens... therefore, when a police officer initiates a criminal proceeding he is legally acting not by virtue of his office but as a private citizen interested in the maintenance of law and order." Theoretically, then, the vestiges of Anglo-Saxon law's reliance on private prosecution remains.⁴³

It is public prosecution that is the biggest stumbling block in the citizen's quest for justice. The answer lies in bringing prosecution back to the private domain, as it still is under the common law.

MY BRIEF EXPERIENCE IN THE INDIAN POLICE

I served as an officer of the Indian Police Service (IPS) from 1983 to 1989. This brief stint does not qualify me to speak knowledgeably on all aspects of

⁴³ Ibid. p. 76, quoting from Juan Cardenas, "The Crime Victim in the Prosecutorial Process," *Harvard Journal of Law and Public Policy* 9 (Spring 1986): 365.

police functioning – but some of my experiences do illustrate that my faith in a ‘natural order’ were amply confirmed during that spell.

My first practical experience as a police officer was in Pondicherry, where I was initially posted as the head of the Grand Bazaar Police Station. This was in the heart of the town’s commercial district, the word ‘grand’ being the French word for ‘big’, Pondicherry being a former French colony. Grand Bazaar was the Big Bazaar. During my tenure there, I was surprised to find that not a single case of crime was reported in my area, apart from some cycle thefts. It seemed to me that where there is a big bazaar, people do not commit crimes; rather, they prefer to trade peacefully. I stayed on in Pondicherry for over two and a half years, during which time there was only one murder. This too was political in nature, and it was rumoured that the ruling party had bumped off a troublesome opponent. My overall impression was that the people were peaceful and law-abiding, perhaps even overly subservient to authority.

During my stay in Pondicherry, I was called on ‘law and order’ duty just once. I was sent with a hundred or so armed men to a coastal village called Kalapet that had for some reason been taken over by the state government. The people who lived there, mostly traditional fishermen, had been evicted. They were now assembled at a spot a few kilometers down the coast and I was instructed by my superiors to use the force at my disposal to ensure that they did not re-occupy Kalapet; and, further, to ‘shoot if necessary’. Not a shot was fired, not even in the air. And I successfully managed to keep the fishermen at bay, till they gave up the idea of reclaiming their village. This took me about 48 hours, after which I finally returned to my residence. Some years later, while reading a newspaper advertisement, I learnt that Kalapet was now the location of a 5-star hotel ‘belonging’ to the state-owned India Tourism Development Corporation (ITDC). Today, I blame the police academy for making me an unwitting instrument in this blatant abuse of armed might. We were all taught a lot of law, but never instructed on the vital importance of private property – for all, especially the poor.

In Pondicherry, I also had an occasion to inspect the records of investigation into serious crimes that were pending with the CID, and it came as a great surprise that all arose in the ‘rural’ districts. Further, that in almost all these cases, the issue that lay at the heart of it was a ‘property dispute’. This experience burned into my mind the idea that it is in the chaotic city market that peace actually reigns, while in our idyllic villages, under their calm

surface, great injustices are regularly being perpetrated. It was then that I became convinced that the exact administration of property and the issuance of sound titles must be made a foundation of good government.

After Pondicherry, I went to a district in the tribal areas of Arunachal Pradesh, in India's North-East. Here, I was quite pleasantly surprised to find that the district police chief had no authority outside his headquarter township: in the hinterland, tribal laws and customs ruled, and only at the formal request of the tribal headman could the state police launch any investigation, even into cases of alleged homicide. This is an example of 'natural order' from our own country. It is also interesting that the tribal headmen were called 'gaonbura', which translates into 'village elder', not very different from the 'ealdormen' of the Anglo-Saxons! Benson informs us that among the Anglo-Saxons their earliest codes of law are in fact 'not so much the introduction of new principles as the declarations of the customs or common law of the race, dating from far beyond the existence of written record, preserved in the memories of the wise and kept for the most part in constant general experience'. This is very much the case within our own tribal societies. We do not need to trouble them with new law. Rather, we should let them be, recognizing that it is this preservation of tribal traditions and customs that enabled the Anglo-Saxons achieve so much. We should be aware of the areas where the Anglo-Saxons succeeded, but we should also be aware of their most spectacular failure (for a people with a deep 'value' for law, order and justice) – and that is in the area of what is today called 'crime'. I have earlier stressed that the natural order is based on tradition. India is a land of traditions, traditions and more traditions – and all these will help preserve the natural order.

I may also mention that our ideas of 'poverty' among the tribes of the North-East may also be very mistaken. I had the occasion to attend a small party at a tribal headman's house, thrown to celebrate a local festival. There was a lot of singing, dancing, drinking and eating, during which a lady from the headman's family came dancing up to me and placed a garland of rough green stones around my neck. While leaving, I took the necklace off and left it on a table. Later, a civil officer who was present told me that if I had taken that necklace to Calcutta, it would fetch me over 60,000 rupees! It was a brief stay, but I am quite confident that I did not see 'poverty' as in many parts of the mainland, particularly the so-called 'cow belt' or the 'Hindi heartland'. There was 'remoteness', a feeling of being unconnected to anything. There was also a deep feeling that we were practicing some

perverted kind of ‘internal colonialism’. But ‘natural order’ was definitely a marked feature of my district in Arunachal Pradesh, and if this can happen there, then these principles can surely be applied with great success to those parts of the North-East where armed insurgency has existed for decades. And which the full armed might of the state has not been able to overcome. All ‘law and order’ solutions must be seen to lie outside the ‘system’.

There is now a great deal of academic interest in ancient tribal codes of conduct and law. Bruce Benson has provided a lot of information on studies made of the Kapauku Papuans of West New Guinea. I recently read of efforts underway to study the Xeres code of the Somalis, which is what is working to maintain order, now that their central government stands abolished and they are an official ‘anarchy’: it is noteworthy that this is the reason why mobile phone call rates in Somalia are the lowest in the world! In our own country, I recently read of efforts being undertaken to record in writing the ancient codes of conduct of the Khasis. The Hobbesian idea that a ‘state of nature’ is lawless and inherently unstable is an extremely false and dangerous world-view, disproved among the Anglo-Saxons themselves. It is precisely wherever such codes arise spontaneously, without being imposed coercively from above, that the true purpose of law is achieved: which is, to facilitate interactions, letting each individual know which actions of his with others will not be interfered with by anyone, or, in other words, what are his ‘liberties’ he can assume. It is precisely within such a spontaneous legal order that the idea of ‘community’ is achieved: for, as Hayek has also observed, the idea of ‘community’ is nothing but ‘a common recognition of the same rules’.

I have spent the past few years on the Konkan Coast, between Goa and Mangalore, and here too I have found an area of complete peace and harmony, with a deeply entrenched commercial culture, a toleration of differences, and a distaste for violence. Here, the police actually seem redundant. That is, there are many, many parts of India where a natural order very much exists.

Most people, including many liberals, hold firm to the belief that the state is indispensable for social order. My own experience suggests that there are natural rhythms and harmonies within society, and people are quite capable of sorting out the occasional disruption among themselves. The recorded experience of the Anglo-Saxons bears this out. In India, it is rather the state that causes discord and dissension. And these are exploited to the unending

advantage of those who wield authority. This is also true of the West: the USA has over 300,000 prisoners in its jails! This proves that the state is not upholding an order that naturally exists; rather, in a steady continuation of the intrusions of the first Norman kings, the state has defined a wide range of actions as ‘crimes’ that are offences against itself, and that it has further taken on the task of capturing these offenders, prosecuting them and then punishing them – all at the taxpayers’ expense. This has caused ‘overcriminalization’. In this relentless process of empowering its functionaries, while disabling the citizenry, the real gainers of state action have been the vast bureaucracies that have been spawned, that negotiate huge budgets from their political sponsors, that wield wide powers in their own interests, and which have become an entrenched interest group like never before seen in history. These are not upholders of any order, however defined. They are living parasites of a faulty body politic.

I will conclude this essay by speaking of what has been happening steadily in Delhi, where I also have a home, over the past few decades: and that is, each and every private residential locality has been installing its own iron gates and securing itself with its own private guards. In the meantime, the newspapers reported just the other day that the government police deputed 1800 men on a daily round-the-clock basis to guard just the residence of prime minister Manmohan Singh. When I receive my bank statement, I always find deductions made for ‘service tax’ as well as the new ‘education cess’; but when I visit my ATM I always find that it is guarded by a private security guard. In Delhi, BlueLine buses run over and kill ordinary people every day. There are many serious crimes reported daily – but these lie unsolved. Convictions of criminals are rare. If at all criminals are tackled by the police, the method is extra-judicial, and they are shot dead in ‘encounters’. A wide range of what should be legitimate businesses have been driven underground by legislation – but they flourish, and the ‘system’ must be milking them. At ground level, I often hang around in an informal market in Vasant Kunj, where I find that every trader considers the policeman to be his enemy – one who extorts money in exchange for leaving them alone: ‘danegeld’.

Bruce Benson’s path-breaking ideas of ‘justice without the state’ will probably shock people in Britain and the US, but in India they give out a clarion call for the rejection of a failed public system and its replacement by private arrangements. We have private guards already. We have private insurance too. We can add private investigation and prosecution to the list. If

we top that off with ‘restitution’ (in lieu of publicly imposed ‘punishment’), we will have a wide array of means at our own command by which to secure ourselves, apprehend offenders and prosecute them, and obtain speedy justice. Indians will then inhabit a natural order ‘private law society’ of the kind the Anglo-Saxons had, but lost. We have learnt a lot from them, but in this area it will be they who will ultimately learn from us.

YE OLDE ENGLISH GARDEN: SOME IMPORTANT CONCLUSIONS

Over the last few essays, we have covered various aspects of the English experience, from the emergence of the common law to ideas of the ‘rule of law, from the signing of the Magna Carta and the beginnings of ‘constitutional law’ to the institution of the Lord Mayor of London, which lies at the root of ‘local self-government’. We then proceeded to cover their unfortunate experience with ‘criminal law’. It may be pertinent, then, to round up all these various threads of the Anglo-Saxon story with some concluding remarks.

To the philosophers of the Scottish Enlightenment down to a conservative realist like Edmund Burke, there has always been a clear understanding that modern Britain was not the creation of any deliberate design, and that, like Topsy, it had ‘grewed’ on its own steam, driven by complex inner processes no one clearly understood. What was clearest, perhaps first to Adam Smith, was that theirs was an order wherein each was free to pursue his own interest, and that if any good occurred to ‘society’, it was unintended on the part of the individual, and was the product of an ‘invisible hand’. In the 19th century, it was widely held on the Continent, by all perceptive observers of British success, that its primary cause was an order that maximized individual liberty by restricting the role of the government. This became the political philosophy of liberalism, but it was based on an *ex post* understanding of the causes behind English success.

If we adopt Hayek’s terminology, we may say that the English operated always in the area ‘between instinct and reason’ – and what is more, they were aware of it. Whereas “Reason” was enthroned by the French revolutionaries as their great goddess, and their philosophers from Decartes to Voltaire and Rousseau gave credence to the fatally flawed idea that modern civilization is the product of reason and could therefore be reshaped (for the better) by reason, British society has always stayed well clear of such views. Marx worked and lived in London, and is buried there, but

British socialism was ‘Fabian’ and Marxists ideas never ever took hold of the British mind. Theirs has never been the desire to tear down and build completely anew; rather, they have venerated each and every tradition, because they believed, without knowing why, that these have been ‘useful’. Thus, the monarchy rests on tradition, parliament rests on tradition too, the judges with their old-fashioned wigs lay claim to tradition, and the Lord Mayor of London’s ceremonials are also very ancient tradition, scrupulously maintained. Shakespeare is tradition; Stratford-upon-Avon today is a living monument to that tradition. Even the English pub is tradition, and you can still get a ‘traditional ale’ in some of them.

In other words, it is precisely the absence of design that lies behind the spectacular success of the Anglo-Saxon tribes. We have been through Jerome’s rather romantic account of the signing of the Magna Carta, but to the serious historian of today, the rebellious barons of that era were unruly ruffians and thugs, solely motivated by their own interests. If any ‘social good’ resulted from the charter for subsequent generations, the original actors in the drama were not guilty of having conceived it. Similarly, those who called the first parliaments in the 13th and 14th centuries had absolutely no idea that the House of Commons would one day wield so much power. Benson makes a telling point when he says:

“Public interest” justifications for a government-dominated legal system and institutions *must* be viewed as *ex post* rationalization rather than as *ex ante* explanations of their development.⁴⁴

In fact, this is true of all English institutions, and their unwritten but robust ‘constitution’ in general: that everything arose slowly, without too much *ex ante* ‘rationalization’; traditions were maintained, customs observed, and every change in the order was a small, incremental one. Some had very good effects for later generations; others, like ‘criminal law’, brutalized society. Even the “Glorious Revolution” of 1688 is viewed by modern historians as something that occurred because powerful landowning factions saw it as in their own interest.

The critical point to note is that the Anglo-Saxons became what they are simply because they allowed their ‘natural order’ to grow on its own. Nothing was ‘planned’, and nothing was deliberately designed in the ‘public interest’.

⁴⁴ Ibid. p. 59. Italics in the original.

To my curious foreign eyes, therefore, England appears as a well-maintained ‘old garden’. A great garden, as all gardeners know, takes many, many years – even decades – to happen. England is such a garden. There is plenty that is very, very old, and all of it is very well preserved; not only that, it continues to be of worth in modern times. London itself is an old historic city. And every ancient street has an old tale or two to tell.

However, if we are to be critical, we see that many of the plants that adorn this garden are foreign imports, and some, in fact, are poisonous weeds. The monarchy and the aristocracy date back to feudal times, planted there by the Normans. In newer Anglo-Saxon communities, like the US or Australia, the people live closer to their original tribal roots. Parliament too has grown well out of its original place in one corner, and has come about to dominate the landscape. It needs to be drastically trimmed, just as the power of kings was once trimmed. Similarly, whereas the wigged judges and their ancient law-books lay claim to hoary tradition, our modern understanding suggests that criminal lawyers and the criminal trials of today are devoid of any traditional roots. They appear on the tree-trunk of law these days rather as lichen or fungi – a parasitic outgrowth that came out of thin air. When we look upon this old tree of Law, we also see that its original roots enriched the whole from a rich vein of Roman law that lay beneath; but these great branches lie petrified today, probably hit by lightning.

The only traditions of real worth we see today are those of the independent cities, led by the Lord Mayor of London, and these tell of their most magnificent story: of how these tribes, struggling close to subsistence and plagued by incessant war in the year 1000 AD – they were not ‘merrie’ at all then – could send forth to the world “The Grandest Society of Merchants in the Universe” by the year 1600. This is the story of their great modern ‘civilization’. It is indeed unfortunate that this exotic indigenous plant lies unnoticed in one distant corner of the great olde garden now, and very few today either understand or appreciate it. I am happy and proud to have recounted part of this great history in an earlier essay. But in this exploration of the Anglo-Saxon ‘natural order’ that lay hovering ‘between instinct and reason’, what I would like to draw attention to is the Law Merchant, *lex mercatoria*, which is the finest example of an enduring legal system whose origins lie in the customs and traditions of the medieval merchants themselves, which they enforced through their own courts, completely outside royal authority. In other words, the market was *not regulated* by the

state; rather, the commercial success of the English (and the Europeans in general) occurred because they ‘self-regulated’ their business affairs. Once again, we are reminded of the fact that the wealth that nourished the English garden, the culture, art, literature, polite manners and graces that distinguish the Anglo-Saxons today, could all come about only because the natural order ‘grew like Topsy’, and deliberate design through the agency of human reason was never ever resorted to. Liberty is the great goddess in this story, not Reason.

There is much of Anglo-Saxon behaviour that seems to me to be distinctly tribal and traditional – from their community dancing to their beer-drinking. Nothing much has changed. There are other institutional aspects of their behaviour, from record-keeping to a fondness for rules and laws, that can be seen to have very ancient origins. But perhaps these have been yielding negative utility for quite some time. Hell, after all, is a place where everything is governed by law – and due process is strictly followed! Over-legalisation, over-regulation and over-criminalization are all direct consequences of this ‘virtue’ – for it is this ‘legal spirit’ that lies behind their success – becoming a debilitating vice.

It is indeed only Liberty that explains why this nation has produced so many heroes, from so many walks of life, and continues to do so. Despotism and over-government would not have allowed many of these to flower. But their story naturally includes many villains. In the popular mind, one of the earliest villains was the Sheriff of Nottingham – and this is an interesting fact by itself. In Victorian times, Mr. Sherlock Holmes’ sidekick was a ‘doctor’ (Watson) who was not too bright, while the arch-villain was a professor (Moriarty). The idea of the villainous professor could not have been purely incidental, for Sir Arthur Conan Doyle was a very perceptive man. But I do believe their modern history will indeed be full of many, many villainous professors. In a society like that of modern England, government does not rest on consent; rather, it rests on ‘opinion’. What has slowly transpired is that their traditional opinions have been radically transformed, old words have lost their meanings, and new terms have replaced them. Lewis Carroll was one Englishman who definitely saw it coming, for his Humpty Dumpty was deeply immersed in the business of buying words and giving them meanings!

In the modern world, and especially so in India, the curious investigator of political ideas and ideals will find that England has been the seed-bed of not

only much that is beautiful and good, but also, in equal measure, of much that has been stupid and wrong. Every great Indian socialist leader, from Jawaharlal Nehru to Manmohan Singh, was educated in England. Mohandas Gandhi was a barrister trained in London. And the London School of Economics was set up to send trained Fabian socialists to all corners of the unsuspecting world, including India. The so-called ‘Keynesian Revolution’ was as English as they come; though all it achieved, in Hayek’s poignant assessment, was ‘a loss of understanding of what was once well understood, and which will now have to be painfully regained’. Behind all these villainous ideas lie the machinations of villainous professors, who have been the toadies of politicians like Humpty Dumpty..

Perhaps we have reached a moment of time when we must learn how to separate the grain from the chaff, the good English ideas from the bad. Though the prospect it presents to a Bengali like me, and to which this book is dedicated, is more like getting all the bones out of the *ilish-maach*, so as to better enjoy its oh-so-tasty flesh.

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CHAPTER SEVEN

LITTLE LEVIATHANS: COMMENTS ON
RECENT INDIAN FEUDALISM

‘The time has come,’ the Walrus said,
‘To talk of many things:
Of shoes – and ships – and sealing wax –
Of cabbages – and kings –
And why the sea is boiling hot –
And whether pigs have wings.’

LEWIS CARROL

Through the Looking-Glass

We are accustomed in India today to conceive of the State as a monolith. This is entirely because our government-approved history books do not speak a word about the 650-plus ‘princely states’ (they were also ‘states’) that covered more than 40 per cent of the territory right up to independence in 1947. The Congress got rid not only of the Brits, they also got rid of these traditional native rulers, some of whom traced unbroken dynasties over a thousand years old. And the subject of History under the Congress has largely been a history of the Congress itself, with no research at all into the princes. Luckily, an excellent book has appeared on the topic: Charles Allen and Sharada Dwivedi’s *Lives of the Indian Princes* (Mumbai: Eeshwar; 1998). What follows is an analysis of facts almost entirely gleaned from this study. It is hoped that this will motivate many more historians to investigate traditional Indian institutions of government.

As with feudalism in Europe, in India too the duties of the feudal overlord were to protect and to administer justice. Having said that, however, our native feudalism differed in every other way, particularly in that it lacked the ‘legal spirit’ of the Occidental

variety, and remained autocratic. The fact that this autocracy was paternalistic and almost completely benevolent was overlooked when it was decided to get rid of these traditional rulers and replace them with ‘democracy’ and ‘socialism’ – modern political ideas imported by Nehru from the West.

[These ideas were to be ‘implemented’ by an elite bureaucracy leftover from the Raj. In the next chapter we will examine the character of bureaucracy during the British Raj.]

Nehru, who once said he was ‘the last Englishman to rule India’, did not import the liberal ideals that make up the English mind. He took India on the socialist path, a path that Friedrich Hayek called ‘the road to serfdom’. But Hayek did not ever appreciate the finer aspects of feudalism: the valour, chivalry, sense of duty, honour, grandeur, pomp and pageantry that made up the virtues of feudal kingship. As we have seen, every tenant farmer had secure rights by the 14th century in England under the common law. Immediately thereafter, capitalism kicked in. Even in India, as we will see, serfs were provided speedy justice by their feudal overlords, right up to fairly recent times, for this was one of the ‘duties’ of their king. Today, after 60 years of democracy and socialism, the condition of not just the peasant but also the average middle class person insofar as obtaining justice is concerned is much, much worse. India took the road, then, not to serfdom, but to barbaric Neanderthal times, an age without law, without justice, without morality and without civilization. Feudalism, even in India, was far, far better than the predatory state we have today. It makes eminent sense, then, to dump our official history books, which gloat over the ‘freedom struggle’ and the role of the Congress and its leaders in it, and examine traditional native institutions of government.

RAJPUTS AND THE IDEALS OF HINDU KINGSHIP

The institution of Hindu kingship was born in feudal times, an age when men of the sword ruled. In much of India, this was the prerogative of the Kshatriya caste of warriors and the Rajputs personified these very Hindu ideals of kingship. The word Rajput means ‘son of a king’: and Rajput princes were taught that they were born to be kings and that their duty was to protect their people. The Rajput worshipped his horse and his sword, and zealously guarded his people. Rajput princesses too had high notions of honour and valour, preferring their men to die in battle rather than return home as losers. At the time of the break-up of the Mughal Empire, Rajputs ruled over much of Rajasthan and the Kathiawar peninsula, but isolated Rajput enclaves could be found here and there, even as far down south as Sawantwadi near Goa and to the east in modern day Orissa. Going further east, Cooch Behar, Tripura and Manipur had kshatriya rulers, though they were not Rajput; their lineage was older than the Rajputs!

But by now there were many other kinds of rulers as well: there were the Marathas, there were many Muslim rulers – Shia, Sunni, Afghan, African, Abyssinian, Turk etc. – and there were Sikh, Jat and other little monarchs as well. However, the Rajputs set the ideal, and these ideals were emulated by others. Rajputs constituted almost two-thirds of the Princes and Chiefs recognized by the British.

The 36 clans of the Rajputs, the ‘royal races’, are descendants of central Asian tribes such as the Huns and the Scythians who began entering India around 400 AD, carving out kingdoms for themselves, and achieving respectability as Kshatriyas.⁴⁵ Once established, they then faced further onslaughts that kept recurring, as other barbaric hordes rode into India from the north. It is through their valour in these battles that Rajput pride and traditions were maintained. For example, Jhala Rajputs still recall their ancestor, Ajoji, who fell against the Mughal invader Babur at the

⁴⁵ The common Rajput surname ‘Chouhan’ reflects this.

battle of Khanua in 1527, while commanding the combined forces of the Rajputs. Thereafter, seven successive generations of Ajoji's line fell in battle at the service of Mewar. There is also the history of Chittor, which last fell to Akbar in 1567, at the cost of 30,000 lives, 1700 of whom were members of the Rana's family. Mewar thus has a place of honour as head of the Rajputs, for alone among the Hindu princes they refused to intermarry with the Mughals in Delhi or acknowledge them as their superiors.

What was the relationship between the Indian king and his subjects? The relationship is best symbolized in the way in which a ruler was addressed by his subjects: Ma-Baap, or 'mother and father'. As Pushpendra Singh of Lunawada put it: "This ma-baap relationship with the people became central to the Rajput ideal of kingship, along with a sense of inherited duty. Rajputs were a warrior race whose job was, firstly, to protect and preserve and, secondly, to rule and administer."⁴⁶ As Maharaja Vibhuti Narain Singh of Benares points out, "Our conception of kingship was quite different from European kingship."

Rajputs also sometimes ruled as God's representative or Dewan. The Maharaja of Benares has always been Shiva's representative, performing many religious functions in that capacity. This was not exactly the European 'divine right of kings'; rather, as Maharaja Vibhuti Narain Singh explains, it was 'the Hindu tradition in which we submerge the individual to the Supreme Being.' Sisodia Rajputs worshipped Shiva as Eklingji, and called themselves "Dewans of Eklingji". In Rewa, the state deity was Rajadhiraj (king of kings) Ramchandraji, whose solid gold idol sat on the throne while the Raja took a vow of being a servant of the deity and looking after the public. The Dewan of Travancore ruled his state as representative of Lord Padmanabha, hence the famous story of how he told Lord Mountbatten that he could not sign the Instrument of Accession since he was but the Dewan and not the

⁴⁶ Allen, C. & Dwivedi, S. *Lives of the Indian Princes* (Mumbai: Eeshwar, 1998) p. 47 passim.

Maharaja! There is also the unique Dassera festival of the state of Mysore, where the ceremonies of the ninth day were reserved for the British, who, led by the Resident (acting in his unofficial capacity), would offer homage to the Maharaja in the Private Durbar Hall. The state of Mysore boasted a model administration, and served as the training ground for many princes from other states.

At this point we may note a crucial difference between feudal conditions in India and those in 12th century England. And that is: in England the merchants managed to buy charters to run their cities independently and the monarch lived in a castle outside the city; while in India the Raja also served as de facto Mayor, living within the city and administering all its affairs. The small Indian raja therefore had to be answerable to the civic populace, and this included the merchant class who made up the *mahajana* (or ‘great people’). If the Raja’s policies were in question, the *mahajana* might shut shop. If this breakdown of commerce did not work, they might pack their bags and threaten to shift – and this usually worked, because such an exodus would result in a severe loss of face for the Raja among his fellow-rulers. Thus, the interests of all classes were looked after by the king.

It must also be emphasized that although Rajputs were Hindus, and the Maharana of Mewar was thus the political head of all Hindus, rulers of every single Indian state, both Muslim and Hindu, ran their kingdoms such that there was no friction between the two communities. At Udaipur’s Gangaur festival, for example, while one barge carried the Maharana and all his nobles across the lake, another barge was reserved for a Muslim family, the Satravan Umrao, ‘who had helped the Mewar family in battle against the Mughals and was honoured in this way.’ In the little Kathiawar states, communal harmony was the norm. Since all these rulers ruled mixed populations, it was essential for the ruler to ensure harmony between all the religious groups. Rulers would take part

in the religious ceremonies of each. Justice would be even-handed. In Porbandar, where Gandhi was born and where his father served as Dewan, the mixed population of castes, tribes and religions ‘co-existed without friction under a Hindu ruler regarded widely as an ideal raja’. In Palanpur, the Muslim ruler who ruled a Hindu-majority state ‘could not have done so without complete harmony between the two communities’. In Kutch, the ruler was Hindu, but ‘he would do a *salaam* at the local mosque on the occasion of a Muslim festival just as many Muslim would offer their respects to a Hindu deity.’ While communal riots were commonplace in British India, especially after the 1920s, there were almost no such incidents in the princely states: “One of the great virtues of a monarchy was that it united people and gave them a common cause, overriding tribal or religious loyalties.” The reader can now hopefully get a feel of what the ‘body politic’ of Indian feudalism was like.

We have examined how, in the capitalist ‘body politic’ of the ancient City of London, the Lord Mayor was required to maintain open house with lavish public hospitality. This may be compared in some ways to the tradition called *Mashaal-ki-Salaam* (or Saluting of the Light) that occurred every evening in most Indian princely states right up to 1947. As soon as the day ended and the night began, the lights would be brought in, accompanied by a regular ceremony in which the ruler would participate. He would be bareheaded, but everyone who came had to wear a turban. There would follow an informal durbar in which the events of the day and news from abroad would be openly discussed with the ruler, as also petitions submitted and heard. There would be music, poetry, recitations, oratory and, of course, complaints. The ceremony of the light “combined elements of a club, theatre and parliament all rolled into one.” There was therefore a very ‘public’ aspect of kingship in India, especially among the smaller rulers, comparable with the role of mayors in Europe. It follows that the interests of traders and merchants were always looked into. There

were free markets and considerable gains from trade – but true blue capitalism failed to emerge because of the absence of the ‘legal spirit’. However, even in this area, we find an instance from the annals of Rajasthan that indicates the existence of an institution that must have played a major role in the development of whatever capitalism there was.

The courts of every Rajput ruler were attended by an ancient and much-honoured institution of bards belonging to two complementary castes, Charans and Bhats. They served as “panegyrist, genealogist, and recorder and raconteur of historic tales.” Thus, they kept alive an oral tradition of family history that played a very important role in the upbringing of Rajput children, for this is how Rajput pride and honour were instilled in the young. Charans and Bhats acted as intermediaries in negotiating marriages and as emissaries in times of war. But they also performed an important economic function, one that may be compared favourably with the Greek *xenos* (or ‘guest-friend’) we encountered in an earlier chapter. Just as the *xenos* protected the lives and properties of foreign traders in Greek territory, so too did Charans and Bhats in their respective domains. Bhats would accompany travelers as guarantors against attack and robbery, while Charans would act as guarantors of bonds. Since the persons of Charans and Bhats were considered sacred, and treated by every Rajput with the greatest respect, it must be estimated that these traditions played an enormous role in the preservation of the economic system. Rajasthan is mainly desert, dependent on trade. As with the Greeks, so too with the Rajputs, there appeared institutions that looked after the interests of all traders, including foreign ones. An estimation of the traditional Indian feudal ‘body politic’ can be arrived at. It was essentially that of a little Leviathan: the original cover illustration of Thomas Hobbes’ book showed a king-like figure wielding a massive sword; however, closer examination reveals that the body of the king is entirely made up of little people, the citizenry. “Leviathan bears the body

of the citizenry,” Hobbes says. The Indian kings and princes performed this function more than adequately, but as ‘little Leviathans’. This must be kept in mind when the centralized socialist state that has replaced them – a big Leviathan – has failed in this most crucial aspect, and nowhere in India do we now find any ‘body politic’ to speak of.

INDIAN PRINCES AND THE BRITISH

When the British first came to India, to trade from Surat in the early 17th century, the Mughal’s representative did not accord them too great a welcome. Later, when an official ambassador was sent to the Emperor Jehangir, Sir Thomas Roe could not obtain a treaty agreement, and was to note that ‘they have no written law. The king by his own word ruleth.’ The ‘legal spirit’ was sorely lacking.

A hundred years later, however, the political scene was vastly different, the Mughal Empire had crumbled, Maratha generals had set up their own kingdoms in central and western India, and the East India Company’s star was on the ascendant. It was then that many formal treaties were signed between the Company and native rulers. Rajput rulers by then had become conscious of the fact that the main threat to their existence came from the Marathas, so many of them began to throw in their lot with the British, signing treaties of ‘perpetual alliance and friendship’ with representatives of the Company, one of whom, Captain James Tod, became their greatest admirer and champion. Tod’s *Annals of Rajasthan* was the ‘bible’ of every British political officer attached to a princely state.

An example of such a treaty reads as follows:

FIRST ARTICLE – There shall be perpetual friendship, alliance and unity of interests between the British Government on the one hand, and the Raja of Boondee and his heirs and successors on the other.

SECOND ARTICLE – The British Government takes under its protection the dominions of the Raja of Boondee.

THIRD ARTICLE – The Raja of Boondee acknowledges the supremacy of, and will co-operate with, the British Government for ever.

The above is an extract from the treaty between the Honourable English East India Company and the Maha Row Raja Bishen Sing Buhadoor, Raja of Boondee, concluded by Captain James Tod on the part of the Honourable Company and by Bohara Tolaram on the part of the Raja, at Boondee, on the tenth day of February, 1818.

After getting all the major Rajput states to sign formal treaties, the British turned to the Maratha states of Gwalior and Indore, who had been defeated in battle. Then Baroda and the Kathiawar states followed. Over 40 formal treaties were signed, together called “Dosti London”, *dosti* being the Hindustani word for ‘friendship’. Thereafter came the turn of the Sikhs. In this way, the very legal-minded Company signed a great many treaties as also a large number of *sanads* or ‘contractual agreements’ with lesser rulers and chiefs.

Then came the Sepoy Mutiny of 1857, followed by the end of Company rule and its substitution by direct rule by the British Crown. The Royal Proclamation of November 1858 issued by Queen Victoria, in the same ‘legal spirit’, undertook the solemn obligation to ‘respect the rights, dignity and honour of the Native Princes as Our own’. This document came to be known as the ‘Magna Carta of the Princes’. But as one Rajput laments, ‘from that day we ceased to be kings and became princes’. The British government froze their borders, assured them of the stability of their line, and it was this protection that ultimately did them in, for many lost touch with their people. The Maharaja of Dhrangadhara says ‘rulers ceased to be kings the day they moved their residence

from the center of the city to someplace more sanitary and salubrious'. But this was not always the case. As there were so many of these rulers, there are instances galore of those who stood out as examples of enlightened and forward-looking governors. We will look into these cases shortly.

Under Crown rule, which lasted barely ninety years, the Viceroy exercised paramount power over two distinct and quite separate Indias: British India was directly governed by him; but 'breaking into the uniform pink on the imperial map with a confusion of yellow patches' was 600,000 square miles of 'Indian India', ruled by native rulers enjoying direct political relations with the government of India. These native-ruled states were extremely diverse: ranging from the 82,700 square miles of Hyderabad state, with an annual revenue of 8.50 crore rupees (in the 1930s) to the tiny states of the Kathiawar, where 282 states covered an area the size of Ireland. The smallest here was Vejanoness, where a Thakur ruled a 22-acre estate with 200 subjects, from whom he extracted an annual revenue of 450 rupees.

The British therefore had to deal with this diversity by ranking these rulers according to their political and economic importance. At the top were 118 First Division States, whose rulers were entitled to formal gun salutes: 21 guns for the 5 biggest rulers – Maharaja Gaekwad of Baroda, Maharaja Scindia of Gwalior, the Nizam of Hyderabad and Berar, the Maharaja of Jammu and Kashmir, and the Maharaja of Mysore; 19 guns for 6 slightly smaller rulers – the Nawab of Bhopal, Maharaja Holkar of Indore, the Khan of Kalat, the Maharaja of Kohlapur, the Maharana of Mewar and the Maharaja of Travancore; going down to 13, 11 and finally 9 guns. The Viceroy received 31 guns; the King-Emperor got 101. These 'salute states' were the top rung, followed by 117 lesser 'non-salute states' of the Second Division, going down finally to 327 hereditary landowners who ruled non-jurisdictional

‘estates’ rather than real ‘states’, wherein civil and criminal matters were dealt with by British political agents.

The British transacted with the Princes through ‘political agents’ or ‘residents’. These were members of an elite Political Service. Their principal brief from their imperial masters was to ‘leave the princes alone’ and let them be ‘all-powerful within their dominions’. The Indian Political Service was small, just about 130 officers in 1947. They were the ones who maintained unbroken relations of ‘perpetual friendship’ with the native rulers, who played a major role in the upbringing of their heirs and successors, and who with their advice ushered in reforms and modernization. As a body of men they were ‘shocked’ by the unthinking haste with which Mountbatten pushed through Indian independence, while also allowing Nehru and Patel to swallow up all the Princely States which, as far as the British in India were concerned, was ‘foreign territory’. The legal evidence presented above indicates that Nehru’s government should have been restricted to British India, which alone Mountbatten was competent to give away. The Labour government of Clement Attlee, which sent Mounbatten and ordered him to hurry it up, should have been reminded of its legal treaty obligations. The story of India’s rajas, maharajas, nawabs, thakurs et. al. thus comes to a sudden and tragic end, to be replaced by an uniform Congressism.

We now turn to look at some of those princes who in fairly recent times provided what would be called ‘good government’. Another historian could put up examples of bad rulers, it is true; but bad rulers were the exception. However, the advantage of having so many different, independent spheres of ‘sovereignty’ meant that quite a few excellent rulers could emerge. The only ‘uniformity’ achieved by allowing the big Leviathan of the Government of India take over all the little ones is ‘uniformly bad government’. Therefore, ideas of ‘subsidiarity’ must be pursued in India today, so that we can once again have many, many small competing

governments running cities and towns independently, like these princes and nawabs used to do so well until recent times. If we invert the governmental pyramid, the Government of India will have very few functions, maybe just defence and external affairs, being merely an organization representing an association of independent free trading cities.

SOME EXAMPLES OF GOOD GOVERNMENT BY SMALL PRINCES IN RECENT TIMES

The protection offered to the native rulers by the British Crown worked both ways: to some, it meant a life of ease, and they handed over the reins of government to a capable Dewan, moved their residences out of the city, and turned to frivolous pursuits; others were unable to change with the times and kept to their old ways, incapable of comprehending the modern world; but there were many who ascended to the *gadi* early, read the signs of the times correctly, and ruled manfully enough to move their little states out of the medieval age and in to the modern.

Perhaps the best example of all is that of Maharaja Bhagvatsinhji of the 11-gun state of Gondal, one of the richest states of the Kathiawar, under whose rule female education was made compulsory. He was a qualified surgeon, and his Maharani was the first native queen to come out of purdah. He educated his daughters and insisted that they be brought out into society, 'causing a scandal with his modernity'. His three sons were trained in Scotland – one as a doctor, two as engineers: upon their return, the one was placed in charge of Gondal's medical services, the other two took over the state's railways and its roads. "When Bhagvatsinhji died in 1944 he left an industrially developed state that was without taxes, rates or customs levies." This is no surprise, for the ruler's lifestyle was extremely modest, to the point of being 'frugal'.

Another case to point is that of Lt-Col Maharaol Ranjitsinhji of Baria, covering 813 square miles on the borders of Baroda. He ruled for 44 years until his death in 1952, and was an exemplar as far as accessibility and justice were concerned. His regular practice was to camp under canvas in each part of his state for a week every year, and personally hear the petitions and grievances of his people. All the records of the area were available at the camp, and all the concerned officials had to be present. All problems were immediately attended to. Ranjitsinhji built a very good roads system in his state and made it his practice to drive along these roads, 100 miles every morning and another 100 miles every evening, always in an open tourer, even in the rain! During these tours he would stop wherever the local people demanded it of him. Sometimes, people would clamber onto the footboards of his car and tell him of their woes. His mass contact was therefore phenomenal, and he was a ruler who was much loved by his people. The main benefit he provided his people, apart from good roads, was very cheap and very quick justice.

Then there is the case of Maharaja Sayajirao Gaekwad III of Baroda, the second richest state in India. He was born a cowherd, and was adopted by the dowager Maharani at the age of 13. He was given an education that included an English tutor as well as practical training in administration by an excellent Dewan, Sir P Madhavrao: under the strict care of his adoptive mother, the two tutors moulded him into an 'ideal prince'. As a ruler he was a social reformer par excellence, being the first state where primary education was free and compulsory. His belief was that education alone could power social reforms, and his support for education, including a village library movement, was unstinting. From his private purse he supported many schools and colleges, and awarded many meritorious students scholarships to study abroad.

In another big Maratha state, Gwalior, Maharaja Madhav Rao Scindia practiced open government, camping in dak bungalows in

different parts of his state for much of the year, providing his people direct access to the ruler, as well as imparting justice. A story is told of how a gang of dacoits armed to the teeth surrendered to him in a dak bungalow, where he was staying without much police protection. He introduced democratic reforms in the early 1900s on a scale virtually unheard of in the rest of India then: directly elected municipal councils in 1903, village panchayats in 1907 and, in due course, a nominated upper house of representatives along with a partially elected lower house. Another Maratha state to have very good government then was Sangli under the progressive Raja Saheb Chintamanrao Patwardhan, who ruled for more than 60 years and ushered in responsible government into the Deccan.

Among the Rajputs of Rajasthan, Sir Pratap Singh of Jodhpur and Idar, Maharana Fateh Singh of Mewar and Maharaja Gangasinghji of Bikaner stand out as outstanding rulers. Sir Pratap was the quintessential Rajput warrior, who captured Haifa for the British and whose valour and chivalry knew no bounds; Fateh Singh was a 'demi-god' to his British Resident, standing tall at the head of all Rajputs and refusing to attend the Delhi Durbar even though a chair was kept especially for him right next to the King Emperor (this chair is now kept at the museum in Udaipur); and Gangasinghji brought railways and canals to Bikaner, ridding his desert state of famines forever: although Bikaner had no riparian rights, his personality prevailed upon the Viceroy, he was granted access to the Sutlej river, and the Ganga Canal system was inaugurated in 1927, after which 'the desert turned green'.

One interesting story about Udaipur is of the time when piped water supply was being contemplated. The project was put on hold by the Maharana until all the traditional water-carriers had been settled in alternative occupations.

Rajput rulers also had excellent relations with tribals living in the jungles in their territory – for example, the Bhils. This was feudal partnership, complete with solemn ceremonies, and it not only worked for the betterment and political inclusion of the tribals, it also worked better for the conservation of the forests and the wildlife: the number of tigers in Princely India did not decline in the first half of the 20th century (despite all the *shikar*) while this number did fall in British India, where the ‘government’ managed the forests.

Rampur, an isolated Muslim-ruled state in the middle of the British-ruled United Provinces, underwent an ‘industrial revolution’ under Nawab Sir Syed Raza Ali Khan, who ruled from 1930. His emphasis was on ‘canals, electrification, roads, sanitation, schools’ – and he trebled the state income in less than 20 years. Sawantwadi, near Goa, was another well-ruled state, and even Gandhi publicly acknowledged its ruler to be an ‘ideal ruler’ who had brought about *Ramrajya*. Gandhi’s father had served as Dewan of Porbandar state, and its ruler was the one addressed by his people as ‘Bapu’: father. Under the rule of Maharaja Rana Sir Natwarsinhji Bahadur, ‘little Porbandar was a state without illiteracy and without slums where its culture and the best of its ancient traditions were respected under a ruler widely regarded as an ideal raja.’

There is also the unique case of the ‘saintly Raja of Aundh’, who introduced genuine constitutional reforms on a far-reaching scale, who declared a constitution (drafted by Gandhi) on 21 January 1939, ‘giving full responsible government to the people of Aundh’. The so-called ‘Aundh Experiment’ worked very well from 1939 right up to merger in 1947 – and it is recorded that when the time came the people were so happy with their own government that they did not want to merge!

British officers of the Indian Political Service like Sir John Cotton, who closely interacted with many Indian princes and kept a close watch on their manner of governance, believed that ‘a well ruled Indian state was a better form of administration than anything we had in British India, because it was an Indian ruling his own people – and not just a governor, but a man whose dynasty had always ruled, so that *ma-baap*, the mother and father of his people, was what he was.’ His colleague, Sir Conrad Corfield adds that ‘the state which had a settled feeling of contentment and belonging was about the same size as a District in British India; in other words, the kind of area where one man, who really was the mother and father of the people, could exercise his influence.’ There were hundreds of well ruled native states in India then, both great and small. The idea of ‘little leviathans’ – call it ‘subsidiarity’ if you will – must be revived in centralized India.

BETRAYAL AND GREED: THE END OF THE INDIAN PRINCES

In keeping with their treaty promises, the Indian Princes ‘rallied to the banner of their King-Emperor’ in both World Wars. They contributed both their resources as well as their personal services. ‘The State Forces of Jaipur, Jodhpur, Kashmir, Gwalior and Patiala were only some of those to see action on many fronts.’ During WW2, while the Congress intensified its opposition to British rule, the Maharajas of Jaipur, Cooch Behar, Nawanagar, Kohlapur and Bundi distinguished themselves in action at the war front, the last receiving the Military Cross for gallantry.

However, once the war was over, and having won it, the Labour government of Clement Attlee announced in February 1947 that transfer of power in India would be completed by June 1948. A new Viceroy, Lord Mountbatten of Burma, was appointed to carry out the task. Hearing the news, Sir John Cotton voices ‘astonishment’, adding that ‘there was a mood of helplessness

among my colleagues in the Political Department, who had the future welfare of the Indian States at heart... All the promises, all the agreements made over the years since India had become part of the British Empire, were set at nought at a stroke of the pen.’

Soon after his arrival, Lord Mountbatten called a conference of Residents and Political Officers. Sir John Cotton’s account of that fateful meeting is riveting:

I watched with dismay, sitting against the wall. The Viceroy presided, *supported by the advisers he had brought out from England*, and I listened while these experienced Political Officers were told – whatever their objections and whatever protests they had heard from individual Princes – that time was short, that there would be no opportunity to solve the manifest problems of the Princes *who were relying on the treaty relations of the Crown towards them*, and that all these matters would be dispensed with in the hope that the successor government would do their best to care for the Princes.... Residents gathered round the table were aghast at what they were hearing. A number of them, and notably Sir Conrad Corfield, attempted to tell the Viceroy that certain matters could not be overlooked and that the Princes deserved better treatment, but all the Viceroy could say to that was, ‘Look, I have been sent out here to preside over the conferment of Independence on India. It has been decided that that the sooner this is done the better, and if there are any problems, then they must be settled after Independence, because there isn’t time to deal with all these matters. So you can leave here and tell the Rulers that the die is cast.’⁴⁷

Soon after this, Lord Mountbatten announced the preponement of the date for transfer of power to 15 August 1947. In July 1947 a new States Department was set up under Sardar Vallabhai Patel,

⁴⁷ *Ibid.* p 263-264.

who urged upon the Viceroy to use his influence to get the Princes to sign individual ‘instruments of accession’ that would bind them to either India or Pakistan. Lord Mountbatten promised to deliver unto Patel a ‘full basket of apples’. This he did on 25 July 1947, barely 3 weeks prior to Independence, when he addressed the Chamber of Princes for the first and last time, with Patel sitting on the dais with him. Unlike his predecessors, who always came in civilian clothes, Lord Mountbatten addressed the Princes in his admiral’s uniform. The session lasted 2 hour as against the usual 2 to 3 days. He did not allow the Princes to raise any questions. The session was brought to an abrupt end. And that is how the saga of the Indian Princes was brought to a close. Looking back, the Maharaja of Benares notes that ‘there was no clear thinking; it was all done in haste and hurry.’ The Partition of India cost millions of innocent lives. The two states created at this huge cost, India and Pakistan (with East Pakistan physically separated from West Pakistan by over 2500 miles), have been badly governed ever since.

The government of India received huge sums of money from the treasuries of these Princely States – Gwalior alone surrendering 55 crore rupees, ‘a sum whose interest would be enough to pay for the privy purses of all the Princes for years to come’. The total cost of the privy purses was just 580 lakhs in the first year, going down subsequently. The idea that the privy purse was a big drain on the exchequer is false: it is said that Indira Gandhi’s motive was purely political – she knew that Princes (and bankers) were the major financiers of the Swatantra Party, which was then the biggest party opposing the Congress, and she abolished privy purses and nationalized all the banks at one stroke in order to ensure than the Swatantra Party ran out of funds. It is noteworthy that this party dissolved itself soon after.

In conclusion, I would like to quote what Gandhi wrote about the Princes in 1930: “The existence of this gigantic autocracy (the

Indian Princes) is the greatest disproof of British democracy and is a credit neither to the Princes nor to the unhappy people who have to live under this undiluted autocracy. It is no credit to the Princes that they allow themselves powers which no human being, conscious of his dignity, should possess. It is no credit to the people who have mutely suffered the loss of elementary human freedom.”⁴⁸

Actually, politicians and bureaucrats in ‘free India’ have arrogated far more powers to themselves than any dignified Prince ever did. And it is in ‘free India’ too that ‘elementary human freedom’ has been totally lost. A new age of ‘little leviathans’ must be ushered in.

Of course, the British had everything to do with whatever good government prevailed in India in the nineteenth century. They had professional civil servants running their districts from the 1770s and they kept a close watch on how native rulers under their paramountcy governed. Before the advent of the British, the plight of the average Indian was pitiable. In Mughal India, no one could sell, mortgage or bequeath land. Village communities held land in common, and there was no individual ownership. As the Mughal Empire went into terminal decline, vast portions of the country were ruled by local chiefs, and traders had to pay all of them in order to transport goods from one part of the country to another. In the Deccan and the South, things were far worse. We proceed to briefly examine the period of British rule, especially focusing on their district officer and the ideas that drove these professional civil servants. They prided themselves on being the finest civil service in the world. How did they govern?

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⁴⁸ Ibid. p. 15.

CHAPTER EIGHT
PLATONIC GUARDIANS
 COMMENTS ON BRITISH COLONIAL RULE
 DELIVERED BY CIVILIANS OF A
 ‘COVENANTED CIVIL SERVICE’

The soldier who shields the peasant while he is cultivating his field from the annoyance of the foe performs his part towards the improvement of the land; and the Magistrate, whose duty it is to give security to property after it is acquired, contributes more even than the capitalist himself towards the public prosperity. Let it not be imagined, therefore, that the revenues of a state lose all powers of reproduction from the moment that they pass into the chest of the collector.

Court of Directors of the East India Company to the Government of Bombay, 10 January 1810

“Sheepdogs, not wolves” is an apt estimation of the cadre of professional civil servants the British created to administer India. For over 150 years, from 1786 till Independence in 1947, these civil servants gave India ‘civil government’ for the very first time in her history. Indeed, the success of the civil service in colonial India can be judged from the fact that reforms in Whitehall followed the lead given by India. Neither Britain nor the USA, nor Australia, Canada or New Zealand, could boast a professional civil service of the kind India had: “minutely just, inflexibly upright”, a body of men who prided themselves as providers of the best government in the then world. In India, among the people, officers of the Indian Civil Service (ICS) were respected, even revered; and

that is why free India continued with this system, with the Indian Administrative Service (IAS) gaining for itself constitutional status. However, just 60 years down the line, the IAS has lost this respect totally and absolutely: in popular parlance, the contemptuous term ‘babu’ has taken the place of the once highly esteemed word ‘officer’; and there is much talk of the Indian government being a ‘predatory state’: that is, the sheepdogs have turned into wolves. The fence is eating the flock. How did this hideous morphing transpire? And, what are the lessons for the future?

My conclusion can be stated upfront: the minds of the officers of the ICS were always steadfastly liberal, wedded to the idea that good government lay in minimal government. The IAS turned into a body of wolves because they embraced Nehru’s idea of a maximalist government wholeheartedly. It is this horrible idea that is ultimately responsible for turning the ship of state into a pirate ship. As an eminent Indian civil servant told me, “A fish rots from the head.”

In this essay, I will refer to the seminal study conducted by the late Professor S Ambirajan on how classical liberalism powered the ICS-mind.⁴⁹ I will also refer to an excellent history of the ICS written by one of their own: Philip Mason’s *The Men Who Ruled India*. In history, as in justice, it is important to hear both sides. Our historians we have heard enough; let us hear some of theirs.

Let us begin, however, with the latter book. In it, Mason mentions his own experience just once: as District Collector of Garhwal in 1936: ‘democracy’ had kicked into the provinces, and Gobind Ballabh Pant was his Premier. Already, Congressmen are busy trying to interfere with the district officer’s work!

⁴⁹ Ambirajan, S. *Classical Political Economy and British Policy in India*, Cambridge University Press, London,.

He also lets slip on another occasion that he became quite adept at making field surveys armed only with a pair of compasses and a measuring chain, and how in a small area this is remarkably accurate. I doubt whether a single IAS-man can do this today.

Mason was a British district officer, member of an elite British civil service, and was personally well acquainted with land records, land surveys, revenue collection, and land settlement issues. He set out to write his history of the ICS after Independence: he wrote 400,000 words, three-fourths of which came out in two volumes in the 1950s, *The Founders* and *The Guardians*. Neither of these books are available today. In their place we have this condensed version of both. I recommend the immediate publication of the original manuscript of 400,000 words. Histories of civil services are invaluable to students of public administration: my own teacher, the late Professor Henry Parris, was the author of *Constitutional Bureaucracy*, the only history of the British civil service written so far. Mason's history of the ICS makes for a much more stimulating read, of great men and great deeds, of pride in a service, of ruling a foreign people – 'so few among so many' – with very little force of arms and thereby with their tacit consent: the district officer usually went about unarmed and unattended; but today 2000 policemen are required to guard the residence of prime minister Manmohan Singh round-the-clock, and VIP security has become a public nuisance in Delhi. Whereas the British ICS governed India lightly but firmly, sure of their governing precepts, the Indian IAS governs hamhandedly and unsurely, and both the misuse of force as well as the overuse of force are recurring themes in the annals of independent India. If only as a study in contrasts, Mason's history of the minds and characters of the officers of the British ICS makes for a compelling read today.

THE COLLEGE AT HAILEYBURY

In the introduction, Mason says that ‘the system began when the college at Haileybury was founded’. It is here that for 2 years, members of the Honourable East India Company’s civil service (HEICS) were trained, prior to their being sent to India. Later in the text, it is revealed that the ‘glorious little man’ Lord Wellesley took an independent decision in 1800 to set up a college at Fort William, Calcutta, to train new recruits arrived from England. For 3 years, they were to ‘learn Indian history, law and oriental languages, ethics, international law and general history’. ‘It was all running smoothly by the time the Directors heard of the project.’

The Directors, however, decided to whittle down Wellesley’s college to a school of oriental languages and set up, in England, a college for recruits to the HEICS. The East India College opened at Hertford Castle in 1806, and moved the Haileybury in 1809. The Directors took a close personal interest in the affairs of the College. There were special “Director’s Days” with prizes, speech-making and pats on the back. Perhaps the main reason why they decided to move Wellesley’s college to England was the availability of better faculty as also their own ability to shape the minds of their recruits. It is mentioned that the Directors came often, taking a personal interest; also that the professors were ‘distinguished’.

Borrowing from Wellesley's college at Fort William, Haileybury divided its subjects into 'Orientals' (Sanskrit, Persian and Hindustani languages) and 'Europeans' (classical languages, mathematics, and law – both general and Indian). What was unusual was the 'great emphasis on political economy': Malthus was the first professor in this subject and held the chair till his death; 'he was succeeded by Mr Richard Jones whose book on 'Rent' expressed considerable differences from Adam Smith, Malthus and Ricardo. He was a brilliant lecturer; his pupils listened with breathless attention.' Malthus was a close friend of James Mill, father of John Stuart, both of whom were highly placed in the Company. Apart from his essay on population whose malign influence far outlived him, Malthus was a talented liberal political economist. Further, the HEICS was never Malthusian in the sense that they felt their government had to control Indian numbers: they were more bothered about preventing Indians from dying like flies! In Haileybury, the emphasis laid on classical liberal political economy – there were examinations as well as prizes – had an enormous impact on policy-making in India. Professor Ambirajan's study cited earlier only confirms this. In a later section on famines, Mason writes of the Haileybury mind:

At Haileybury, everyone had learnt that political economy was a matter of laws, that money and goods would move by themselves in ways beneficial to mankind. The less any government interfered with natural movements, the better.⁵⁰

This is classical liberalism at its simplest and best. And Malthus was their teacher!

The age limit for admission was 15 to 22; the lower limit was later raised to 17. All recruitment was based on patronage – 'every young man must know at least one Director well enough to have been nominated and many had fathers, uncles or godparents in the

⁵⁰ Mason, P. *The Men Who Ruled India*, Rupa: New Delhi, 1992, p. 222.

Court.’ But everyone did not pass: full one-fourth of every batch were rejected for the civil service and ended up in the cavalry.

It must be emphasized that Haileybury had its military counterpart, Addiscombe, where military training was imparted. But the government of India was to remain always under ‘civilians’ – and that is the essence of ‘civil government’ as opposed to ‘military government’, which is what India had been subjected to for millennia. The British brought in not only this, but also its legal counterpart: the ‘rule of law’, the idea that laws rule (and not the whims of the ruler).

For 50 years Haileybury continued, till patronage to the HEICS was ended in 1853, and the service opened up to competition. This was 17 years before the same was done for Britain’s own civil service. The HEICS was ahead of its times. Haileybury closed in 1859.

In Mason’s estimation, Haileybury ‘fostered a close family spirit’ and India was administered by men who knew each other well, trusted each other, and ‘worked for the Company, the Queen, the team, what you will, but not exclusively for themselves’. As to the outlook of Haileybury men while in India, Mason asserts that although they came from comfortable homes, and had connections with the Directors of the Company, ‘most of them were found to be on the side of the tiller of the soil and surprisingly few believed in supporting an enlightened aristocracy’.

Apart from a deep understanding of classical liberalism, the men of the HEICS were also ‘brought up on Plato’: the ‘ideal model for the Indian system, with which every English statesman in the nineteenth century was familiar’ was that of a state ruled by specially chosen Platonic Guardians. A Hobbesian Leviathan run by Platonic Guardians on the principles of Classical Liberalism?

Sounds bizarre, but it must be true, as this quote from the introduction makes quite clear:

India too would one day be free: Macaulay said so, Queen Victoria said so, Gladstone said so. Munro, Elphinstone and Metcalfe felt in their bones that it must be so and it was the conscious will of England. But for the present it was guardianship India needed. And in fact it was to peace and unity rather than to freedom, that the effort in India was directed, to equal justice for all, roads, railways, canals, bridges. That was the mixture, very good for the child, to be given firmly and taken without fuss.

The nineteenth century saw Britain herself moving towards higher and higher degrees of individual liberty. First came the free trade movement led by Cobden and Bright, then the Reform Bills, the repeal of the Combination Act and so on, a step-by-step process by which restrictions based on privilege gave way. America had been lost, and ‘England learnt only slowly the lessons of Yorktown and Saratoga.’ An Indian Empire was suddenly made possible when Clive gained the Diwani of Bengal in 1765. Mason says that this event filled the Directors of the Company in London with ‘incredulous elation, shot with sharp twinges of doubt, of a village grocer who has inherited a chain of department stores and is not quite sure whether they will pay him a profit beyond his dreams or drag him down to ruin.’ In the end, the idea of responsible government prevailed. And the HEICS, trained at Haileybury, were the men chosen for the task.

THE FIRST DISTRICTS

When Clive accepted the Diwani of Bengal he never considered directly collecting the revenue, except in the three ‘provinces’ – Burdwan, Midnapore and Chittagong – that had been granted in perpetuity to the Company. Here, the career of Harry Verelst

stands out as quite remarkable, for he was the first of these provincial or ‘district’ officers. He was in-charge of Chittagong from 1761-65, of Burdwan in 1765 and then Midnapore in 1766. This unique experience made him a different sort of Governor after Clive, for it was he who decided to undertake the ‘arduous task’ of extending British government to all of Bengal and Behar. Thus, thirty-nine districts were administered by British officers of the Company – the beginning of responsible government.

Verelst’s instructions to his District Supervisors are detailed: first, to trace a summary history of the district; next, to prepare a rent-roll; to fix ‘ancient boundaries and divisions’; to investigate all titles to land, etc. Mason quotes from Verelst’s instructions:

*Among the chief effects which are hoped for... are to convince the Ryot [the peasant] that you will stand between him and the hand of oppression; that you will be his refuge and the redresser of his wrongs... that honest and direct applications to you will never fail producing speedy and equitable decisions; that, after supplying the legal due of government, he may be secure in the enjoyment of the remainder; and finally to teach him a veneration and affection for the humane maxims of our government.*⁵¹

The career of Sir John Shore, who landed in Bengal a young lad of seventeen when Verelst was setting up British rule in the districts, also reflects the nature of the ‘civil government’ being established. In 1770, still only nineteen, he was appointed Assistant of the Revenue Council of Bengal. In this capacity he settled over 600 ‘revenue suits’ a year, and Mason explains what a revenue suit meant:

In India, by accepting the revenue for a plot a collector automatically bestows a title; gradually it comes about that

⁵¹ *Ibid.* p. 44.

*the Collector of Land Revenue spends only a few minutes a week on seeing that collections are coming in to his subordinates, but many hours deciding disputes.*⁵²

Shore stands out most as a totally honest man, plodding along, doing his duty. He spent over 30 years in Bengal, rising to Governor-General. During this time, salaries of civil servants were raised considerably, and corruption weeded out. They became professional administrators who could look forward to a suitable salary kicking in on time every month, without having to pay any attention to trade as a means of survival. Trading on the Company's behalf was done by a separate cadre, and the two never met. Jobbery and influence-peddling from England was gradually ended as a succession of Acts of Parliament laid down that all appointments must be made from the covenanted civil servants of the Company. With Pitt's India Act of 1786, the district officer set up by Harry Verelst came into his own, responsible for fixing revenue as well as collecting it, with the power to arrest and imprison, but not to try, a criminal. The *zeitgeist* is brilliantly captured by Mason:

This was the age of the American and French Revolutions; half the century had been spent under a Whig administration; Locke was still a prophet. But, against the spirit of Locke, a system which was developing in India combined executive and judicial powers in one hand. It was the tradition of the country that one man should rule; it was the way India liked to be ruled, but it was repugnant to liberalism and Whig views. For a hundred and sixty years, from 1786 to 1947, liberal principles and the practical needs of administration in India made an uneasy bargain...Already in the settled areas there is a judge distinct from the district or revenue officer – a concession to liberalism – but the

⁵² *Ibid.* p. 52.

*revenue officer has powers of arrest – a concession to convenience.*⁵³

Sir John Shore was ‘a Victorian before Victoria’, a man of scholarly pursuits, a Harrovian who played cricket in Calcutta, and by the time he left Bengal the rudiments of a professional civil service had been created. Already, there is a belief that theirs is a ‘public service’, one that is ‘minutely just, inflexibly upright’, and that ‘no public service in the world can evince more integrity’. There are already some legendary district officers, like Augustus Cleveland, ‘who made the Sonthals a man’ and who became the source of John Chinn in Kipling’s story *The Tomb of his Ancestors*; and Tilman Henckel, Collector of Jessore from 1781-89, whose fatherly care prompted the inhabitants to make an image of him and worship it after he left. All these were foundations upon which Wellesley and Haileybury would build. The golden age of British rule, 1798-1858, was dawning. Already the peasant had begun to feel that laws ruled, and not the whims of rulers. Already, property titles existed where anarchy ruled before. In the settled areas, natives were beginning to feel that British rule, based entirely on liberal precepts, was far better than anything they could remember.

THE MEN OF THE ‘GOLDEN AGE’

All this gave the British the confidence that they could effectively administer an Indian Empire – that too with the ‘tacit consent’ of the ordinary, poor people, for now it was quite commonplace that their district officers could go about unarmed and unattended, ‘alone among a million of his subjects’. The stage was set for extending this benevolent administration. There were certain key features of this administration: first, that the ‘king’s share’ would be lower than before; that it would preferably be settled directly with the tiller of the soil; that settlements be for long periods; an

⁵³ *Ibid.* p. 56.

equal and speedy justice for all; and, of course, 'roads, bridges, canals'. The British believed that among the Afghans, Sikhs, Marathas etc. who were vying with them to rule India, 'victory would go to the power that managed to pay its soldiers and keep its peasants on the soil'. The rest were just predatory states; the British knew that their long run success was assured if they followed the liberal precepts of responsible government. They wanted to be 'sheepdogs, not wolves'.

The extension of British administration to south India gave occasion for the career of a truly remarkable man, Thomas Munro, who was a lieutenant in the Madras Army when selected by Cornwallis for civilian duties because of his knowledge of the customs and languages of the people of the south. One of the districts ceded by Tipoo was Baramahal (now Salem) and Munro spent seven years there, surveying the district completely and 'fixing rents that were lower than Tipoo's, but greater exactness in accounting and less corruption meant that just as much was collected as before and more of it reached the Treasury.' He did so, as he says, by 'going from village to village with my tent, settling the rents of the inhabitants.' Munro went on to settle Kanara district, then an area without any roads at all, traveling 10 miles every day, conducting surveys and assessments, and in this way covering a 650 mile circuit every year. He pioneered a system by which the district officer would deal directly with the peasant, be in close contact with him, and, for all practical purposes, be what they called him in their petitions: 'mother and father of the people'. He laid great stress on the learning of Indian languages by British civilians. Generations later, peasants in south India were still naming their sons Munrolappa after him. He rose to be Governor of Madras. There is a story of an Englishman asking a south Indian peasant where exactly he was, only to be told, 'In Munro Sahib's kingdom'. Munro also trained many others in carrying on his good work, and south India was catapulted into the nineteenth century from conditions of 'widespread sloth and corruption'.

There are many stories of other great men, who fought wars, engaged in diplomacy, dispensed justice and administered territory – all with a sense of mission and purpose: as Munro himself put it, ‘the good government of the people is the great end’. There are the careers of Sir John ‘Boy’ Malcolm and Mountstuart Elphinstone in settling the Maratha territories, taming the Pindaris and bringing order to an area ‘the size of Spain, France and Germany combined’. In these areas, the rule of law was established and peasants returned to their fields and villages. Travel along the roads became safe. There is the career of Sir William Sleeman, who crushed Thuggee and ensured that 3000 of them were convicted in a court of law, which resulted in an estimated 10,000 of them giving up this life of plunder and murder (note there were no ‘encounter killings’). Chaos was tamed. With the British taking sovereignty, their civil government prioritized on the right issues: going after the bad guys, providing law and order, delivering justice, settling the land and fixing revenue dues while handing over property titles – and not doing much else apart from the ‘public works’: roads, bridges, canals. Elphinstone, for example, took an interest in education while Governor of Bombay, but he was far ahead of his times: in England then, it was widely believed then that this was the job of parents and voluntary bodies like the Church.

Even the ‘princely states’ we examined in the last essay were quite a mess till the British reformed them and their ‘strong moral influence permeated the whole’. In 1800, whereas revenue collection in British territory was a dull, boring grind, in the princely states it ‘combined the excitement of a sweepstake in reverse and a bullfight in a small Spanish town. The demands of the revenue collector would be resisted, often with loss of life; nothing was predictable and it was all much more fun.’

Some more great men may be briefly mentioned, like Charles Metcalfe who was Resident in Delhi in the early 1800s: in theory he was a diplomat in the court of the Mughal, but in reality he was an administrator of an area half the size of England. Mason notes that his administration was ‘the most enlightened the world’: ‘In England men could be hanged for a forty-shilling theft; the United States permitted slavery for another 50 years. But there was no hanging in Delhi and no selling of slaves.’ Metcalfe went on to the supreme post of Governor-General. From him too, we get an idea of how senior British minds were thinking of their engagement with India:

Our dominion in India is by conquest; it is naturally disgusting to the inhabitants.... It is our positive duty to render them justice, to respect and protect their rights, and to study their happiness. By the performance of this duty, we may allay and keep dormant their innate disaffection; but the expectation of purchasing their cordial attachment by gratuitous alienations of public revenue would be a vain delusion.⁵⁴

It is this ‘vain delusion’ that has marked the government of independent India, with subsidies and other grants totaling over 100,000 crore rupees being voted in the 2006 Budget: this amounts to spending 1,40,000 rupees every day, each day, since the birth of Jesus Christ! Our rulers today are attempting to ‘purchase cordial attachment by gratuitous alienations of public revenue’.

Then there are the careers of Robert Merttins Bird and James Thomason in the North-Western Provinces: Bird commenced to ‘map the waves of the ocean’ and field-by-field surveys were carried out in each district. The post of Settlement Officer was created and the village *patwari* became a government servant. The surveys were fast and accurate, and in less than thirty years these

⁵⁴ *Ibid.* p. 121.

districts were fundamentally transformed. Thomason rose to be Lieutenant-Governor (and died in office): he was also ‘the father of public works’, in particular the Grand Trunk Road, the Ganges Canal, and the Engineering College in Roorkee was named after him. Ambirajan cites a book written by Thomason on public works in India.

By 1857, the year of the Mutiny, the British had left their mark on much of India. The peasantry was better off, great public works had been carried out and much more was in progress, and many evils like suttee and thuggee had been suppressed. The East India Company had ceased to be a trading concern and the civil service had become a true ‘public service’, that too, one of the finest in the world, answerable to Parliament. Already, the policy of employing Indians in positions of trust had been proclaimed as a matter of principle, and many, many Indians were now being trained in administration, learning English law. Mention must also be made of the Lawrences, Henry and John, ‘the Titans of the Punjab’, who carried on the same ‘civil government’ there, fixing revenue at ‘thirty per cent below Sikh rates’, providing swift, uncomplicated justice, and, of course, ‘roads, canals and bridges’. John Lawrence’s ideal was ‘a country thickly cultivated by a fat, contented yeomanry, each riding his own horse, sitting under his own fig tree and enjoying his rude family comforts’.

Of this golden age, another man stands out: Sir Bartle Frere. He started off in settlement and revenue work when he was sent by Dalhousie to be Resident at Satara. The Raja died without any direct heir. Dalhousie refused to accept his adopted son as claimant to the throne (against Frere’s advice), the state was annexed and Frere had to administer the territory himself. He refused the offer of troops and managed fine without. The notable contribution he made was the introduction of the first municipalities in India: committees who collected funds and kept the towns clean. When he left Satara, the natives were in tears.

Frere then went to Sind, the newest and least developed province, as Commissioner, succeeding Sir Charles Napier. Here too he started municipalities and ‘fought great battles for the port of Karachi’, convinced that it was the ‘natural port of the Punjab’. More than that, he ‘built roads, railways, post-offices, travellers’ bungalows, and, above all, canals.’ Over 3000 miles of roads, furnished with over 800 masonry bridges were built in just the frontier districts of Sind, where his able assistant, John Jacob, established a lasting peace.

Frere the municipality builder also performed wonders as Governor of Bombay. Florence Nightingale wrote to him in 1860: ‘Bombay has a lower death-rate on the last two years than London, the healthiest city in Europe. This is entirely your doing. If we do not take care, Bombay will outstrip us in the sanitary race. People will be ordered for the benefit of their health to Bombay.’ We thus come to another liberal aspect of British rule: the importance given to cities and towns and local self-government therein. Under colonial rule India saw vigorous urban development, cities, towns and countless hill-stations were developed, administered and maintained in fine fettle.

So there it is then, the liberal British Raj dissected: low taxes, justice, land records, municipalities and ‘roads, bridges, canals’. It was a vigorous despotism, but the despot was tempered by his own liberalism as well as his Platonic ideals. Not much changed after the Mutiny, just that Haileybury was shut down and the service opened up to the competition-wallahs. But here too Macaulay insisted that recruits should have received ‘the best liberal education that England has to offer’.

The question that arises is: How did this liberal government change so drastically in independent and democratic India. Socialism and Gandhianism have much to do with it, but Mason’s comments on

the closing years of the Raj show that many small changes were beginning to be felt earlier on, and these were ultimately responsible for the debasement of that great British institution upon which the entire edifice stood – the district officer.

THE CIVILIAN: SOME OUTSTANDING EXAMPLES

The India that the British ruled after the Sikh Wars included not only the Punjab but had also expanded to the border areas between Punjab and Afghanistan, the ‘no man’s land’. Sir Henry Lawrence was Resident and his ‘Titans’ began their rule, first among whom was Herbert Edwardes. Mason says that ‘the doings of Herbert Edwardes in Bannu are the best illustration of what happened those days’. If so, it is a story of a ‘civilian’ that deserves to be told:

The Afghans had ceded Bannu to the Sikhs but neither had ever administered this high desolate valley, where every man went armed and no one had ever willingly paid a tax. Every three years, the Sikhs sent an army to punish the Bannuchis for their failure to pay tribute....

The time came to send out another of those punitive expeditions. Sir Henry Lawrence agreed, but on condition that a British political officer went too and tried to make a peaceful settlement. The Sikhs smiled and agreed; Herbert Edwardes set out, the only Englishman with an army of Sikhs, recently defeated. He was not even in command. But he began by enforcing an order that the army must pay for everything.

This transformed the situation. The Bannuchis were astonished by an army that did not plunder; they came and talked. They sold provisions to the army. Night after night, they came to Edwardes’ tent and sat talking to him.... When he came the next year for three months, he achieved miracles. They dismantled their forts; they agreed to pay a reduced land revenue and he began a field-by-field survey

that would lead to an accurate assessment. Finally he decided that they needed a legal code, and wrote it one night. He turned it into Persian next day and made a beginning of administering his code single-handed. The Political Adviser became judge as well as financier, tax-gatherer, commander-in-chief, engineer and legislator – Moses as well as Napoleon.

Even Edwardes himself seems hardly to have realized quite how miraculous his achievement was. He was alone among these people who obeyed him because of the certainty with which he spoke to them, because of the intensity of his moral fervour...⁵⁵

There is also this quote from the journal of John Beames, Assistant to the Deputy Commissioner Hardinge, which describes the hard work done by civilians in those early days of British rule in the Punjab (while the erstwhile rulers largely sat idle). It is impossible to talk about those days without sensing the deep sense of a civilizing mission that all these men had undertaken. John Lawrence, another of these ‘Titans of the Punjab’, was the one who kept the Kohinoor diamond for two weeks in his waistcoat pocket, forgetting all about it. He then found it by accident and sent it to the Queen. A sense of mission, personal disinterestedness, a sense of justice and fair play – and very hard work: Beames writes about himself and his DC Hardinge:

We were in the saddle by five in the morning and worked on horseback for two or three hours, riding about inspecting police stations, roads and bridges and public buildings under construction, tree-planting, ferry-boats, settling disputes about land and property between villagers and such-like business. Then court from ten to six. There was no law in the Punjab those days. Our instructions were to decide all cases

⁵⁵ *Ibid.* p. 147.

*by the light of common-sense and our own sense of what was just and right.*⁵⁶

This confidence in the moral and ethical principles that guided their government could only have been brought about by a thorough grounding in classical liberal political economy, including liberal jurisprudence. Beames was a Haileybury boy.

Long before Edwardes, Beames and the Punjab, Augustus Cleveland had done much the same with the Sonthals in Boglipoor: the reason why Kipling immortalized him as John Chinn:

*A deadly feud existed between the Sonthals [aboriginal hill tribes of Chota Nagpur] and the cultivators of the neighbouring lowlands; they being untamed thieves and murderers, continually making forays, and the Mohammedan Zamindars killing them like mad dogs or tigers, whenever they got them within gunshot. An excellent young man [he was only 29] of the name of Cleveland, Judge and Magistrate of Boglipoor, undertook to remedy this state of things. He punished all violence from the Zamindars. He got some of the Sonthals to enter his service and took pains to learn their language. He established regular bazaars at the villages nearest to them where he encouraged them to bring down for sale [the produce of their hills]... He gave them wheat and barley for seed; he encouraged their cultivation... And to please them still further, he raised a corps of Sepoys from among them.*⁵⁷

⁵⁶ *Ibid.* p. 195. The good British district officer was always known by the extent of wear on the seat of his pants. District officers all over India traveled about their jurisdictions on a daily basis, inspecting everything, meeting the people, solving problems. The DC's touring of his district increased after there was a separate district judge. The DC was never a man to be seen just sitting in his office.

⁵⁷ *Ibid.* p. 58, quoting from the *Journal* of Bishop Heber.

Cleveland died young. He was a cousin of Sir John Shore. ‘The Governor-General and Council of Bengal raised a monument in honour of his character and for an example to others.’

This is the essential non-predatory nature of ‘civilian government’ upholding the ‘rule of law’. It is based on the ‘presumption of natural order’ that the market economy offers: where that order is absent, the civilian seeks to invoke it by setting up markets where people can peaceably and gainfully trade (and not murder each other). There are many more such examples Mason provides of British civilians in India, in Burma, and especially among the tribes of the North-East. These examples are useful as ham-handed US diplomats today use military force to bring order in, say, Afghanistan, or Iraq. It also tells against the government of India’s handling of areas such as Kashmir and Manipur, where military might rules and the market is not encouraged. We skip ahead now to inquire into the early years of the Indian National Congress.

THE CONGRESS BEFORE DEMOCRACY

The Indian National Congress was founded entirely by the effort of a civilian, Allan Octavian Hume. He had come to India in 1849, fought some battles during the Mutiny years and won them, served as DC of Etawah for nine years, etc. till he finally retired in 1882, to Simla. He firmly believed that a political vehicle was required to channel Indian public opinion: that is, of the educated elite. He set out to create it, with the blessing of the Viceroy, Lord Hardinge.

Hume began by writing to all the graduates of Calcutta University asking for fifty volunteers to join in a ‘movement to promote the mental, moral, social and political regeneration of India’. A fragment of this letter is quoted:

There are aliens, like myself, who love India and her children... but the real work must be done by the people of

*the country themselves... If fifty men cannot be found with sufficient power of self-sacrifice, sufficient love and pride in their country, sufficient genuine and unselfish patriotism to take the initiative... then there is no hope for India. Her sons must and will remain mere humble and helpless instruments in the hands of foreign rulers.*⁵⁸

By this time, as Mason notes elsewhere, the ‘educated Indian’ was a reality that could not be ignored: he possessed ‘airs of independence’. Hume sought to steer these educated Indians into liberal politics.

The result of Hume’s letter was the first Indian National Congress in Bombay in 1885, ‘in an atmosphere of friendly encouragement by both the Governor and the Viceroy.’ At the end of the proceedings, the party was ‘absolutely unanimous in insisting on unswerving loyalty to the British Crown as the key-note of the Institution’.

*The longest and most detailed of their resolutions concerned the method of recruitment to the Civil Service.... Hardly anyone, English or Indian, in 1885 envisaged a country ruled by a parliament and by the majority of votes in a wide electorate. What some Indians of the university class did picture was a continuation of the existing system, but with Indian officials gradually replacing English. They wanted, therefore, recruitment to be as late as possible, to give Indians a better chance of competing with Englishmen in English.*⁵⁹

Hume remained general secretary of the Congress till its twenty-third session in 1908. “The resolutions of that year begin as usual with loyal homage to the King Emperor, express the deep and

⁵⁸ *Ibid.* p. 250.

⁵⁹ *Ibid.* p. 250.

general satisfaction of the country and the reforms just announced, and end with a message of cordial greetings and congratulations to Hume, ‘the father and founder of the Congress’.”

Mason says that ‘the resolutions that came between are framed in the spirit of Mr. Gladstone; they have the flavour of a non-conformist meeting-house, earnest and well-meaning, a trifle doctrinaire, fundamentally warm-hearted.’ He later confirms that ‘the men of the Congress had been brought up in the mental atmosphere of English Liberalism’. He feels that some of their resolutions may have been ‘too English for India’!

To illustrate this, below is a passage I found from Surendranath Banerjea’s presidential address to the Congress in 1895: In a speech filled with the faith that the British would grant self-government to India when she was prepared for it – the position of the ‘moderates’ – Banerjea said:

England is our political guide and our moral preceptor in the exalted sphere of political duty. English history has taught us those principles of freedom which we cherish with our lifeblood. We have been fed upon the strong food of English constitutional freedom. We have been taught to admire the eloquence and genius of the great masters of English political philosophy. We have been brought face to face with the struggles and the triumphs of the English people in their stately march towards constitutional freedom. Where will you find better models of courage, devotion, and sacrifice; not in Rome, not in Greece, not even in France in the stormy days of the Revolution – courage tempered by caution, enthusiasm leavened by sobriety, partisanship softened by a large-hearted charity – all subordinated to the

*one predominating sense of love of country and love of God.*⁶⁰

Banerjea, like most of the ‘educated class’ of Indians, had imbibed liberal political values. He was one of the few Indians to have made it to the ICS. The liberalism in his intellectual upbringing stands out. The Congress was still a club of the educated elite and had not taken to the ‘mass politics’ of the Gandhian kind. There is a need to understand today why for so many years the INC was so loyal to the British Crown.

Mason sums up what the British had achieved in India by the time of Lord Curzon, who was ‘the last to view the mighty structure with a pride that was hardly mixed with apprehension’:

*The structure was indeed mighty. A political unity had been imposed that had never before been equaled and had not been approached for two thousand years. Roads, railways, bridges, canals, were far ahead of anything else in Asia; there had been internal peace for half a century, the raids of bandits were no longer a feature of everyday life and robber chiefs had one by one submitted.*⁶¹

Elsewhere it is mentioned that, as compared to China then, India was far, far ahead in terms of roads, railways and canals. Vast stretches of China was totally unconnected then. Things are very much the other way around after 60 years of ‘central economic planning’.

THE GUARDIANS AND THEIR WARDS: THE LAST YEARS

⁶⁰ Hay, Stephen (Ed.) *Sources of Indian Tradition*, Second Edition, Volume Two, Penguin: New Delhi, 1991, p. 101 citing Banerjea’s *Speeches and Writings*.

⁶¹ Mason, P. op. cit. p. 265.

When discussing the last 40 years of British rule in India, which must have been very fresh in his memory, Mason repeatedly laments the fact that the Indians were impatient: ‘they did not want to be taught; they wanted to drive the car themselves’. And it looks like they crashed it.

First came ‘dyarchy’ in 1919, with some subjects being transferred to elected representatives in the provinces. One of the subjects transferred then was ‘education’. This led to a situation that the Congress flag would fly over the district school, and Mason notes that this was an insult to the authority of the district officer. This is when the ‘Congressization’ of India’s education began, with socialist, Gandhian, Marxist and ‘democratic’ ideas and ideals replacing the classical liberalism that was previously taught. Over the years, the guardians of the ICS found that they could not give orders; they must only advise; and make democratically elected Indians, mainly Congressmen, ‘fit for self-government’. However, precious few, if any, wanted to learn.

Mason, of course, was in service during these closing years and he must have noticed many of the changes himself. He says that after dyarchy was introduced:

Those who wanted political progress thus found themselves in the same camp not only with self-seeking careerists, but with criminals in the Western sense, gang robbers for their own gain. In the mind of the peasant and the policeman, criminals and politicians were all alike.... It was not permissible to say openly what scoundrels some Congress supporters in a district were.⁶²

There is also a telling comment on municipalities after the introduction of the democratic principle:

⁶² *Ibid.* p. 290 and 292.

The standard of local politics in the early 1920s was one through which the municipalities of England had passed in the seventeenth or eighteenth centuries. If the factions were evenly balanced, a member might be locked into his bathroom just before leaving home and the crucial vote taken while he was still trying to get out. Or the office clock might be advanced and one party, but not the other, warned to be present ten minutes early. The smaller towns sometimes got themselves into a hopeless tangle, their dues heavily in arrears, their streets dirty and unlighted. Such boards would have to be superseded and handed back to the district officer, who for three years or so would ruthlessly collect arrears of taxation and see that money allotted to services was in fact spent. And then the Board would be re-constituted.⁶³

By 1935-36 there was full blown democracy in the provinces. Mason quips that these assemblies were ‘much like undergraduate debating societies’, ‘criticism was ill-informed’ while, from the government benches, ‘speeches tended to consist of facts and figures, perfunctorily repeated’. But all this changed the life and work of the district officer in a most profound way:

India was a poor country which could not afford luxuries and a district officer had concentrated on essentials – public order, the swift administration of justice, the prompt payment of taxes moderately assessed, the maintenance of accurate land records which would prevent disputes. Those had been the four first things. But by 1939, the emphasis had changed and rural development, co-operative banks and village committees were inclined to come first.... The district officer must add to his innumerable duties the maddening and infructuous business of answering parliamentary questions,

⁶³ *Ibid.* p. 293.

the host of subjects included under the head of Rural Development....

That was why to some at least of the service it seemed that it was time to go. Rule of the old kind was running down; districts were being administered in a new way, which might be better, but was not the British way. A district officer might find, perhaps, when he had time to look, that a peasant had been brought into headquarters a dozen times before his case reached even the first formal hearing, or that someone had been forced to spend all he had to defend his holding against some fabricated claim, simply because the land records were not up to date. As to Rural Development, most British officers would have agreed that a great deal of what was proposed was admirable if the villagers would do it themselves, but they were skeptical about trying to change habits from above – and much of the effort put into the attempt seemed to them wasteful and incompetent.⁶⁴

But then came the war, Gandhi declared ‘open rebellion’ and the rest is the history of ‘free India’. Of this modern phase I have two quotes: the first is from the 6th Five Year Plan (1980-85), para 9.100 (iii) p. 115.

A systematic programme would be taken up for compilation / upgradation of land records, to be phased for completion within a period of 5 years, i.e. 1980 – 85. In states where the backlog is heavy...

As to how the administration of land records got sabotaged, this comment from the communist leader SA Dange made in Parliament is quite telling:

If you pass a resolution about ceilings on land holdings, you cannot keep Ministers who are opposed to that in

⁶⁴ *Ibid.* p. 317-318.

*principle.... But here a peculiar situation exists. When suddenly the Hon Prime Minister takes up an issue they start opposing it; then they pass it and say: It does not matter. Let him talk, we can sabotage him in action.*⁶⁵

This is the why and how of the mess in land records all over India, and the complete and total debasement of the office of district officer.

THE IAS ACADEMY IN MUSSOORIE

I will conclude this essay with the story of my visit to the IAS Academy in Mussoorie (their version of Haileybury) in 2001, along with Barun Mitra of Liberty Institute, New Delhi, to deliver a few lectures on why population is India's biggest resource and it is the government rather than that is the real big problem. Barun and I delivered our talks back-to-back; after which we were invited to visit the office of their professor of Economics (who did not attend our talks). We did pay the courtesy call as expected of us; but were shocked that, a decade into 'liberalization', the professor of Economics at the IAS Academy was a Marxist-Ricardian, a follower of Piero Sraffa. They are teaching illiberalism. Indeed, they are inducting systematic errors into the thinking of the officialdom. This proves that India's 'liberalization', begun in the early 1990s, has not stemmed from either the heart or the mind; exigencies forced the government's hand; and that a huge rearguard action was undertaken to keep liberal ideas out of the academies and universities. There is thus a very important reason why any role for this government in education should be rejected outright, for it will only consist of the spreading of errors. True knowledge will never be imparted.

⁶⁵ Frankel, F. R. *India's Political Economy 1947 – 1977: The Gradual Revolution*, Princeton U. P. 1978, p. 166n, citing *Lok Sabha Debates*, Second Series, 25, p. 1207.

We have a long, long way to go, but at least now we know how it all began – with Haileybury. And very strong doses of classical liberalism.

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CHAPTER NINE

MODERN CHALLENGES – 1

POLITICS, DEMOCRACY AND THE RULE OF LAW

– including some remarks on the politician; and with a conclusion on the contrasting Ideals of Liberalism and Democracy

Overhead there appeared to, coinciding with the sky, an immutable sphere of justice and order, brooding sleeplessly over what was happening below. But that feeling vanished at one stroke with the coming of the nationalist agitation in 1905. **Nirad C Chaudhuri**, *Autobiography Of An Unknown Indian*

Before we discuss democracy – ‘the most promiscuous word in the political lexicon’ – let us first discuss ‘politics’, the stuff that democracy is supposed to be made of. It is a foreign word, its roots buried in some *polis* among the ruins of the ancient Greek city-states. Aristotle devoted much thought to it, ignoring economics, thereby exhibiting what Hayek called ‘the philosopher’s blindness’.⁶⁶ Among modern political thinkers, the Fabian socialist and social democrat Bernard Crick’s *In Defence of Politics* defines the activity as the ‘public actions of free people’. This is the ‘good politics’ Crick seeks to defend. Freedom is thus the ‘privacy from public actions’.

⁶⁶ Hayek, F. A. *Fatal Conceit: The Errors of Socialism*, Chicago U. P. 1988, p. 45.

POLITICS AND POLITICAL RULE

Politics in this good, defensible sense is about active citizenship, airing one's views openly, participating in public debates, offering candidacy for public office – all within a 'public sphere' and, most importantly, as individuals. Before the coming of newspapers and television, this 'public sphere' must have been the open spaces of the walled cities of Europe, where discussions on public matters occurred, speeches were made and heard, where prominent citizens made their views known, and open decisions on public affairs were taken. Pubs and cafés – 'the busy haunts of men' – also played their part in this free politics. We have discussed the ancient City of London earlier, and we can safely surmise that it is this open and free politics that must have enabled Londoners to organize their public affairs into an honest corporation – a 'body politic' of their own ownership – to run their public affairs, and, to a lesser extent, 'represent' them before the King. When we discuss politics in this good sense we lay more emphasis on its open and free nature; we also talk more of the 'body politic' than the 'politician' – who is just the man of the moment. Crick asserts that, instead of supporting 'democracy', as most people do, it would be better to defend politics – 'for it is a more precise

thing than is commonly supposed; it is essential to genuine freedom; it is unknown in any but advanced and complex societies; and it has specific origins only found in European experience.’⁶⁷

We have encountered the idea of ‘civil government’; let us now turn to what is ‘the nature of political rule’. This is something that the British possessed back home, and what they were trying to bring about in India via the Indian National Congress. India was possessed of civil government; it was ‘politics’ that the British were trying to introduce. It is worth noting that what Crick calls politics ‘is unknown in any but advanced and complex societies; and it has specific origins only found in European experience’. Crick uses this dialogue from Sophocles’ *Antigone* to illustrate the political character of a *polis* in ancient Greece:

CREON: Can any voice but mine give orders in this polis?

HAEMON: It is no polis if it takes orders from one voice.

CREON: But custom gives possession to the ruler.

HAEMON: You’d rule a desert beautifully alone.

⁶⁷ Crick, B. *In Defence of Politics*, Fourth Edition, Chicago U. P. 1992, p. 17.

Politics is therefore an ‘activity’ that arises in a city where diverse peoples live. It arises ‘from a recognition of restraints’, and is directed towards the conciliation of differences. Thus, ‘a political system is that type of government where politics proves successful in ensuring reasonable stability and order’. Note that the idea of politics, like the idea of markets and prices, is essentially anarchistic: there isn’t one supreme ruler; and many voices contend. Thus, ‘the moral consensus of a free state is not something mysteriously prior to or above politics: it is the activity (the civilizing activity) of politics itself.’⁶⁸

At this point, let us pause to reflect on the quote from Nirad C Chaudhuri’s autobiography which heads this essay: it suggests that the feeling of justice and order brought about by British rule vanished because of the ‘politics’ that the British had themselves introduced. But then, Hume & Co. set up a ‘national’ congress; and Chaudhuri uses the term ‘nationalist agitation’ to describe their ‘politics’. Perhaps it would have been more politic on the part of the Brits if they had attempted to create hundreds of little ‘polities’ by encouraging civic participation in local government alone. Then, just as the princes were under the supervision of British Residents, so too would all these little polities in British India run by the newly-

⁶⁸ *Ibid.* p. 24.

emerged 'educated class' have remained under the supervision of the district officer. Good politics would have been introduced, and the 'recognition of restraints' at the local level would have allowed Hindus and Muslims to sort out their differences locally, so that the horrors of the partition could have been avoided. The partition, in any case, shows that a 'political solution' to the Hindu-Muslim question was not found by the major 'political parties'. One of these parties, the INC, took British India as well as the princely states under its control – and set up a highly centralized and very powerful government. The head of the party was also the head of the government and they instituted a Stalinist system of 'dual subordination' by which the bureaucracy (which had always been insulated from politics) became debased and corrupt. Instead of 'politics' in the Greek sense, India got 'palace politics' – a very private and secret politics, a contradiction in terms. There is still as little real politics in India as was there in the Kremlin – despite 'democracy'. Instead of civil government, India got 'party government'.

The setting up of an all-India 'national congress' gave the organization too much to 'represent'. And, it started off as an 'organization', replete with all the 'procedures' Hume introduced, and all the various party posts. It was not free civic politics; it was

political organization – and such an organization can be turned towards any end, from rebellion to actual criminal behaviour. It is this political organization that has controlled India since 1947. Its ‘control’ has been peculiar: it has preferred economic controls to all else. Every valid governmental function, from justice to roads, from policing (even policing road traffic) to garbage disposal has been not just neglected, but even abandoned. This political organization has given India ‘democracy’ without civic politics – because it was never a creature of such politics itself. Instead of the promised equality of a ‘socialistic pattern of society’, this centralized, hierarchical command organization has succumbed to Roberto Michels’ famous dictum: ‘every party organization represents an oligarchical power grounded upon a democratic base’. Here, we have the oligarchical power all right, but does it really rest on a democratic base? It is time we realized that we will never be equal. We can, however, fight to be free.

Crick has a chapter entitled ‘in defence of politics against democracy’; worth reading in a nation where ‘politics’ occurs behind closed doors and every political actor is someone or the other’s toady – they are not ‘free people’: every ‘political party’ is more like a criminal gang. Funny how Mason saw the gangsters coming in as early as 1936 – just after

‘democracy’ was ushered into the provinces by the Act of 1935. Thereafter, what followed was ‘mass politics’ and ‘mass agitations’ directed towards ‘national independence’: none of this had anything to do with any *polis*. Indeed, even today, when some political party wants to show its strength, lorry-loads of rural ‘masses’ descend to the cities and the ‘citizens’ stay at home. All this rent-a-crowd nonsense is not politics. The sad thing is that it all began with the British *raj* misconstruing the idea of ‘politics’ as well as the best kind of ‘political participation’ in which to engage the newly educated class. As Mason said – ‘those who wanted political progress found themselves unwittingly in the same camp as gangsters’: this was because the idea of politics was wrong.

Indeed, the Hindi word for politics, which is *rajniti*, is best translated as ‘ethics of kingship’. It is a term harking back to India’s feudal past. It has nothing to do with the ‘public’ and ‘free’ nature of politics as a ‘complex activity’ that Crick defends with so much passion. Crick also issues a caution – while free politics ‘is something to be valued highly... to overvalue it can be to destroy it utterly’.

For a timely alert on why politics must not be overvalued, we must turn to the side of the liberals:

Anthony de Jasay's slim volume, *Before Resorting to Politics*. In essence: with liberty and property, man as a social animal is not only able to survive, but also get along with strangers, trading with them and living among them in cities and towns. The 'recognition of restraints' that politics presupposes is born out of market relations. To wit:

... it is man as a social being who has the least need to resort to politics, precisely because he commands the difficult civic skills and virtues of voluntary cooperation, of finding bargained solutions, of maintaining valuable conventions and keeping free riding within tolerable bounds.... It is these skills that atrophy and vanish when politics takes over.⁶⁹

He adds that the 'liberal presumption is that resort to politics is wrong because coercion is wrong'. Coercion is an actionable tort, and a grave matter. Resorting to politics – and this means the organized politics of a liberal democratic state – is ultimately to resort to coercion. Everything the state does – including 'education' – is based on coercion, taxation and bureaucracy: that is why liberals dislike the idea of increasing the size and functions of the state. By this limiting of the state, they hope to achieve a

⁶⁹ De Jasay, A. *Before Resorting to Politics*, Edward Elgar: The Locke Institute, 1996, p. 55.

limitation on politics itself. The basic idea is to give no discretion to the political domain. Because coercion is a grave matter, and an actionable tort, political rule should clearly list the situations in which the state ‘must’ act and also those in which it ‘must not’, leaving no room for political discretion. ‘If the optional use of state coercion is excluded, the only uses of it that are permitted are mandatory ones.’

The Nehru-Indira years marked a period – in which I grew up – when the intellectual consensus that prevailed demanded ‘political control’ over each and everything. From getting a gas cylinder to a telephone connection, from a railway reservation to a flat in a housing complex – everything required political intervention on the part of the citizen. That is, there was too much politics. Of course, this was not politics as the ‘public actions of free people’: it was private dealings between citizens and ‘politicians’ who sold favours as privileged members of a political command structure that controlled all resources. It was a rare and unique kind of gangsterism, a perverse kind of politics that is far, far removed from the real thing.

But even the real politics must not be over-valued – to do so would be to ‘destroy it altogether’ – for it is

an activity with diminishing returns for society. Jasay's principle 'first do no harm' tells us that almost anything and everything we need can be obtained through the process of market exchange; the less we resort to politics, the better. To give an example from modern India: we need modern railways, including underground railways for our cities, tramways for our towns and so on: should we get these from private businessmen or should we resort to the political process to get them?

The conclusion to draw is that a good, free and open society is one wherein politics is free and public, an activity of citizens as individuals; but it is something that occurs rarely, whenever critical public issues arise. For the rest of the time, the citizens are busy trying to survive as best as possible through the processes of market exchange. As was mentioned about the Lord Mayor of London: he could not 'mind his own business' while in office, but everyone else in London certainly could. London was and is a city of commerce, not politics. According to Jasay, in this scenario, politics would be 'compressed to a vanishing point'. A 'natural order' would prevail, and 'political rule' would provide a 'civil government' in every polis.

POLITICS AND THE RULE OF LAW

Almost all of humanity holds on fast to the belief that unless there is an 'elected government' there cannot be the 'rule of law'. This is false at many levels. In the first place, experience tells us that politicians and their camp-followers are criminalistic in their behaviour; and that much of the civil administration's work all across India consists in controlling their worst excesses. If to a policeman the average politician was a criminal in 1936, this is truer today. Secondly, the central idea of 'rule of law' is that the law is eternal and immutable and above the king. 'The King is under God and the Law'. Rule of law implies that men are governed by long-established laws, and not the everyday whims of their rulers. In feudal times, this meant that the King of England could not himself make new law; further, that he and all his officials were also under the law. There was civil government and civic politics in some of the cities and towns, with their own mercantile and property laws and courts, and there were manorial courts in the feudal estates with their own laws. Then there was the Church, with its own taxes and its own laws and courts. Into all this came the 'common law', competed effectively, and in time became the dominant system of law and justice. Politics had nothing to do with it. Even today, when ideals of the 'rule of law' are made, it is of the policeman who

arrested a minister's son, or a judge who convicted a senior politician. Just as the feudal monarch was unable to interfere with the law, so should the rule of law be immune from politics and politicians. Thus, there has to be a separation between politics and law. Quite the opposite from the usual habit of thinking that the rule of law is somehow dependent on there being a duly elected government in a position to 'rule'. This is not the purpose of free civic politics, which is to conciliate differences at the level of the polis, recognizing restraints imposed by the law. And 'party governments' should certainly not have anything to do with the rule of law.

As the economic historian Sudha Shenoy wrote to me, 'Englishmen in feudal times looked upon legislation as the King's instrument, and an interference in their affairs'. The only function of parliament for centuries was to vote taxation. However, in modern times, parliaments the world over have become 'law factories' and all democratic countries suffer from 'inflated legislation'. Further, all the education in 'civics' that is universally imparted prevents the citizenry from seeing clearly what the average Englishman felt in his bones long ago – that legislative interference must be opposed. Intellectuals like Rousseau and lawyers like Blackstone are largely to blame for both this over-

estimation of the need for legislation as well as the ‘supreme’ and ‘sovereign’ nature of the legislature as a body, expressing the ‘general will’. I often joke that the ‘general will’ is more dangerous than General Musharraf! Rousseau also idealized the individual legislator, extolling him to superhuman status. Of course, it must be noted that Rousseau lived in Geneva and had the free civic democracy of his own city in mind – not the centralized parliament of a nation of continental proportions like India. Rousseau would have been aghast at any Indian ‘political party’. Frederic Bastiat’s *The Law* (1848) dissects many of Rousseau’s errors; and Roberto Michels’ *Political Parties* (1915) was the first attempt to understand this manner of political organization, which inevitably reduced government to the ‘iron law of oligarchy’. Just as English kings were prevented from making new laws so should these oligarchies be restricted from issuing new legislation. Public opinion should command so.

There is also an important legal truth brought out by that great Italian legal philosopher Bruno Leoni that the ‘common will’ can only consist of the proscription of a handful of actions which all the people being ‘represented’ agree to proscribe within their ‘body politic’. Thus, the ‘common will’ cannot be said to have outlawed the dance bars in Mumbai –

this was done at the whim of the legislature. It is these whims that need to be under legal restraint – for both liberty as well as the rule of law. It was a laughable moment when India’s legislators passed legislation against ‘offices of profit’ aiming at their opponents, only to find that their party president, Sonia Gandhi, had to resign. The speaker of the assembly also fell under a cloud! They then passed legislation amending the earlier one. They did not know the implications of the laws they were making!

This is not the way ‘law’ is supposed to be made. It cannot be that the only way modern man has found of making law is to cram a whole lot of ‘representatives’ into a room and ask them to do so, voting ‘aye’ or ‘nay’ as directed by their ‘party whips’. How can such a procedure produce any good law at all? At best, such procedures can be used to make rules and regulations governing the organs of the civil administration, but no more. As far as the law is concerned, it should never be made – for it comes from the past – rather, it should be ‘found’. The way to find the law is by litigants employing lawyers who scour the judicial decisions of the past in similar cases and bring them before a judge to decide. This ‘lawyer’s law’ and the ‘judge-made law’ based on precedents are the pillars of a rule of law society: the law is thus made in a decentralized or ‘molecular’

way, looking separately at each case: the term ‘minutely just’ used by the HEICS to describe themselves reflects this attitude to law. Leoni points out the similarity between decentralized decision-making in the market to this decentralized way of making the law. If we add free, civic politics to the list, we can arrive at an estimation of what life in a well governed political state will be like.

We in India have a penal code and codes of civil and criminal procedure. We have a law of evidence. If our courts treat several property as inviolable, with a ‘presumption to title’ on the part of the possessor, the rule of law can be established without any need for fresh legislation. As Leon Louw once told me: “The Indian constitution may not recognize property rights, but the Indian government can.” Just because the government has legislated itself the powers to take away the properties of the citizenry does not mean that the government must use these powers. The ‘first avoid doing harm’ maxim that should apply to all legal coercion means that the government should see beyond the benefits it is giving to a few, and look at the harm it is causing many others. That the scope of doing harm through the misuse of coercion is reduced to nil is what the ideals of rule of law as well as constitutional government are all about.

The main reason why legislation continues to hold on to the minds of the populace as the best means of government is because ever so often the legislators offer the people a ‘bribe’ – usually a ‘right’ to something or the other. We now have a ‘right to education’, a ‘right to information’ and a long list of ‘human rights’. All this while our properties and liberties are insecure. The worst part of this is the philosophical error our legislators prompt us into, for nothing perpetuates evil as much as muddled thinking. Peter, Lord Bauer was fond of quoting these words of Pascal: “Struggling hard to think clearly is the first step to moral conduct.” And I think it was Confucius who said, ‘when words lose their meaning, the people will lose their freedom’. In the case of ‘rights’ we need to ‘struggle hard to think clearly’ before all meanings are lost and all freedom destroyed.

RIGHTS AND LIBERTIES

Legislators have muddled our thinking on ‘rights’ by multiplying them, thereby making them hollow and meaningless. In liberal legal thought, as Jasay makes quite clear, one only has a ‘right’ when someone else has a matching ‘obligation’. For example: if I sign a labour contract to work eight hours a day in a factory, then I have an ‘obligation’ to work as directed while

the factory-owner has a ‘right’ to demand the work from me as per contract. Similarly, if I sign a rental contract with a building-owner, then I have a ‘right’ to vacant possession of the premises, while the owner has an ‘obligation’ to hand the same over to me for undisturbed occupation.

There are no ‘rights’ when there are no matching obligations. ‘Every genuine right of one person has the agreement of another as its source, cause and evidence. The deontology or rights is their epistemology.’⁷⁰ The mindless multiplication of rights – right to food, right to work, right to education, right to information, human rights, a ‘bill of rights’, etc. – all without any matching obligations on anyone’s part, actually confuses the meaning of the word ‘right’ as originally used in common law. This loss of meaning is ultimately responsible for freedoms getting lost.

In liberal political thought, the first object of the law is to list out all that is impermissible. This is a small list; it reflects the ‘common will’; and it can easily be compiled. Thereafter, the basic rule is that ‘a person is presumed free to do what is feasible for him to do’. There are two ‘compatibility conditions’ attached to this: the first relates to the person’s contractual

⁷⁰ *Ibid.* p. 30.

obligations, if any. If the person is bound by such obligations, and others have 'rights' over what he proposes to do – for example, occupy a house that he has already signed a tenancy lease for – then he cannot be allowed to pursue this line of action. The second relates to harm to others, or torts, and if it can be shown that his proposed action will injure others, then he may be rightfully stopped from pursuing such an act. If both conditions are satisfied, then the person is presumed free to do whatever he proposes to do, and he does not have to seek permission to do so. If anyone challenges the admissibility of his actions, then it falls upon that person to prove in a court of law why. It is indeed a perversion of these basic principles of both Roman as well as common law that 'citizens are apparently not *as a rule* presumed to need no permission to do what is feasible for them to do'. Instead, all that is not specifically permitted is presumed forbidden, and long lists of 'rights' are enumerated. Jasay says that 'such a configuration is typical of para-totalitarian government'. He adds that these rights are quite bogus actually, since all they give the right-holder is 'an entitlement for the time being': an entitlement that 'can be modified or reduced or withdrawn altogether without the rightholder's agreement, and without other cause than a decision of the lawgiver based on a judgement of expediency. Genuine rights,

of course, cannot be curtailed or withdrawn without the rightholder furnishing cause or giving his consent.’⁷¹

Jasay goes on to define what is meant by legal liberty:

*With torts and obligations taken care of, the set of admissible actions becomes a residual: an admissible action is the exercise either of a right (entailing the fulfillment of someone else’s obligation) or of a liberty. A liberty is any feasible action that is neither a tort, nor the breach of an obligation, nor the exercise of a right. In order to be feasible, a person must be able to perform it without another person being required to perform onerously.*⁷²

The basic liberal conclusion then follows, that ‘property originates in a liberty, it remains a liberty, and its growth and distribution are the results of agreements.’ The socialists use state coercion in order to ‘redistribute’ property but Jasay is emphatic that ‘costs and harms to some cannot generally be offset by benefits to others to yield an alleged balance for justifying the imposition of the will of some

⁷¹ *Ibid.* p. 31.

⁷² *Ibid.* p. 31. Italics in the original.

(however many) on all.’ The state is supposed to be possess a monopoly over force; it is all the more vital that only the just use of this force be permitted. The liberal believes that true justice prevails when every individual is possessed of his properties and liberties, secure in his contracts, and sure of remedies if torts are inflicted on him. For this perfect justice and perfect liberty to prevail it is essential that all avenues of optional and discretionary political action be stopped: there should be a list of conditions under which the state ‘must’ act. Anything else comes under the ‘must not’ category, with no room for discretion. This is how the beast of politics can be tamed and man can be secured in his liberties.

FREE MARKETS MATTER MORE THAN DEMOCRACY

The discussions so far have revealed many truths about how we Indians got our collective effort – government – all wrong. We have a highly centralized government, with little or no local government: Westminster minus Guildhall. Further, we have very little free, civic politics as a result; we have many ‘political organizations’ instead, and these ‘parties’ are all centralized, hierarchical and based on personal loyalty to a ‘leader’. It cannot be denied that criminals have infiltrated all these parties, that too in

great numbers. However, Indians continue to celebrate their 'democracy', and it might make sense, therefore, to see how a socialist democracy without free markets is actually harmful. We can then discuss some of the flaws in liberal democracy

Both sides gain in trade. This is easily observable when we, say, buy a book. We say 'Thank You' to the shopkeeper when he hands over the book; and he too says 'Thank You' when he receives the money. The very fact that both parties thank each other shows both gained. Trade is thus a 'positive sum game': win-win. It is the basis of wealth creation. When we buy a book we add to our property and we contribute to the earnings of a long line of people ranging from the shopkeeper to the printer to the publisher to finally the author. There are no losers in trade.

Contrast this with democratic politics. Since the state does not create wealth - it only taxes and spends - democratic politics is always a 'zero sum game': some gain; others lose. It is also usually the case that the gainers are small, organised, vocal groups like, say, protectionist Indian industrialists, while the losers are the large, unorganised masses. With trade, everyone gains; with politics, most people lose!

The nature of the political ‘win-lose’ game is best understood by an analogy of Professor Ken Schooland’s, from his charming *The Adventures of Jonathan Gullible*. There is a circus tent and entry is priced at a hundred rupees. Inside the tent is the ringmaster who selects one person from the audience every once in a while and hands him a thousand rupees. The people keep coming into the tent in the hope of being selected for the prize some day. This is precisely how ‘redistributive politics’ is carried out.

Now, democrats always claim to represent the majority, so let us look at the issue of majority representation more closely. If there is 60 per cent voter turnout and four parties share the vote equally, the winner is the chap who gets 15.1 per cent of the total vote! Even when Rajiv Gandhi won his landslide victory, the Congress barely received 40 per cent of the total vote.

Now look at markets: In the market, there is complete and total unanimity. Since no one used force, both sides of every deal agreed to it. In a free market, not a single buyer or seller can complain that the decision to buy or sell was one with which he was not in complete agreement. In politics, we see millions unhappy with decisions taken.

In the market, each decision we take is in complete sovereignty. We are always free to pick and choose between various players. I buy a toothpaste of Brand X, a toothbrush of Brand Y and soap of Brand Z and equip my bathroom. None of these firms can force me to take all three of the same brand.

Now contrast this with party politics: In party politics, we get a 'package deal'. We may like one party's stand on religion, but its economics may appall us. We like another party's economics, but its position on war may be frightening. We cannot pick and choose as we can in the market. This is because, in the market, there is 'continuous competition': every time we visit the market, the vendors fight for our custom. In democratic politics, however, the competition is only periodic. Once every five years we get the vote. Once we have voted, we are saddled with that party, for better or for worse. We may have liked something about the party at election time, but then we may be woefully unhappy with what that party does thereafter.

Finally, it must be understood that voters in a democracy do not vote with the same amount of care and attention that they pay to market transactions. When I go to buy a television set, I make sure I get a good one because if I do not I will directly suffer. I

check out various makes and prices, read reviews, consult friends and so on before making my purchase. When I go to vote I do not have the incentive to take the same pains, go through every manifesto, hear all the candidates' spiel, check their criminal records etc. Voters display what is called 'rational ignorance': they find it rational not to know about politics. Informed voting is a 'public good'. Smart editors have found this out and now politics no longer monopolises the front page: *The Times of India* is an excellent example of this. Voters may also display 'rational absence' and stay away from voting because they know that their one silly vote is not going to affect anything. I have never voted in my life.

All this is proof of what the Swiss-French thinker and politician Benjamin Constant wrote in 1819⁷³: that 'modern liberty' is the liberty of the individual, an individual who wants to be maximally free in the pursuit of his chosen way of life, secure in his possessions. In contrast, 'ancient liberty' – that of the Greeks and the Romans – was the liberty to participate in political decision-making. Today, while this manner of 'political liberty' remains important, it is 'individual liberty' that every citizen really wants

⁷³ Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns" in David Boaz (ed.) *The Libertarian Reader* (New York: Free Press, 1997) pp. 65-70.

and this makes economic freedom even more important.

The lesson to learn is that we Indians must use democracy much less and give full room to markets. For example: Why do we need railways from democracy? Or beershops, as in socialist Delhi, where every liquor-shop is run by the government? Democratically elected politicians and their democratic state should both be cut down to size. The principle of 'subsidiarity' should be invoked and cities and towns given full freedom to conduct their own affairs. In such a scenario the state will be but a common police force, controlled at the local level. The government of India will be but an association of free trading cities and towns and it will look after only those issues that the towns cannot look after themselves - like national defence. My ideal is Switzerland. The Swiss flag is surrounded by the flags of its 26 cantons. And Swiss citizens are proud to say that they do not know the name of their president! There is free trade, sound money, property rights, rule of law, good policing and excellent roads. They are prosperous, peaceful, heterogeneous, landlocked, mountainous country. If we apply their principles, we can be far richer.

The ‘public choice’ school of political economists has unraveled many flaws in contemporary liberal democracy by assuming that personal motives guide politicians and bureaucrats. Gordon Tullock’s *The Vote Motive*⁷⁴ is an excellent guide to the tradition. What these penetrating analyses contribute to our understanding of the world we live in are: first, a break from assuming that the people in government, politicians and bureaucrats, work ceaselessly in the ‘public interest’; and second, how ‘government failure’ is more likely to occur than ‘market failure’. But these are analyses mostly of the US and Britain; our condition in India is far worse. We must re-think what kind of politics and democracy we are willing to allow in a free market society; and it is imperative that this politics be based on a ‘recognition of restraints’ imposed by the idea of a rule of law that is above politics. To put it another way: the custodians must be ‘bound by a law they did not legislate’: a Charter of Liberties.

IN SEARCH OF A POLITICIAN

Of course, the fact remains that we in India are possessed of democracy – the greatest utility of which is the ability to alter regimes without violence. This is a freedom that liberals must utilize if they are

⁷⁴ Institute of Economic Affairs, London, Hobart Paperback, 1976. Republished 2006 with commentaries.

to change the nature and functions of government. We will then need politicians from amongst us, and I will conclude this essay by trying to assess what a real politician is all about.

In the contemporary world, politicians offer zero inspiration. In India today, perhaps for this very reason, neither the president nor the prime minister are politicians. Sonia Gandhi cannot be considered one either, for no real politician heading a political party would give up the prime minister's post if his party came into office. The history of Britain offers us examples of many excellent politicians, from John Wilkes who had the London mob on his side and became Lord Mayor, to Cobden and Bright who led the nation to battle for free trade. Pitt, Peel, Gladstone, Disraeli and Thatcher were all superb politicians. In India, on the other hand, the political organization of the Congress has only thrown up 'great leaders', all wedded to the organization. A few among them have tended to be more in the mould of 'statesmen' than 'politicians'. They worked towards making the Congress strong, making the government and the bureaucracy strong, and making local politics and local politicians weak. They themselves were elected because of organizational support; and none of them ever commanded any 'body politic' in their own right. What then is a politician? Some answers

emerge from an essay entitled “In Praise of Politicians”,⁷⁵ arguably the only essay of its kind, penned by Samuel McChord Crothers, who served on the British cabinet.

In the essay, we are informed that, in England, ‘politics is the national sport’. Further, ‘it is pre-eminently a gentleman’s game, and success gives real distinction’. Crothers here is referring to the debates in the House of Commons, with the ‘thrust and counter-thrust of keen wit’, which ‘furnish entertainment for the entire kingdom’, and that the people follow with keen interest. This is possible in England because of its compact size, but not so in the US, he says, where, because of other, local distractions, the people do not follow politics as closely. The same may be said of India, where no one watches the televised debates in the Lok Sabha, and anyone who does so is quickly horrified by the low standards of parliamentary behaviour on display. We are forced to accept that copied political institutions never work in quite the same way. This is the main reason why the word ‘politician’ is a term of disparagement today and politicians are a much-hated lot all over the democratic world.

⁷⁵ Crothers, S. M. “In Praise of Politicians” in *Among Friends* (London: Houghton Mifflin, 1910).

It is here that Crothers offers some hope. The politician works on a 'body politic' – and this is a serious function. There are therefore serious politicians who attempt the task, and there are the quacks. The situation is bad because it is as if 'we had only one name for all those who do business on the great waters, and were unable to distinguish between the merchant and the pirate'. It is in this sentence that the crux of the problem for liberal politicians in India lies: they must build for themselves a great, big merchant ship. Thereafter, the pirates will be easily identified and dealt with. With their socialism, social justice, crony businessmen, public sector and trade unions, our present lot of political quacks have converted the ship of state into a pirate ship. Liberals must never get aboard that ship.

Crothers asserts the open character of politics and politicians when he reminds us that the term 'candidate' comes from Roman times, denoting a person who appeared in public to contest for office, wearing a loose white toga to show the candour of his nature as well as better display his scars won in battle. He goes on to add that 'the real politician rolls his logs in public'. This must be the motto of all politics on the merchant ship. It is, after all, to practical politics that we must turn if we are to effect

the changes we desire. This will require many great politicians. Only then will these quacks beat a hasty retreat.

Crothers insists that ‘one who would represent a commonwealth must realize what a commonwealth is.’ As to what that is, allow me to quote at length:

A commonwealth is not only big, but, at least in relation to its own citizens, it must be thought of as honest. Dishonesty is the attempt of a part to obtain what belongs to another part or to the whole. But it is hard to conceive of the whole as engaged in a deliberate robbery, for it has no one to rob but itself.... The self-interest of a commonwealth is but interest in the common weal, and against this there is no law. We may think of a commonwealth as a huge and honest personage who means well, but has never made himself fully articulate. He manifests his more permanent ideas in laws and customs and social usages; but in dealing with the events of the passing hour, he must employ interpreters. Like Nebuchadnezzar, he has his soothsayers, and Chaldeans, and magicians to interpret his dreams. They have long been with him, and are skilled at reading his habitual thoughts. But sometimes it happens that the huge personage

has a new dream and has forgotten what it was. Then he calls his soothsayers, but the wise men only shake their heads. If he will kindly describe his dream they will tell him what it means. Which learned indecision makes the huge personage very angry. So he seeks out someone who has dreams of his own, whose soul has been stirred by vague forebodings of impending change.

Happy is the nation which in time of perplexity can find an interpreter. The old order, he says, changes; but if we act resolutely we may have part in the new order. It is a time when quick intelligence and courage point out the only safe courses:

*Think not that Prudence dwells in dark abodes;
She scans the future with the eye of gods.*

The hero in politics is one who has convinced the people that he possesses this higher prudence. They recognize him when he separates himself from the crowd of petty politicians, by sacrificing a small advantage that he may seize a large opportunity. He is the man they were looking for; they hail him leader, for he is the one who "all alone stands hugely politic." The master-strokes of policy have been made by such men. With popular sentiment behind them, they have been able to overturn the

*best-laid plans of those who have grown gray in the work of political manipulation.*⁷⁶

Such a politician, Crothers adds, ‘must know the value and the limitation of organization’. This is precisely where all the ‘statesmen’ of the Congress failed. The failure of the organization of the Indian state (the bureaucracy) closely mirrors the failure of the Congress party (another organization) to retain its hold on the electorate. The Nehruvian dynasty could think big because they were in command of both organizations. And the electorate always delivered a verdict that made the country a ‘one party dominant system’. That age has passed, and the limits to political organization (and therefore its command over bureaucratic organization) have been exposed. There is sufficient scope, therefore, for genuine civic politics.

The liberal politician, knowing well the limits to organization, must be a man of the streets, of the people, and one who ‘moves in magnificent masses careless of particulars’. We in India need many such politicians on the side of liberalism. It is hoped that this essay will be of utility to them. We need a political movement with a new kind of politics based

⁷⁶ *Ibid.*

squarely in cities and towns – a ‘politics to end politics’.

DEMOCRACY & LIBERALISM: CONTRASTING IDEALS

Since I may have lit a fire in the minds of many an aspiring liberal politician – which was my intention – I will conclude with some sobering thoughts on the essential contradictions between the liberal project and that of democracy. The two are not identical. This is the prime reason why even the so-called ‘liberal democracies’ of the West seem more like ‘socialist democracies’. Indeed, social democrats in the USA call themselves ‘liberal’! It seems to me that it is vital that the differences between the two doctrines be clearly restated. Allow me to quote at some length from Hayek:

Liberalism is concerned with the functions of government and particularly with the limitation of all its powers. Democracy is concerned with the question of who is to direct government. Liberalism requires that all power, and therefore also that of the majority, be limited. Democracy came to regard current majority opinion as the only criterion of the legitimacy of the powers of government. The difference between the two

principles stands out most clearly if we consider their opposites: with democracy it is authoritarian government; with liberalism it is totalitarianism. Neither of the two systems necessarily excludes the opposite of the other: a democracy may well wield totalitarian powers, and it is at least conceivable that an authoritarian government might act on liberal principles.

Liberalism is thus incompatible with unlimited democracy, just as it is incompatible with all other forms of unlimited government. It presupposes the limitation of the powers even of the representatives of the majority by requiring a commitment to principles either explicitly laid down in a constitution or accepted by general opinion as to effectively confine legislation.

Thus, though the consistent application of liberal principles leads to democracy, democracy will preserve liberalism only if, and so long as, the majority refrains from using its powers to confer on its supporters special advantages which cannot be similarly offered to all citizens. This might be achieved in a representative assembly whose powers were confined to passing laws in the sense of general rules of just conduct, on which agreement among a majority is likely to exist. But it is most

unlikely in an assembly which habitually directs the specific measures of government. In such a representative assembly, which combines true legislative and governmental powers, and which is therefore in the exercise of the latter not limited by rules that it cannot alter, the majority is not likely to be based on true agreement on principles, but will probably consist of coalitions of various organized interests which will mutually concede to each other special advantages. Where, as is almost inevitable in a representative body with unlimited powers, decisions are arrived at by a bartering of special benefits to the different groups, and where the formation of a majority capable of governing depends on such bartering, it is indeed almost inconceivable that these powers will be used only in the true general interests.

But while for these reasons it seems almost certain that unlimited democracy will abandon liberal principles in favour of discriminatory measures benefiting the various groups supporting the majority, it is also doubtful whether in the long run democracy can preserve itself if it abandons liberal principles. If government assumes tasks which are too extensive and complex to be effectively guided by majority decisions, it seems inevitable that

*effective powers will devolve to a bureaucratic apparatus increasingly independent of democratic control. It is therefore not unlikely that the abandonment of liberalism by democracy will in the long run also lead to the disappearance of democracy. There can, in particular, be little doubt that the kind of directed economy towards which democracy seems to be tending requires for its effective conduct a government with authoritarian powers.*⁷⁷

In the very next essay, “Whither Democracy?”, Hayek is mercifully much less polite. Starting off saying that ‘unlimited democracy is the problem of today’ he adds that the idea of a ‘sovereign’ parliament has ‘destroyed the old idea of the Rule of Law’: that is, the traditional idea of a ‘government under law’ has been lost. What we have, therefore, ‘is in truth lawless government’.

Let us recall what the purpose of the ‘Rule of Law’ is: and that is, to safeguard individual freedom. The idea was to restrict coercion only towards just ends, which means obedience to the general rules of individual conduct. In these lies the ‘common will’.

⁷⁷ Hayek, F. A. “Liberalism” in *New Studies in Philosophy* etc. *Ibid.* pp. 142- 144.

“What makes a community is the common recognition of the same rules.”

With unlimited – and therefore lawless – democracy, we have confused legislation with true law. These measures passed by a legislature reflect ‘particular wills’. The original purpose of summoning parliament in England was to vote on taxation. But, over time, this body took over two separate functions: the running of the government as well as the making of the law. Hayek says that it would have been preferable had the House of Lords (which was the highest court in the land) kept the development of the law to itself: “The triumphant claim of the British Parliament to have become sovereign, and so able to govern subject to no law, may prove to have been the death-knell of both individual freedom and democracy.”

But there is worse: in a strictly limited democracy, the people vote for a limited legislator, and this amounts to ‘choosing between alternative ways of securing an overall order resulting from the decisions of free individuals’.

However, voting for an unlimited legislator is very different, for it amounts to electing someone with the power to confer special benefits. In such an

assembly, a majority can be formed only by ‘buying the support of numerous special interests’.

In an omnipotent assembly, decisions therefore rest on a sanctioned process of blackmail and corruption.... What we call ‘legislatures’ are in fact bodies continually deciding on particular measures, and are authorizing coercion for their execution, on which no genuine agreement among the majority exists, but for which the support of a majority has been obtained by deals. In an omnipotent assembly which is concerned mainly with particulars and not with principles, majorities are therefore not based on agreement of opinions, but are formed by aggregations of special interests mutually assisting each other.... The picture of the majority of such an assembly united by common moral convictions evaluating the merits of the claims of particular groups is of course a fantasy. It is a majority only because it has pledged itself not to a principle but to satisfying particular claims.

An unlimited legislature which is not prevented by convention or constitutional provisions from decreeing aimed and discretionary measures of coercion, such as tariffs or taxes or subsidies, cannot avoid acting in such an unprincipled manner.... What

*happens is that political necessity created by the existing institutional set-up produces non-viable or even destructive moral beliefs.... [This...] is not democracy. At least it is not that ideal of democracy which has any moral justification.*⁷⁸

Prior to this demolition of modern Western democracy, Hayek makes a confession that I wholeheartedly share:

I must confess to preferring non-democratic government under the law to unlimited (and therefore essentially lawless) democratic government. Government under the law seems to me to be the higher value, which it was once hoped that democratic watchdogs would preserve.

It must not be forgotten that India is possessed of a ‘socialist democracy’ – and that never once during her 60-year long independence has ‘liberalism’ ever been on the political agenda. Indeed, the Representation of the People Act expressly disallows the formation of liberal parties: that is, those who will not swear by socialism and the socialist constitution. The Bombay-based Indian Liberal Group led by SV

⁷⁸Hayek, F. A. “whither Democracy?” in *New Studies on Philosophy* etc. *Ibid.* pp. 152-162. Italics in the original.

Raju filed a petition against this Act in 1994, but their PIL is yet to be heard! Raju recently wrote that one of his close associates died waiting for a judicial decision, and that the same fate is likely to befall him!

The liberal politician in India must therefore lean more towards the liberal project than the democratic one. The objective must not be to win elections – we are effectively barred anyway; rather, the effort must be towards raising the people to demand a limitation of the powers of government, on its taxation, and on its functions. The goal must be individual liberty under the rule of law – which demands that the government be placed under legal restraints which it cannot alter. It has often been said that liberalism only happens ‘when the government is bound by a law that it did not legislate’. That should be the liberal goal. And towards that end all liberal politics should be directed. As Herbert Spencer wrote in 1884: “The function of Liberalism in the past was that of putting a limit to the powers of kings. The function of true Liberalism in the future will be that of putting a limit to the power of Parliaments.”

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CHAPTER TEN

Modern Challenges – 2: Sound Money, the Rule of Law and Free Banking

"...the best way to appreciate freedom is to lose it."

Michael Ivens - *Pressure for Conformity*

"In a free society the state does not administer the affairs of men. It administers justice among men who conduct their own affairs."

Walter Lippman - *An Enquiry into the Principles of a Good Society.*

As I write, the news is that inflation is up again. It is at 6.73 per cent, the authorities say, pretending to have measured it so very precisely. Actually, inflation is a sign of corruption. Only 'unsound money' constantly loses its value. We suffer also from the other attribute of unsound money: inconvertibility. Indeed, even up to fairly recent times, well after 'liberalization', many eminent businessmen, from KL Chugh of ITC to Ashok Jain of Bennett, Coleman & Co. and Rajan Pillai of Britannia faced severe persecution from an 'enforcement directorate' legislatively empowered to act against all those who were found violating the Foreign Exchange Regulation Act (FERA) that prohibited currency conversion. Both Ashok Jain and

Rajan Pillai died because of this. Freedom is a sweet word only when you lose it, and this essay seeks to elucidate how sound money may be obtained in freedom.

The fact that today the government is the monopoly issuer of the currency points to where the problem, and the corruption, lies. In this essay I shall first discuss how things came to such a sorry pass. We will then look at the alternative: free banking and competing, private moneys. But first, especially for readers who are not familiar with the subject, we need to see how money arose in the first place. Did any government, or king, think it up? Or did money emerge on its own, out of the processes of trade and exchange?

THE ORIGIN OF MONEY

Carl Menger, founder of what is now called the “Austrian School of economics”, taught us all how money was a product of trade, of the human mind, born spontaneously to solve the essential problem of barter – the ‘double coincidence of wants’. That is, if you have potatoes and want apples you must find someone with exactly the opposite needs, or no deal. If you meet someone with apples who wants fish, you cannot trade.

Since man survives by trade, and since his needs were always pressing, it is natural that some ingenious individuals found a way out of this problem – by ‘indirect exchange’. In the above case, then, the person with potatoes would first trade these for what he considered the most tradable commodity in the market – say, cowrie shells. He would then use the cowries to obtain the apples he needed, reasonably sure that the cowries will be accepted, because they are so eminently saleable in turn. The apple vendor will only accept cowries if he thinks he can trade them easily for the fish he wants. After selling his apples, he would then proceed to do so. Then, the fishmonger would use his cowries to obtain his needs, and so on, until in a short time it became accepted that cowries had ‘gained currency’ and become the established money. In this manner, many, many moneys were spontaneously established in different parts of the world, ranging from salt (the word ‘salary’) to animal skins (the word ‘buck’) and from scarab beetles to our very own cowrie shells. In Nazi concentration camps, cigarettes were money, with king-size Kents commanding the highest price. In my boarding school,⁷⁹ we used marbles for the same purpose, and different kinds of marbles had different values. We were just little boys, but we had invented our own money!

⁷⁹ Goethal’s Memorial School, Kurseong, Darjeeling

In time, as civilizations grew and trading systems matured, the precious metals, gold and silver, became the dominant moneys – and it is then that the first governments (or kings) played their role. The role was essentially that of standardizing the money: issuing coins of known weight and purity. But there were many bad rulers who betrayed the trust of the people. This continues right up to the present day.

WHEN KINGS TURNED COUNTERFEITERS

One of the easiest ways of getting rich – that is, buying up all the goodies for sale in the market – is to make false money and issue it as the real thing. If you can pass off a stash of brass coins containing a little bit of gold as authentic coins, you can not only buy cake; you can buy the entire cake-shop. Of course, this manner of cheating has always been regarded as a serious crime, and the death penalty was usually handed out to those found guilty of it.

But then, *Quis custodiet custodes?* Or who will guard the Guardians? This was a question asked in ancient Rome, and it is perhaps no coincidence that Roman emperors were among the worst offenders in this respect. They systematically ‘debased’ their coins, adding more and more ‘base’ metal into the gold, and this was one of the prime reasons for the empire’s later collapse. Let us look at the effects of

debasement then, first from the viewpoint of the ruler and then from that of the people.

As far as the ruler is concerned, his objective is to buy more than his resources permit. The gold in the treasury could have made 5 tonnes of pure coins, but after mixing a tonne of brass, his Royal Mint has issued 6 tonnes of debased coins. The dishonest king now has 1 tonne of extra coins by which to buy up the labour and the land, as well as the wine and the poultry of his people. He can pay his army, wage war, build palaces, and throw lavish entertainments – all this, by offering counterfeit money in exchange for real goods and services. This is the ruler's gain – but the people lose much more; that too, in a very disproportional manner.

Note that the new, counterfeit coins do not get uniformly distributed amongst the people – and therein lies the rub. The coins go first to those who sell goods and services to the king. These are usually hangers-on of power – and such people have benefited from corrupt practices always, right up to the present day. These people then spend this money – and so on and so forth, until at last it comes the turn of ordinary people to use the debased coins.

But in the meantime, something strange has occurred: all prices have risen, though not uniformly. This is

inflation, defined as a general rise in prices. It is always a monetary phenomenon; a sign of corruption in monetary matters; a proof of ‘unsound money’.

What is essential to understanding how inflation triggers processes of the ‘transfer of wealth’ is to see its effects in stages: that is, in periods of time. When the hangers-on spend the cash, prices have not risen much. But when the poor spend the money, much later, the value of money is greatly eroded, as are their savings. The transfer of wealth that occurs is from the people to the king and his clients and from savers to borrowers. In time, the incentive to save is reduced, and the incentive to borrow becomes strong – lowering the moral fibre of the nation. Thus, debasement can also be called ‘inflationary finance’: it seems easy for the custodians to engage in this in emergencies like war, but its long-run effects are so horrible that I, as an economist, will never agree to co-exist with such policies. Like all Austrian economists, brought up on the teachings of Menger and his followers, I am proud to remain, firmly, a ‘sound money man’.

THE MEANINGLESS PAPER MONEY OF
TODAY, AND THE ‘LEGAL FRAUD’ IT IS
BASED ON

Paper notes began as ‘warehouse receipts’ issued by individual, private goldsmiths, who were also the first bankers. Initially, these notes had a name on them, but they quickly graduated into ‘bearer notes’ that could be circulated. They remained warehouse receipts nonetheless. They were supposed to be backed by bullion, payable on demand. This was the ‘promise’ printed on each note, signed by the private banker (who faced imprisonment on a diet of bread and water if he failed to redeem the note on demand). The promise still exists today on the government note, like the grin without the cat – and that is the ‘legal fraud’.

The existence in India of an appalling ignorance on both law as well as economics is what led to the deaths of Pillai and Jain, and the public humiliation of Chugh. Lawyers, economists and even economic journalists, all in the employ of three major companies, displayed complete and total ignorance on such a vital ingredient of life: money. *The Times of India* ran a campaign for ‘human rights’! But then, socialist ‘education’ (including ‘higher education’), in both law as well as economics, cannot impart any understanding of private property rights, so central to liberty and justice. The fact that the promise on the note denotes a property right as well as a contractual obligation can never strike those educated under such

a system of ‘thought control’. In my book, if the central banker whose promise is on the note cannot convert it on demand into whatever asset the noteholder asks for, it is the banker who should be in prison: a debtor’s prison. This is the cat with the grin.

PEEL’S ACT of 1844: WHY IT FAILED

The banking system that exists today, with central banks as monopoly issuers of money and as ‘lenders of last resort’ to a pyramid of private banks – a monopoly banking cartel – is the product of Prime Minister Sir Robert Peel’s Act of 1844. The second volume of Murray Rothbard’s history of economic thought (from an Austrian perspective) contains a great deal on the ideas of the time – the controversies between the ‘banking school’ and the ‘currency school’ – and how these led Peel to this sadly mistaken piece of legislation. Interested students can pursue this lead.

The crucial error in Peel’s legislation, as Rothbard points out, lay in not taking deposit money into account. A bank can increase the supply of money by simply granting a loan and opening a current account in the borrower’s name, containing the ‘money’ advanced. Peel had insisted that currency notes be backed by 100 per cent gold reserves (the position taken by the ‘currency school’) but the monopoly

over note issue had been retained with the Bank of England. It was also the ‘lender of last resort’ and the member banks maintained ‘fractional reserves’. There was no check on the growth of deposit money by the banks themselves.

Under the circumstances, these expanded to such an extent that redemption in specie had to be ultimately suspended, not only in Britain but finally all over the world, and the legal fraud of inconvertible fiat money let loose. Rothbard informs us that in September, 1844, bank deposits totaled £12.2 million; by the end of February, 1846, they had doubled to £24.9 million. Most of the money went into railroad speculation. In the meantime, the bank’s gold reserves fell sharply. This massive expansion in bank credit was due to the fractional reserve system, owing to which the growth of deposit money lay unchecked. Rothbard’s assessment of the mess is worth quoting at length:

The government saved the fractional reserve system by obediently suspending Peel’s Act on 25, October, 1847, thereby of course saving the day for the banks and alleviating the immediate crisis – at the expense of, in effect, giving up the currency principle and any attempt to tie the monetary and banking system directly to, and to the same extent as, the behaviour of gold. From

then on, Great Britain, and eventually the rest of the world, was stuck with a fractional reserve banking system issuing demand deposits, pyramiding on top of a central bank monopolizing the issue of notes and centralizing the nation's gold, and generating an endless round of boom-bust cycles of inflation and recession. Furthermore, with gold essentially centralized into the reserves of the central banks, it became easy for all these nations, even though allegedly committed to the gold standard, to go off that standard and on to fiat paper whenever any crisis – such as World War I – presented an alleged need for rapid inflation of money to finance the war effort.

The heart and soul of the currency principle was a rigid tie of Bank of England note issue to 100 per cent gold reserve; but if this restriction was to be suspended whenever banks or businesses got into trouble, then the currency principle lay in shambles. As the prominent London banker George Carr Glynn correctly prophesied after the 1847 suspension, the public would expect another suspension in every future crisis. And sure enough, that is precisely what happened. In response to the 1847 crisis, there were committees of parliamentary inquiry in

1847 and 1848. The suspension of Peel's Act during the crisis of 1857 was easier, and while there were parliamentary committees in 1857 and 1858, there was, in contrast to the 1847 crisis, no debate on the floor of Parliament. And the suspension of Peel's Act in 1866 was considered so routine that there was not even the bother of a parliamentary committee of inquiry.

It is therefore remarkable that, from the time of the first suspension in 1847, the currency school, without exception, defended the suspension of Peel's Act, giving no sign of realizing that they were thereby abandoning their entire doctrine. For not only did suspension in crises weaken the point of the Act, but also the knowledge that suspension would come to the rescue in any crisis emboldened the bank and banking system to expand credit as if the restrictions of Peel's Act did not exist at all. As a result, all that was left of the currency principle was the monopolization of notes by the Bank of England.⁸⁰

He goes on to say how it was, in effect, a victory for the banking school, especially because their adversaries failed to come up with anything more than apologia for the suspensions of Peel's Act. They

⁸⁰ Rothbard, M. N. *History of Economic Thought*, Vol. 2. p. 258-259.

did not restate their original principles correctly, incorporating bank deposits into their framework. So things continued towards a universalization of this manner of banking and note issue.

Mention must also be made of Mr. Keynes, who stepped into the picture in the 20th century and, taking the ‘tiger by the tail’, destroyed the moral conception people generally had of money. Under Keynesians, money became a political tool, to be used by central bankers (*à la* central planners) in order to ‘stabilize’ economies, making ‘trade-offs’ between inflation and unemployment: if inflation rose, money would be sucked out, raising unemployment; if the converse happened, money would be pumped in, allowing for a little inflation in order to counter rising unemployment. This was the theory. In practice, what followed were ‘political business cycles’, as incumbent governments would inflate just before elections, in order to create a ‘feel good factor’ and sail through the polls. Then, once elected, they would deflate. All this continues, and this is the grin without the cat.

THE CAT WITH THE GRIN

As the reader must have guessed by now, the problem is basically a legal one: the existing corruption is rooted in bad legislation, and correcting

it requires the common law courts taking decisions on bankers' defaults based on law that the ancients used.

In this connection, we are fortunate that Professor Jesús Huerta De Soto's monumental study, *Money, Bank Credit and Economic Cycles*, is now available in English.⁸¹ It was originally published in Spanish in 1998. I first heard about De Soto's views from a paper he had presented at the 1993 Mont Pelerin Society meeting in Rio de Janeiro. The brief paper contains his main idea in a nutshell, but the book contains detailed historical research into what he calls the 'economic analysis of juridical institutions'. We are then able to unearth the traditional and universal legal principles upon which banking must be based. This enables us to better understand the legal fraud that modern banking is, and how it came about.

The central point in De Soto's argument is that under Roman law there was a clear distinction between 'deposits' and 'loans'. As the great Roman jurist Ulpian defined the former term:

A deposit is something given another for safekeeping. It is so called because the good is posited [or placed]. The preposition de intensifies the meaning, which reflects that all

⁸¹ Mises Institute, 2006.

*obligations corresponding to the custody of the good belong to that person.*⁸²

Ulpian added, ‘to loan is one thing, to deposit is another.’ This was the clear understanding in 200 AD. It cannot be a mere coincidence that Roman jurists like Ulpian were not civil servants; they were independent professionals whose task was to ‘reveal the law’ in a system wherein the law was not ‘made’, but ‘found’.

Thus, under Roman law, there were clear differences between a loan contract and a deposit contract. In the case of a loan (what is today mistakenly called a ‘term deposit’ – and this confounding of terms is not accidental) the banker pays interest because he accepts present goods in exchange for future goods. During the term of the loan, the money in question is totally at the command of the banker, and he may invest it as he wishes. The term of the loan is also critical to the contract, and it specifies the moment of time when the banker is obliged to return the sum loaned with the interest. But demand deposits are different.

In the case of a demand deposit, money is given in custody for *safekeeping* – and this is the most important *purpose* of the contract. There is no

⁸² *Ibid.* p. 27-28.

exchange of present goods for future goods, and hence no interest. Instead, the banker could charge a fee for looking after the money. The money in question, under Roman law, must always be available for the depositor, whenever he may demand it. There is no term. Thus, unlike in the loan contract, the banker is not free to use that money in his own ventures. *If he does so, it is a case of misappropriation and he faces a criminal charge.*

In the case of a term loan to a banker, the ownership of the money is transferred during the period of the term, but in the case of a demand deposit there is only ‘a change in the manner of possessing present goods’. The money remains the depositor’s property. Under such a legal view, every private banker will be forced to retain 100 per cent reserves on his deposits. The curse of ‘fractional reserve banking’ will end.

To understand the pitfalls of fractional reserves, imagine yourself as a London goldsmith in the days of yore, with free private money. In the early days, before bearer notes were invented, you would never issue more notes than the gold you got. After all, why issue a note to anyone who hasn’t got any gold belonging to him in your vault? Once bearer notes came about, and your note gained some amount of currency, you were faced with a strong temptation:

you could issue some extra notes to those who took loans from you – and earn interest by just giving out pieces of paper! That is, you would issue *property titles without property!*⁸³ By doing this, your reserves would become a ‘fraction’ of the value of your note issue. Of course, if many of these loans are indiscreet, you will go bust. You have not been a prudent banker. You have also been a bit of a cheat. You will then demand central banking as a ‘lender of last resort’, and further confound matters with both force and well as fraud.

So how can we legally have free private banking, free private note issue, and yet ensure banking morality?

De Soto’s solution to this extremely perplexing problem is simple, and it strikes at the very root of our present-day ills. The fiat moneys of today and the huge amount of credit created out of thin air by the banking system – all this is ‘property titles without property’. Just as the king who debased his coins offered counterfeit coins in exchange of real goods and services, so too is the paper money of today counterfeit. Naturally, this is a cause of inflation as also periodic cycles of boom and bust. In these conditions, as we have already seen, the poor lose the most.

⁸³ The first modern bank to engage in this corruption was the Bank of Sweden – after it was nationalized in 1668: the first government bank in the world. It is this bank that awards the Nobel Prize in Economics.

PRIVATE MONEY, FREE BANKING AND THE RULE OF LAW

We can now sit back and contemplate a free banking system based on traditional and universal legal principles. Under such laws, a banker would, of course, have to redeem his notes on demand. (Any citizen who issues an IOU or a cheque would have to honour them too.) Bankers would also be unable to misuse money deposited with them for safekeeping – and these two factors would prompt them towards maintaining a 100 per cent reserve against demand deposits. It is only the uncertainty of fractional reserves that requires a central bank as ‘lender of last resort’. As De Soto shows, central banking has not emerged spontaneously out of markets; it has been imposed from above in order to handle the fall-out of not following traditional legal principles. It is legal fraud that has brought about central banking.

Under the rule of traditional law, therefore, every note-holder and every depositor would be secure, and every banker would have to conduct his business with the care, caution and prudence that such a serious profession demands. De Soto also furnishes evidence that says ‘Islamic law also banned bankers’ personal use of deposits throughout the medieval period, especially on the Iberian peninsula.’ He cites

the 10th century Hispano-Arabic jurist Ibn Abi Zayd (or Al-Qayrawání) who wrote that ‘he who uses a money deposit to do business commits a reprehensible act, but if he uses his own money, he may keep the profit.’ Al-Qayrawání also added that in the case of a loan, the lender cannot withdraw the money at will and must wait until the end of the term. Thus, at least in Spain, the Islamic legal concept of a money deposit was exactly like that of the Romans.⁸⁴ Under such traditional ethics and law, paper money has to be redeemable on demand. And deposits cannot be misappropriated. Private bankers will then issue notes and the public can choose between various competing note-issuers. The role of the government is to provide justice based on these traditional and universal legal principles.

The fact that paper money will now be privately issued implies that just as no one can issue an IOU or a cheque and not pay up, so too must all note-issuers pay up real money when asked to do so by a note-holder: no property titles without property. Further, with demand deposits taken care of, and the law recognizing that in such cases property is not transferred but held in custody for safekeeping, bankers will not be able to indulge in fraudulent risks with their depositors’ money. Under such traditional

⁸⁴ De Soto, *op. cit.* p. 61n.

laws, banking will be stable, and good business practices will prevail. We will have sound money without the government, and all note-holders as well as depositors will be protected under law.

THE LAST HISTORICAL CASE OF LEGITIMATE BANKING:
THE MUNICIPAL BANK OF AMSTERDAM, 1609.

De Soto's work looks at the subject matter of finance from three different angles: the historical-evolutionary, the theoretical, and the ethical. This three-dimensional approach allows for a thorough understanding of the social processes involved. The historical approach is fascinating, covering bankers, frauds, corrupt rulers, some wise economists, and more. The story of the Bank of Amsterdam is worth recounting at this point, for it is the last case of banking based on good law. The effects of bad banking are now there for all of us to see. Let us also see the effect good banking had on Holland.

After a period of great monetary chaos and fraudulent banking based on fractional reserves, the Dutch people set up the Municipal Bank of Amsterdam in 1609, intending to put an end to these troubles and establish 'an institution committed to universal legal principles governing the monetary irregular deposit'. More precisely, the bank was founded on the principle that the *obligation* on the part of the bank in

a deposit contract was to maintain the *constant availability* of the deposit money in favour of the depositor: that is, a 100 per cent reserve with respect to all demand deposits. For over 170 years, the Bank of Amsterdam faithfully kept this commitment and no matter what the crisis, every depositor was always easily paid. This made the bank a pillar of capitalism at a time when the city of Amsterdam's trade spanned the globe. As inflations and wild speculations occurred in parts of Europe, money went to Amsterdam in order to find a safe haven. The commerce and wealth of the city of Amsterdam flourished. The Dutch bank was admired all over Europe, finding praise in the writings of Adam Smith and David Hume.

Smith wrote that the bank 'professes to lend out no part of what is deposited with it, but, for every guilder for which it gives credit in its books, to keep in its repositories the value of the guilder either in money or bullion.' He added that this was ensured by the city itself, for the bank was under the direction of four burgomasters who changed every year. Each of them had to visit the vaults, match their contents with deposits in the books and declare under oath that all was well. Adam Smith noted how, in 1672, when the King of France marched into Holland and the Dutch were in danger of being conquered, the Bank of

Amsterdam withstood the crisis, satisfying every last claim for payment. We can only conclude how this reputation for solidity must have mattered in making Amsterdam the financial capital of Europe at a time when John Law had wrecked the financial system of France, and Britain too had suffered many a financial crisis.

[At another point, De Soto tells us that, because of their historical experience, the French developed a deep distrust of paper money, which is why France and India are the two countries in the world where the private hoarding of gold as well as the private demand for gold are the highest in the world!]

Between 1780 and 1820, things went wrong and the Bank of Amsterdam began to violate the principles upon which it was founded. The result: “The financial predominance of Amsterdam was replaced by the financial system of the United Kingdom, a much less stable and less solvent system based on the expansion of credit, deposits and paper currency.”

Did the Bank of Amsterdam make any profits? Adam Smith had noted that the City of Amsterdam derived a fair bit of revenue from the bank, because it charged a ‘warehouse rent’ for the money deposited with it; and a fee of 10 guilders was charged for

every new account. But the crucial point about the bank's profits comes from De Soto:

*... the Bank of Amsterdam did not try to attain disproportionate profits through the fraudulent use of deposits. Instead... it contented itself with the modest benefits derived from fees for safeguarding deposits and with the small income obtained through the exchange of money and the sale of bars of stamped metal. Nevertheless, this income was more than sufficient to satisfy the bank's operating and administration costs, to generate some profit and to maintain an honest institution that fulfilled all of its commitments.*⁸⁵

If this was done once, it can be done again. Banks are too important for capitalism, and they must be under the law – traditional legal principles rather than democratically fabricated legislation. These principles should also be widely understood amongst the populace, so that the moral consensus of society gives them requisite force. All paper money will be convertible and all depositors will then be secure under law. Most importantly, there will be neither inflation nor the recurrence of boom-bust cycles. The poor will be able to slowly accumulate capital – with which to play the great game of capitalism. And it will be real capitalism – in which the most important

⁸⁵ De Soto, J. H. *op. cit.* p. 101. Italics added.

ingredient of the market, money, will be produced by the market itself, and not by the government.

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CHAPTER ELEVEN

MODERN CHALLENGES: 3

BUREAUCRACY & PUBLIC ADMINISTRATION

... the existing literature on the machinery of government assumes that, when an activity is delegated to a bureaucrat, he will either carry out the rules and regulations or will make decisions in the public interest regardless of whether it benefits him or not. We do not make this assumption about businessmen. We do not make it about consumers in the market. I see no reason why we should make it about bureaucrats.

GORDON TULLOCK – *The Vote Motive*

India's gigantic bureaucratic apparatus, inherited from the British, has failed the nation in every possible way. The primary reasons for this 'invincible defeat' are not far to seek: for, in the ultimate analysis, no institution of government that is based on injustice and immorality – which is essentially the misuse of force – can succeed in the long term. Socialism, the command economy, central planning, nationalization, public sector corporations, Keynesian paper money – all these immoral and unjust ideologies unwork themselves out with every passing year. Finally, when the scores are tallied today, it is no surprise that the writing on every available wall reads "failure". The nation needs to think anew.

According to liberals, bureaucracy is an organization inserted into the natural order of the market economy with a few specific objectives: namely, the preservation and extension of the natural order, and the need to supplement it wherever necessary. This is the light, firm and sure hand of a government that understands its

limited role in a free and prosperous commonwealth. This was precisely what had given the British civilian administration both success as well as a huge amount of social respect.

We may recount some of the key features of the British civil administration that were mentioned in the earlier essay devoted to this subject:

India was a poor country which could not afford luxuries and a district officer had concentrated on essentials – public order, the swift administration of justice, the prompt payment of taxes moderately assessed, the maintenance of accurate land records which would prevent disputes. Those had been the four first things.

There was another revealing quote on the attitude of the British colonial administration:

And in fact it was to peace and unity rather than to freedom, that the effort in India was directed, to equal justice for all, roads, railways, canals, bridges. That was the mixture, very good for the child, to be given firmly and taken without fuss.

If we examine the track record of the independent Indian government over the last 60 years, we find that it is precisely in these areas, vital to the success of the natural order, that the socialist administration has failed:

- Public order is routinely disrupted because diverse groups resort to agitational politics in order to derive benefits for themselves
- The very idea of ‘swift administration of justice’ has vanished from living memory
- Taxation has become heavy and iniquitous

- Land records have not been maintained, increasing disputes, most of which are settled through violent extra-legal means
- The idea of an ‘equal justice for all’ has been replaced by an unequal ‘social justice’ that politicizes economic outcomes, thereby working against the natural order
- ‘Roads, railways, canals and bridges’ have been totally neglected, the public treasure being invested in steel plants, hotels, airlines and myriad other government-owned businesses: thus, instead of supplementing the efforts of the natural order by providing those ‘public goods’ that businessmen could not supply, the socialist administration preferred to totally ignore this vital role that any government must play in ensuring the success of the society which it is supposed to serve
- The treasury is empty; despite this, the last budget allocated 1,00,000 crore rupees for subsidies and social welfare schemes

It is therefore no surprise that the colonial civil servant, who considered himself a sheep-dog and a ‘platonic guardian’, has morphed into a wolf that is preying on the flock: the ‘predatory state’ of theoretical analysis has become an ugly reality in modern India. The primary reason behind this hideous morphing is ideology. Any government that finds profit-making immoral and seeks to extinguish it will inevitably be led to its own doom. Such an administration will not seek to serve a natural order; rather, it will attempt to replace it with a command structure. This fatal error in thinking will incentivise immoral behaviour, and this will ultimately lead to the disappearance of the government’s legitimacy. We are now living in the long run, when their great ideologues are all dead, when the generation that foisted these ‘collective choices’ upon us are very old and gray, and the future of our children demands that the nation be steered onto another path.

THE BARRENNESS OF GOVERNMENT SPENDING

One definition of bureaucracy is ‘an organization that spends money as per rules’. Under the socialists, who are also inevitably Keynesians, the erroneous view prevails that government spending ‘stimulates’ an economy and is beneficial to it. I do believe that if the falsity of this idea be proved, humanity will have much to gain.

Let us examine the case of an honest citizen, a baker by profession, whose successful bakery is visited regularly by all types of tax collectors: sales tax, service tax, education tax, property tax, income tax etc. Our baker honestly and faithfully pays all these taxes – but what my reader must note is that these payments all mean a net loss to him. As Bastiat said, the government has two hands – one that gives (the gentle hand) and one that takes (the rough hand). By looking first at the tax collector, we look at the rough hand that takes away. We can then judge the effects of the gentle hand more realistically.

Now, these tax collectors are all bureaucrats, their salaries paid through tax collections. Let us suppose that one of them decides to throw a lavish tea party for his friends and relatives and that this tax collector calls on our baker to place a massive order for cakes, rolls, pastries and the like. Let us also suppose that the size of the order is 10,000 rupees – and that this is the exact amount our baker has remitted to all the tax collectors mentioned above. Does this mean that our baker is ‘even’ once again, since the gentle hand has ‘returned’ to him what the rough hand had taken away?

Actually, our baker is still a net loser of 10,000 rupees. When the tax collector pays him 10,000 rupees back he also takes away an equivalent amount of cakes, pastries, rolls etc. Previously, the baker had given up money; now he gets back the money and loses his goods – which he could have sold to someone else. He remains

a net loser. Thus, government spending is ‘unproductive’ (as Jean-Baptiste Say had said), though a better term might be ‘misproductive’ (as Bruno Leoni put it).

The key point to note is that the ‘work’ of the tax collector – and this includes both hands – is always a ‘cost’ on society, with no attendant benefits. When he takes, he takes; and when he spends, he takes again, giving up nothing in exchange that he has contributed himself. The term ‘misproductive’ is also used to describe the ‘work’ of a beggar or a thief: in all these instances, the ‘work’ imposes costs on others, with no attendant benefits. So, just as the earnings of the beggar and the thief cannot be ‘added’ on to national income, so too correct social accounting demands that the share of government be deducted from national income. Keynesians add it: this is the biggest error of their ‘polylogic’. And it is this huge delusion that animates the civilian administration today.

If one correctly visualizes both hands of the government, one realizes that it is in the interest of the wealth-producing citizens to see that both hands are minimally activated. If taxation is low, the citizenry can accumulate capital – which they can invest in enterprise, thereby adding to the welfare of all via the ‘invisible hand’. Further, the visible ‘gentle’ hand of the government that spends money must do so only on those goods that augment the national capital – like roads, bridges and canals. If the money is frittered away on useless schemes (like ‘rural employment generation’) the betterment of the commonwealth is not pursued; rather, particular private interests gain at the expense of the rest of society.

It may be recalled that the colonial district administration was not a ‘spending’ bureaucracy; rather, it was a ‘collecting’ bureaucracy:

...by accepting the revenue for a plot a collector automatically bestows a title...

The character of the district officer has changed so dramatically under native rule precisely because the collector has become a spender – nay, a waster – of national resources, whose ‘work’ imposes costs on society with no reciprocal benefit at all: it is totally ‘misproductive’ work.

THE MISPRODUCTIVE NATURE OF GOVERNMENT EMPLOYMENT

Having understood how the two hands of government operate, let us now proceed to an examination of the social benefit of government employment. India is a country where government jobs are coveted; where the government is the biggest employer of the nation; and where the government has made a fetish of its role as a ‘generator of employment’.

[When Sonia Gandhi visited Srinagar, Kashmir, she gave away government jobs as a welfare measure! There have been reports that jobs in the police are purchased. There are widespread tales of corruption in public employment recruitment bureaus.]

Let us take the case of a small town visited by the tax collector, the rough hand. Total collections stand at 1,00,000 rupees.

Thereafter, the town is visited by government recruiters, who hire three local lads: one as a soldier; one as a policeman; and the last as a civil servant. Let us also suppose that the annual salaries of these three recruits totals 1,00,000 rupees. Does this mean that the town is ‘even’? Certainly not!

From the point of view of the town, the rough hand extorted a lakh of rupees. Then along came the gentle hand and did two things:

first, it employed three people and second, it paid them. Even if this employment occurred within the boundaries of that town, and all the wage-money was spent therein by these three recruits, the fact remains that the townspeople first lost money, and then, when that money was ‘returned’ to them, they lost real goods in ‘exchange’. But this is an understanding we have already come across.

What makes government employment a very special case is revealed when we bring into our analysis what the three recruits were doing prior to their recruitment: How were they employed? How did they survive?

Now, in India, there is no such thing called the ‘unemployment benefit’ or ‘dole’ – thank goodness! – so it is very safe to assume that these three lads were up to some useful work, albeit we can be sure it paid them much less than what the government does today.

Therefore, prior to the visitation of both the hands of the government, the town had 1 lakh rupees and it also had the output of these three lads – output that was useful to the people, in the real sense that they paid for it, and that these payments helped the lads survive.

Now let us turn our gaze to the present, when the soldier is doing nothing more than ‘attention’ and ‘stand at ease’; the policeman is harassing street hawkers; and the civil servant is asking for a thousand forms to be filled in by anyone seeking a building permission: that is, the soldier is ‘unproductive’ while the other two are clearly ‘misproductive’. What has the town lost in aggregate?

In the final tally, the town has lost 1 lakh rupees as well as the useful output of three good lads. It has lost out even further because the ‘work’ that two of these lads now do – for the

government – imposes further ‘costs’ on society. What emerges, therefore, is not only that government spending is barren, but so too is government employment.

It therefore follows that the commonwealth will benefit hugely if taxes are slashed across the board and vast swathes of the bureaucracy retrenched – and thereby returned to society wherein they can produce useful goods and services and add to national wealth as well as their own prosperity and prestige. Society gains nothing from government employment – unless these chaps are doing something truly ‘useful’. And how can they do something truly useful? The answer was given long ago, by the Court of Directors of the Honourable East India Company to the Government of Bombay in 1810:

The soldier who shields the peasant while he is cultivating his field from the annoyance of the foe performs his part towards the improvement of the land; and the Magistrate, whose duty it is to give security to property after it is acquired, contributes more even than the capitalist himself towards the public prosperity. Let it not be imagined, therefore, that the revenues of a state lose all powers of reproduction from the moment that they pass into the chest of the collector.

This is John Locke talking – and this means we must drag the socialist Indian state back to first principles, kicking and screaming all the way if need be. As the constitution of the US state of North Carolina says: “The frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.”

TOWARDS AN USEFUL CIVIL SERVICE

There is an interesting part in Mason’s history of the colonial administration wherein he describes the grand parade held in the

new capital of New Delhi in 1911 by Lord Curzon. It is an awe-inspiring spectacle that is received by the assembled crowd in complete silence! An English lady complains that, after the event, it is such a bother to find one's carriage.

The truth is that India was never run centrally: it was in the districts and sub-districts that the ordinary people felt the presence of an honest, efficient and useful civil administration. I am in no doubt that such a cadre has to be created anew – but then, if wishes were horses...

There are other alternatives that can also be made to work – such as 'company towns', wherein the company that built the township runs it without either democratic or bureaucratic inputs: no elections; no IAS-IPS. Jamshedpur is already such a town, and there can be thousands more: the new policy of creating 'special economic zones' (SEZs) can be translated towards such ends. The competition that will then be unleashed through what economists call 'Tiebout forces' will have a salutary impact on the motivational levels of the new civil service, who will have to administer affairs in the rest of the territory.

The new civil service, centering around the district officer, will have to focus on the four essentials – 'public order, the swift administration of justice, the prompt payment of taxes moderately assessed, the maintenance of accurate land records which would prevent disputes' – and they would need to be supplemented by a small corps of policemen as well as the offices of a judge. Such a barebones administration of the districts would be the most useful service that a liberal government can deliver to the people.

If I can add another important function that the civil administration must provide, it is this: the supervision of municipalities, so that the thousands of small towns that comprise India are efficiently run. In this respect, the new cadre can follow in the line of

Napoleon's 'prefects', who till today perform an important role in administering provincial France. They themselves were modeled after the 'intendents' of the *ancien regime*. The British do not have such a civil service in their own country – the counties and towns are run independent of the central bureaucracy in Whitehall. But it is the Napoleonic system that was adapted to India, and it may be prudent to continue with it. I may mention that at least some Britishers so admired the prefectoral system of France, that they desired to have it in their homeland.⁸⁶

Thus, we have the district administration as of old: the district officer, his police, and the district judge.

In this connection, it may be pertinent to point out that, whereas an impartial judge is an institution produced by the spontaneous forces of the natural order, a bureaucracy is different: it is an organization implanted within the order with specific tasks. This little difference between the two must be stressed, because even Max Weber, the patron saint of bureaucracy, was not aware of it. To him, all order was designed, brought about by something 'binding in law', which is 'enforced'. This misconception must be erased. In reality, the 'rule following animal' we call *homo economicus* establishes his own natural order; if it were not so, the civil administration wouldn't have a moment to spare, and all its time would be spent enforcing rules upon an unruly mass of lawless people. That is, the natural order describes a 'factual state of affairs'. This should not be confused with the 'norms that prescribe a particular arrangement'. As Hayek points out, Max Weber confused these in his discussion of 'legal order and economic order': by this error, he adds, Weber 'blocked for himself the access to the genuine theoretical problems of a science of society'.⁸⁷ A science of society requires theory only to understand an order no one has designed; if the order was

⁸⁶ See, for example, Brian Chapman's *The Prefects of Provincial France*.

⁸⁷ Hayek, F. A. *Law, Legislation & Liberty*, Vol. 2, (Chicago U. P.: 1976) p. 49, 50n.

designed, there would be no theoretical problem, and the scheme of the designer would suffice.

This makes it all the more imperative that a civil service that seeks to be ‘useful’ sees where its usefulness lies. It lies not in generating employment, pursuing ‘rural development’; indeed, it has nothing to do with ‘development’ at all – and certainly not the ‘sustainable’ variety. The role of the civil service is ‘subsidiary’ to the forces of the natural order: and it is there that the civil servant should seek his usefulness to society. The career of a good civil servant is one of ‘usefulness and trust’, as Samuel Smiles might have put it; and I am quite certain that just as the good people have always outnumbered the evil, many good people can be found who would like to pursue such a career – provided the conception of its role is crystal clear. Recall A O Hume’s call to the students of Calcutta University: almost all those who responded were aspiring civil servants!

A useful civilian administration of the kind contemplated above would not have vast budgets to spend: it would not be a ‘spending bureaucracy of a provision state’. It would need to take heed of the warning of the great Charles Metcalfe: that ‘a government that attempts to purchase the cordial attachment of the people by gratuitous alienations of public revenue would be following a vain delusion.’ I am therefore not entering into an elaboration of the ‘budget-maximizing bureaucrat’, who is a creature of precisely such a ‘vain delusion’, a product of social democratic politics funded by Keynesian fiat money that has become the orthodoxy and the ruination of the modern Western world.

It needs to be mentioned that Napoleon’s prefects were and still are governed by the *droit administratif*, and the citizens of France have recourse to administrative courts under a conseil d’etat for redressal of wrongs committed by the administration. In India, Lok Ayuktas are ‘toothless’ – as one newspaper survey described their

working – and a check on administrative excesses of the Napoleonic kind might be a good idea. I have written elsewhere on this subject.⁸⁸

There have been good and bad bureaucracies throughout history, an ultimately everything depends on the man at the head, and towards what ends he turns the organization. A once proud and useful organization, the Indian civil service, has been turned towards wrong ends and thereby debased. From this failure, the new civil service will have a lot to learn. If they do learn all the right lessons, they will make their profession respectable once again, and from this restoration of their public esteem, they themselves will have the most to gain.

CIVIL SERVANTS IN THE CITIES: THE NEW PUBLIC MANAGERS

In the big cities and larger towns – that is, excluding all the ‘company towns’ – the local government must provide certain services like garbage collection, sewage, roads and streets (including traffic management), footpaths, street-lighting, and not much more. Note that I do not include ‘education’ and ‘healthcare’ in the list. These are not ‘public goods’; they are better supplied by the spontaneous forces of the natural order; and poor people can access these services too if they are provided by competing private charities. The question then boils down to how the supply of these essential public goods and services are to be ‘managed’ by professional civil servants; and this indicates that this is an area closer to management than to public administration proper.

Today, these services are provided bureaucratically, in the sense that there are vast government departments in every city and town that hold an effective *monopoly* in the provision of these services.

⁸⁸ See my “Care for some French Teeth” in *Antidote 2 : For Liberal Governance* (Macmillan India: 2003) p. 321.

The senior-most civil servants head these departments – and spend most of their time in office processing ‘bureau inputs’: leave, promotion, discipline, purchases and so on. These senior officers have no time whatsoever to process ‘bureau output’ – to see to it that the work is actually being carried out and the service is being efficiently and economically delivered to the citizenry.

With the ideology of ‘new public management’ (NPM), the first step is the shutting down of each and every one of these inefficient and corrupt provisioning bureaus. In their place, for each service there is placed but one senior civil servant, whose task lies in ‘contracting-out’ these services to competing private players: what managers call ‘outsourcing’. He ‘steers’ the boat while the private sector ‘rows’ it. The government ‘provides’ all the services, but it does not ‘produce’ anything. The civil servant therefore has enough time to process the ‘output’ of these private firms, and he can blacklist any who do not perform as per contract.

In my opinion, such NPM practitioners need not be part of the cadre of provincial civil servants who run the districts; they should be skilled managers, recruited, if necessary, from the international skills market. Rather than being an apolitical service, they can actually be a body of political civil servants who are part of the team that seeks election along with a mayoral candidate. If their candidate wins, they manage. If some other candidate wins, he brings in his own managers. Thus, we can dispense with a permanent civil service for urban areas.

The key point here is the waste of public money – for while every city has big budgets, the quality of public services provided by the existing bureaucracy is totally shoddy. When we visit a modern, Western nation, or even progressive Asian nations in the Far and Middle East, we do not find pot-holed streets, chaotic traffic and overcrowding, garbage and filth everywhere and a complete loss of public faith in all the institutions of government, including

especially the bureaucracy. Yet, there are bureaucracies in these countries too. What makes them work? And what are the lessons we can draw from these successes?

The subject of public administration is quite alive today – except in India, because IAS officers control all the elite institutions where it is taught. New Public Management has been a dominant paradigm in the subject for over two decades now, and the IAS has barely woken up to it. Once again, it must be seen that they are not a knowledge-driven bureaucracy (which is an essential condition in Max Weber’s ‘ideal type’). Rather, they have sought to fortify themselves against knowledge. In the area of ‘provision’ (as distinct from ‘administration’) the IAS officer has behaved like a monopolist as well as a budget-maximizer: providing shoddy services, lowering both quality as well as quantity, knowing well that no one can step in and compete. Therefore, I am of the view that in our teeming cities and countless towns, NPM practitioners must be inducted. It is in these crowded cities and towns that the need for public services is most acutely felt. These cities and towns are also vital to wealth-generation and the natural extended order, because markets exist herein, and it is in these cities and towns that the division of labour is maximized. Since the IAS has all along focused on ‘rural development’, to the ruination of all our cities and towns, it is imperative that they be ousted from all positions of responsibility in urban management, and a new breed of city managers with a clear conception of their role be ushered in.

LIBERTY AND PUBLIC ORDER

The idea of a natural order that exists as a ‘factual state of affairs’, as an ‘endogenous order from within’, and which is not subject to coercive interference by the agencies of government, is an order based on individual liberty. Liberty exists only where private property is inviolable – and the role of the civil servant lies in protecting liberties and rights. As far as the honest citizen is

concerned, he enjoys the most ‘perfect liberty’, which means that neither democratic assemblies nor government bureaus can obstruct any ‘feasible action’ that he desires to undertake. Let us recall Anthony De Jasay’s definition of ‘feasible action’:

*A liberty is any feasible action that is neither a tort, nor the breach of an obligation, nor the exercise of a right. In order to be feasible, a person must be able to perform it without another person being required to perform onerously.*⁸⁹

What this implies is that ‘permissions’ from government authorities are not required to undertake any feasible action. These permissions and licenses not only breed corruption, they also lay the regime open to the charge of being ‘para-totalitarian’. Under a regime where the natural order is allowed free play, liberated from every kind of administrative ‘control’, the role of the civil service will lie only in ensuring the ‘preservation of the peace’; the efforts of the impartial judge will also be directed in this direction.

What exactly will transpire in such an order, wherein several property is inviolable by all, including the authorities, cannot be precisely predicted – but the very fact that legislation against alcohol, cannabis, gambling and prostitution will be inapplicable indicates that all these businesses (which continue an underground existence today) will operate openly, as legitimate businesses. There will be no ‘criminal’ elements involved. Criminality will have a very narrow definition and the civil administration will only have to act against criminals who will be easy to identify and against whom the entire weight of public opinion will prevail. Today, it is fairly obvious that there is widespread gangsterism

⁸⁹ De Jasay, A. *Before Resorting to Politics*, Edward Elgar: The Locke Institute, 1996. p. 31. Italics in the original.

despite all the legislation – and that many of these gangsters actually command a great deal of public sympathy and support. It is often not clear to the citizen – as for example when he buys a packet of ganja – whether the ‘criminal’ is actually a friend and the police an oppressor.

Nothing could be worse for public order than this blurring of the identity of the criminal. This blurred identity is also what is responsible for the mass entry of criminals into politics – and where criminals get elected to public office it should be obvious that the voting public does not consider them to be ‘outlaws’ as, say, in the case of an American town where the Sheriff calls up a corps of citizen-volunteers to form a posse and ride out with the objective of bringing some known outlaw to justice. It would be unthinkable that this outlaw could get himself elected to office in that town. If this is happening in India, it is the para-totalitarianism that the authorities practice that is really to blame, for it makes gangsterism inevitable. A liberal regime will be able to provide a far superior public order precisely because only a few acts, agreed to by all, will be considered criminal; every criminal will then face the moral wrath of the citizenry and, what is more important, the authorities will enjoy the unstinted support and co-operation of the entire body of honest citizens in their efforts to bring known criminals to book. This is the only way to combat terrorism; state terrorism, which is the para-totalitarian response, further alienates the citizenry from the civil authorities.

THE PRINCIPLE OF SUBSIDIARITY

Although the Nehruvians are still attempting to run India through central direction, this was never the British practice, which gave a great deal of independence to the district officer and relied totally on his knowledge of local circumstances. Today, the district officer spends much of his time running centrally administered schemes as well as those instituted by his state government – and all these are

‘spending’ oriented. In those days, he inspected the roads, courthouses, jails and treasuries, built new roads where necessary, laid out new towns where possible, and then sat back to watch economic development happen through individual enterprise and free trade. It is this administrative ethos that needs to be brought back.

In today’s language, this is called the ‘principle of subsidiarity’. This firstly sees the role of the civil administration as subsidiary to that of the natural order. Thus, it has only to do those things that the people cannot do for themselves. For example: In the days before the wrist-watch became common, every town market would have a government-funded clock-tower. This also means that the people can organize for their own protection – as with private security services that have become so commonplace in Indian cities today.

Secondly, if the administration has to do something, then this task is first given to the lowermost authority – the mayor or the district officer – and only those tasks which they cannot perform (like international relations or national defence) are handed up to higher tiers of government.

Thus, while centralization is the administrative response to government planning, decentralization is the administrative response to the free market, which is itself entirely based on decentralized, independent decision-making on the part of consumers and producers.

To institute the principle of subsidiarity into the civil administration we will have to resort to legislation (and this is the real purpose and utility of legislation) that will list out the duties and responsibilities of district officers and mayors. For example: the district officer could be made responsible for district roads as well as the oversight of small municipalities, while the mayor

could be made responsible for the orderly conduct of all legitimate businesses in the cities (which would mean that street hawkers and vendors would be protected instead of being preyed upon). Thus, the laws of the natural order are found; but the rules that will be binding on the agencies of the government are made – by democratic assemblies. Law and legislation are not confused; they remain different things, with different origins as well as different purposes. Today, legislation is misused to control society, while the administration has no legislated duties at all! The Constitution of India, for example, contains an article that says that there shall be the All-India Civil Services – but no mention is made as to their duties and responsibilities. On the other hand, in a typically totalitarian manner, the same constitution carries a section on the ‘duties of the citizen’!

To conclude, the tasks of government are noble enough if conceived in justice and morality. Towards these just and moral ends civil servants are required, and there are many bureaucracies, throughout history, who have performed their tasks with honesty, impartiality and a sense of duty. In the polluted moral discourse of present-day India, the debased and institutionally-corrupted bureaucracy has become a disgrace to what should have been a noble calling. If this collection of essays helps the nation in re-thinking the role of government in society, and how that role can be best performed, then the effort will have received its most valuable reward.

CHAPTER TWELVE

GOVERNMENT AND SOCIETY IN A FREE AND PROSPEROUS COMMONWEALTH

Predatory men, you who, by force or fraud, in spite of the law or through the agency of the law, grow fat on the people's substance; you who live by the errors you disseminate, by the ignorance you foster, by the wars you foment, by the restraints you impose on trade; you who tax the labour you have made unproductive, making it lose even more than you snatch away; you who charge for the obstacles you set up, so as to charge again for those you subsequently take down; you who are the living embodiment of selfishness in its bad sense; parasitical excrescences of faulty policies, prepare the corrosive ink of your critique: to you alone I make no appeal, for the purpose of this book is to eliminate you....

FRÉDÉRIC BASTIAT – *Economic Harmonies*

*Not steering by the venal chart
That tricked the mass for private gain,
This is the faith with which we start,
That men shall know commonwealth again.*

LEONARD COHEN
Villanelle For Our Times

A free and prosperous commonwealth does not depend for its motive force on any great political leader. On the contrary, the varying degrees of success that different commonwealths achieve depend entirely on the people, their entrepreneurial abilities, their knowledge, and any

other advantages they may possess. Such a society is people-driven. The government is on stand-by, to act against those who break the law, and nothing else. This too, at the local level.

The word ‘commonwealth’ has its origins in the very old term ‘common weal’, which meant ‘common benefit’ or, as it was later called, ‘common profit of the realm’. The word ‘commonwealth’ stands for collective decision-making that is not guided by particular interests. This ‘impartiality’ to particular interests has remained the highest ‘value’ of law and government, including civil service, and this value was often expressed as ‘an empire of laws and not of men’. Under such a government and legal system what mattered is ‘how competition was carried out, not its result’. The ‘common interest’ of the people comprising a ‘body politic’ thus lay in uniformly applicable laws, binding upon all.

In English history, the word ‘commonwealth’ is used to describe the Republican government of Oliver Cromwell that ruled between 1649 (the execution of Charles I) and 1660 (the death of Cromwell and the restoration of the monarchy). Cromwell did not accept the title of king – “We have not cut off this king’s head in order to steal his crown!” – and was known simply as “Lord Protector of the Commonwealth”. The word ‘commonwealth’ has all but disappeared from modern

political discourse; my modern dictionary of political ideas does not contain the word. This is not surprising when interest group politics has become the norm almost everywhere. Mancur Olson's *The Rise and Fall of Nations* analyses this trend and warns of its serious consequences.

DESTRUCTION OF COMMONWEALTH IN MODERN INDIA

The sad story of modern India, free from the British but not free from the machinations of all sorts of particular interests, is a story in which the word 'commonwealth' does not feature. If anything, the government of independent India has scripted a story favouring special interests alone: crony businessmen, the vast bureaucracy; the innumerable public sector enterprises that offer so many opportunities for patronage as well as kickbacks... as the story unfolds, the honest taxpayer is forced to admit that nothing has been done to further those crucial interests that all Indians have in common, and for the pursuance of which they are supposed to have come together to set up this republic. The license-quota-permit raj played private interests in a closed economy against each other – but in the end most of these businessmen gained at the expense of the citizens as consumers. The annual budget was always used to bestow favours by varying tax rates in such a manner

that competition was affected because relative prices were altered. These ills are still with us.

Let us take the example of the import of cars, including second-hand ones, which is the direct path to universal automobile ownership – and thus in the true interest of the ‘commonwealth’ because if every Indian owns a car, every Indian is wealthy. However, the manner in which the ‘voodoo liberalization’ of the automobile industry has been carried out has meant that, instead of aiming for an India where everyone has a car, India has become a nation where most Indians own bikes and scooters, some Indians own cars, some foreign multinational car companies are operating small assembly lines for some of the products of their wide stables, and all the old cronies are still prospering – and yes, in all that, we still have some amount of government ownership in Suzuki India, a company with a commanding market share. Quite clearly, ‘commonwealth’ is not the objective; rather, playing favours in the marketplace – in which the government remains a major player – is the dominant ethic(!).

The citizen as consumer has always had his interests sacrificed, so this exploitation is nothing new; but what of the citizen as taxpayer? Now, customs duties on second-hand car imports are 180 per cent. This means there is zero trade and hence zero revenue collection.

The same is the case with imports of wines and spirits, where duties are over 400 per cent, and have become a matter of international dispute at the WTO. At such an astronomical tariff level, there is once again zero trade and, in consequence, zero revenue collection.

As far as the citizen as taxpayer is concerned, the overall size of the public treasury is the 'commonwealth' – and the bigger it is the better, provided the collections place an equitable burden on all. In both these cases, if imports had been allowed on low duty, citizens would have gained hugely as consumers – dump the bike and drive the wife and kids in a second-hand Toyota; chuck up the horse's rum for an inexpensive and healthy bottle of Italian wine.

But the citizens would have also gained as taxpayers because huge revenues would have been painlessly collected. If the government had these revenues, it could have avoided imposing a special education tax; indeed, many – if not all – the new rapacious taxes that have been devised could have been avoided. I recently flew Delhi-Goa by a budget airline. My cheap ticket cost 2100 rupees, but taxes totaled 1700 rupees!

When the government gives up huge amounts of revenue by imposing tariff walls that bar trade, it must collect it by some other means – for it must feed its troops. But the taxpayer loses a great deal in the process,

because the idea of ‘commonwealth’ has not informed the authorities.

Poor citizen! Condemned to ferrying the wife and kids on a motorcycle; condemned to the uncomfortable autorickshaw when in need of public transport; condemned to the harsh grogs of IMFL. And condemned to cough up the revenues thereby sacrificed so as to restore the public treasury! How far removed indeed from the idea of ‘commonwealth’.

The socialist Indian state is always a predator on the people because it has no principles, and always acts according to expediency. In an earlier age, especially in politics, a man without principles would be in disgrace; but in the *chaltha hai* times we live in, expediency is considered clever and smart, while principled people are considered ‘idealistic’, ‘utopian’ or, worse still, ‘theoretical’. However, the absence of principles in our opponents is ultimately derived from a total lack of understanding of society, economics and politics – and such a level of ignorance can only spell doom. In the long run, I am confident, principles must prevail.

Enough of this government! Socialists and protectionists have converted the ‘ship of state’ into a ‘pirate ship’. For the common profit of the realm, a new ‘merchant ship’ must be built. Let us therefore turn away from government and consider how free commerce can

greatly improve the wealth of every ordinary Indian, thereby augmenting the ‘commonwealth’ via what Adam Smith called the ‘invisible hand’.

THE CASE FOR UNILATERAL FREE TRADE

Let us start with the most extreme position: Would we Indians, as far as our ‘common profit’ was concerned, lose anything if the customs department was abolished at one stroke and the entire sub-continent became the largest duty-free trading area in the world, wherein every shop, even the paan-bidi shop, was a duty-free shop?

Frederic Bastiat, a great free trader who was inspired by Richard Cobden and the Manchesterites, gave us the best way to answer this question, through a thought-experiment: Make an inventory of every possession of every Indian on the night before the abolition of the customs department, and then make another such inventory a year later. Will the latter inventory show that the possessions and properties of all Indians have improved or declined? Of course, they will show a marked improvement. Thus, the ‘wealth of the nation’, which correctly consists of the wealth of every Indian added up, which is the ‘common profit’, will significantly rise, although many particular interests would lose out in the competition. But then, impartiality demands that what matters is the manner in which

competition is played out, not its results. It is then that the ‘common profit’ is realized. There is no ‘right to profit’.

Therefore, the antics of India’s minister for foreign trade, Kamal Nath, who walked out of the WTO ministerial in Hong Kong – and who is therefore a protectionist at heart as well as in practice – must be viewed as opposed to the common profit of the realm: in other words, he is, strictly speaking, an ‘anti-national’. But do we need a WTO in order to trade with foreigners? According to our principle, the government is subsidiary to the natural order. This natural order extends beyond our shores as, for example, when we order books or music from Amazon.com with our credit cards and receive them, without the assistance of any government. Does the freedom to trade with foreigners need our government to meet with other governments in order to ‘negotiate’ terms? Can we not negotiate terms with our foreign buyers and suppliers ourselves much better as free individuals?

The best method by which to investigate foreign trade is, once again, individualism. Individuals trade, not nations. When individuals trade, reciprocity is meaningless. I do not buy a Nokia phone because the Nokia manager dines in my restaurant regularly. Indeed, I can jolly well buy a Motorola phone and not offend my customer in any way. It is not a ‘just expectation’

that those who buy from you should demand that you buy from them in turn. In the market there is 'continuous competition'. The act of buying and the act of selling are two separate acts, to which different forces of competition apply. It follows that, since reciprocity is meaningless when individuals trade, it must be utterly devoid of all meaning when applied to nations. We do not need the WTO: we must declare free trade unilaterally. If revenue is what the government needs – which is clearly not the situation today, when revenue is being sacrificed for particular interests – then the customs department can stay, but a flat rate, extremely low revenue tariff should be imposed. Revenues will soar, other taxes can be slashed, and competition will be free and fair because relative prices will be unaffected.

I once lectured to a group of students in Panjim, Goa, and the lecture hall on the roof-top overlooked the Arabian Sea. I pointed to the blue waters and asked my class: Suppose you want a car, will you get it from this direction? Or, I continued, pointing towards the land, from the other side, where Poona lies and where the Bajaj types live? My class, after a moment's hesitation, said they want to get their cars via the sea route.

It is a symptom of the absence of principles in the thinking of our rulers that overland trade routes between India and China are being opened in Sikkim and Arunachal Pradesh while the 2000-mile long coastline is

not being opened up to free international trade. When principles do not guide action, nothing makes sense. We might as well be ruled by madmen, or idiots.

THE LIBERAL VISION: A PROSPEROUS COMMONWEALTH

The fact that we live in an ‘artificial order’ exhibiting ‘particular patterns’ produced by interventions in the natural order imposed upon us by central planners and their legislature is best illustrated by the fact that the two biggest cities of modern India are landlocked New Delhi and Bangalore. Both these cities have become heavily overcrowded and unlivable despite the fact that in both instances the surrounds of the cities offer more than ample vast empty spaces for suburbanization, the spread of population and the consequent ‘development’ of the countryside.

The reason for this destruction of our habitat is the fact that in both cities ‘urban development authorities’ operate as land monopolists combined with road monopolists. As with any textbook monopolist, such an entity will undersupply the goods in question – in this case, ‘legal’ land for building upon and roads to connect this land to the whole – so as to extort the maximum ‘rents’ for himself. It is the ideology of ‘urban planning’ that is to blame, for it assumes a benevolent planner. All

the great cities of history grew organically, without any such ‘planning’.

The liberal vision statement of a prosperous and free India living in the natural extended order is therefore based on a freeing of the natural forces of trade and urbanization so that many, many great new cities spring up along the twin coasts. Let these cities grow organically, and let the citizens in each manage their own affairs with their own resources, free to make local rules provided they are not in contempt of the overall ‘rules of just conduct’. These cities will compete for citizens, and the better run ones will be more successful.

From the point of view of what a government at the centre can do to help this natural order come about, the one and only thing required of it are roads – and I mean big, broad, modern inter-city highways, lesser highways between the larger and smaller towns, and then a spreading of the road network into the hinterland like capillaries that nourish the whole. A www on the ground.

The central planner’s much-touted ‘Golden Quadrilateral’ road project connecting the 5 metro cities of Delhi, Bombay, Bangalore, Madras and Calcutta remains a 5-city vision: that too, of 5 utterly destroyed cities. If the central planner had attended even a first semester class on transport economics, he would have

been acquainted with the notion of ‘hubs-and-spokes’, a pattern basic to all transport systems. Civil aviation, railways, shipping – are all based on hubs-and-spokes, with the big cities as the hubs branching out the traffic into the peripheral lesser cities and towns through spokes. Obviously, roads should also be built in this manner, so that all the satellite towns surrounding each of these cities grow and develop as well. The ‘primacy’ we see in India, of just the primary cities growing and growing while the periphery disintegrates, is vividly illustrated by a statistic: 63 per cent of India’s urban population is cramped tight into these 5 metros. This is the result of ‘planning’. This is the ugly ‘artificial order’ that the innumerable pincers of political control have brought about. Without liberty, we as a nation can never achieve the civilized life of a people living in healthy, clean and thriving cities and towns.

I have recently spent quite some time on the west coast of India, and discovered that the Konkan area from the south of Bombay right up to Mangalore and including the whole of Goa, offers scope for the building of many, many new cities and towns. The rolling expanses of the unpopulated mountains of the Western Ghats offer scope for building hundreds of new, attractive ‘hill-stations’ As I drove on the broken down coastal highway (which is not part of the Golden Quadrilateral project and which will be imperative in the natural order) I passed many, many small towns that have been

ancient centres of trade and commerce, which have fallen off the map today, and would regain all their lost glory in a matter of years if we as a nation freed international trade unilaterally – and also built a great big coastal highway: Sawantwadi, Honavar, Karwar, Kundapura, Udipi... to name just a few.

As has been repeatedly stressed throughout this volume, a primary liberal value is Civilization – which means cities, trade, civility, manners and virtue, and the good life. The idea is to attract more and more outsiders into this way of life – and that is development as well as progress. Our villagers have been ‘voting with their feet’ for 60 years, relentlessly migrating to the cities, even to sleep on the footpaths. But the entire class of official economists (there is an Indian Economic Service!) has never advocated building more cities and towns for them to move to – or even more footpaths for them to sleep on! They have never understood that rent control legislation is the only cause of urban slums – because landlords stop offering rental property on the market. The poor cannot buy houses; for them, cheap rentals on the market must be the only way to live in cities. This is another example of misguided socialist Robin Hood legislation actually harming those it was intended to benefit. It is also a telling illustration of why the inviolability of private property should be an inflexible judicial principle.

Frankly, I see no hope for the 5 metro cities and their Golden Quadrilateral. The quality of life in each of these cities is miserable for rich, poor and middle class, without exception. The political life in these cities has also degenerated into ugly goondaism and I doubt whether anything can cure them of this. Even if an excellent mayor were to be found for each of these cities, it is doubtful whether the chap would be able to accomplish much. There is the better way: build new cities and towns and run them well. Start a new life. Own inexpensive property in a lovely new city and abandon the hideously expensive property in the hideous city. This is entirely possible if market forces have free rein in the market for land – there is no shortage of land in India! The cause of the urban land crunch is the roads monopolist and the city planner. And, of course, that great curse of socialism – legislation: The Urban Land Ceiling Act.

Land in my middle class area in Delhi is therefore worth more than 1,00,000 rupees a square yard – because of the numerous interventions of the political authorities. The poor have no hopes of owning property here. But for the princely sum of 400 rupees a square metre, I can buy land in the less developed parts of Goa, where both life as well as the weather are far better. Here, my neighbour was a bus driver, and he lived in a modest cottage of his own, with his wife and daughters. There

are no slums here. Bus drivers in cities have only the slums to live in.

Note that the Portuguese were the first to arrive here from the West and they cherry-picked Goa. On the other hand, when Babar and his army first arrived in Delhi, the summer hit them so hard that many of Babar's top generals pleaded with him to loot and scoot. It goes to Babar's immense credit that he insisted on staying to rule, despite the heat, as a 'stationary bandit'. The British shifted their capital to Delhi because of Curzon's excessive fascination with imperial symbolism; but even Curzon himself, and his entire administration, spent the summer in Simla. The British built 80 'hill-stations' in 50 years and the experience can and must be repeated. Delhi has been abandoned many times before in its long history, and there is no reason why in the natural order it will not be abandoned once again. There are no natural reasons why it should succeed as a city. The socialists have invested now in an underground railway, just as the Soviets had installed one in Tashkent. In the natural order, landlocked cities like Delhi and Tashkent, with hard weather conditions, will never be major centres of population, with or without underground railways.

The freeing of international trade and the market for land will spur urbanization and wealth generation, and we can safely predict that the greatest action will be along the coasts – but we cannot predict much more

than that. Cities and towns have a way of sprouting spontaneously wherever markets locate, and urban geographers have developed some interesting theories about how and why this happens. The Great California Gold Rush was caused by an economic incentive, and similar incentives will spur millions of Indians to resettle in the new order, migrating in search for greener pastures. A new Indian civilization will be born.

At this point, I am sure that some voices will be raised about ‘what will happen to the poor’? I do believe that the poor have human minds just like mine and are fully capable of sensing gain and finding it. They too need liberty, like all the rest of us. However, to hammer this very important point home, allow me to take my reader on a small digression: Why is India poor? This question is no longer valid as India is getting richer by the day, so perhaps it should be rephrased to: Why are some Indians still poor? If the real reasons for the poverty of some are understood, we will be much better placed to advocate the right ideas.

WHY ARE SOME INDIANS STILL POOR?

There are three core reasons why many Indians remain poor – and all three have to do with bad government. At the outset, let it be understood that there is only one way to achieve lasting prosperity, and that is by improving the productivity of labour. People work in order to

produce for others. If with the same amount of work they are able to produce more and more, then only can their earnings improve. There is no short cut or quick fix. Wealth has to be produced through human effort: work.

Now, while socialists teach our children that ‘there are four factors of production: land, labour, capital and enterprise’, liberal economists have always held that the *most important* factor of production is Time. We can work for only some hours in a day. Productivity is measured in time: how many spindles of yarn do you produce per day on your *charkha*? It is only because of much higher productivity that the *chowkidar* outside a modern spinning mill earns more than the dude with the *charkha*.

Further, the economic use of all the other factors of production is governed by Time. Rents for lands and buildings are paid by the month. Labour is paid by the hour. And the interest on capital is calculated on the basis of Time. That is, the essence of capitalism, which is the calculation of profit and loss, is entirely governed by Time. Therefore, it is only through the relentless saving of both time as well as effort that the earnings of all the factors of production can show sustained increases.

So, the most important reason why many Indians are poor is because they waste time. Travel to work and back, to the market, to anywhere, is torturously slow and extremely unsafe. Roads and railways are government monopolies. Second-hand car imports are effectively banned by tariff walls enforced with the military might of the government. You see the pathetic boats of the Indians who live off the ocean's bounty and it makes you feel like crying. Megatonnes of fruits and vegetables, flowers, fish and other products that must be delivered to markets 'on time' perish every day. I have no hesitation, therefore, on insisting that what India needs is a transportation revolution. Not education; transportation.

Trade and transport go hand in hand; all tradables must be transported to the furthest away markets, where demand is acute, for maximum profit. Flowers must be shipped to Amsterdam just as the apples of Kulu must go to Bombay where no apples grow: there is no gain in selling the apples in Kulu itself. The great 'trade routes' of the world were all transportation arteries. They powered every great civilization that ever existed. The modern west conquered the world because of better ships – not warships, but merchant vessels like the Cutty Sark, which transported tradables from where they were abundant and cheap to where they were scarce and expensive, and where profits were enormous. We cannot

become a great civilization without a complete and total revolution in every area of transportation.

With the opening up of civil aviation to competing private companies, the horror of the state monopoly under which we lived for so many decades has been openly demonstrated to all Indians. Similarly, trade liberalization has brought modern cars to many of us. What the future requires is complete freedom for all kinds of private players in the transportation sector combined with the unilateral free trade without which the vital knowledge developed in other parts of the world will be unavailable to us. Why is the government putting up the example of the Delhi Metro Railway as one suitable for all Indian cities? Will every Indian city and town have to wait for the nod of the central planner to obtain modern systems of mass transport? How will, say, a modern tramway company be able to invest in the numberless small towns and cities that dot the map of India? Government is not the solution; government is the problem.

Now, it becomes obvious that there will have to be huge private investments in transport, machinery and equipment in order that the productivity of labour is enhanced significantly. This shows that the relations between labour and capital are entirely harmonious: the more the capital, the better for labour. This in itself is philosophical justification for the jettisoning of all

labour legislation, because it is entirely based on the erroneous idea that these relations are in fact in a permanent state of disharmony, for which the only cure is the government. The natural order will be better for all workers, not just the unionized few, and the realization that this is so will help obtain mass support for the just legal principles upon which this order is based. The natural order will be strong from within.

Having covered time, transportation and the relations between labour and capital, and seen that in all these instances our present-day ills emanate from the erroneous ideas of our rulers and planners (who aspire to teach the unlettered!), let us now proceed to the second core reason why many Indians are still poor: and that is, 'economic freedom'. Indians are 'mostly unfree' according to the World Economic Freedom Index, bare notches above the 'economically repressed'. Our socialist government is nothing but an unholy bag of rules, legislations, and bureaucratically imposed restrictions on human liberty based on 'subordinate legislation': a 'para-totalitarian state' of the kind that Anthony de Jasay warned earlier. He also spoke of how the common law tradition is based on 'liberties under law' and not 'rights' to various 'goods' to be provided by the government.

To visualize the ripple effect that the immediate economic emancipation of the people with 'liberty

under law' will have, let us take the case of the thousands of harmless dance bars of Bombay that were closed down by the legislative fiat of the Mumbai democratic assembly. Since I did visit a few of these establishments, allow me to comment on the enormous loss of livelihoods that must have ensued. First, apart from the dancing ladies, there are the musicians and the crooners. Then there are the cooks and bartenders, and those who supervise them. There are waiters, bouncers, accountants, cleaners, sweepers and other workers. There are many servicemen who make a living by providing for the needs of these establishments, from the suppliers of food and drink to the numberless transporters, electricians, plumbers and so on. The chain of human economic relations in the natural order is endless. You will surely find that some guys in Finland who were supplying Finlandia vodka have also lost money. If this endless chain is properly conceived by our miseducated minds, then the huge gains to be made by all Indians through 'liberty under law' will be immediately apparent. Towards this end I recommend a reading of Bastiat's "What is Seen and What is Not Seen".⁹⁰

In the matter of economic freedom, then, we find the same culprit: government is the problem. Once again it is in liberty that the solution lies.

⁹⁰ This and select other essays can be found in my *The Essential Frederic Bastiat* (Liberty Institute: New Delhi, 2007).

The third reason why many remain poor is because they are denied capital, the life-blood of capitalism. This is because they own land and buildings but do not possess property titles to them. The ‘mystery of the missing capital’ that Hernando de Soto solved is once again because of the government – in this case, their inaction, which has occurred because they do not know their essential tasks. In this volume, we have seen how the British colonial administration was based on this principle; the principle itself based on the ‘rules of just conduct’ that comprised the common law; principles that the British brought to India and applied with resounding success. These principles must be brought back to government. That is, it is the government itself that needs to learn; it is intellectually unfit to impart universal education upon the children of the suffering people.

THE ETHIC OF SELF-HELP

In the impersonal, competitive and individualistic natural order, each and every person must help himself. With ‘liberty under law’ he will be free to do so. With every economic actor liberated, the markets will bustle with activity and there will be huge all-round gains and a prosperous and free commonwealth will result.

There is more: good laws and sound money will mean that people can make their individual plans with greater

chances of meeting with success. Good laws will give each individual a protected domain from which to deal with strangers, all similarly protected (and constrained). With property, contracts and torts, every individual will be assured that no just and legitimate expectation of his will be let down by those he trades with or by anyone else in society. This is the most secure basis of long-term individual planning, which is the surest way to individual success. Further, with sound money (and its blessing – stable prices) individual financial planning will be more accurate, and individual failures will occur very rarely.

Is there any ground for any government action to ‘help the poor’ – which has been the gospel of the collectivists all these long years? I sincerely doubt whether the government can produce a single poor family that has climbed out of poverty because of its long and expensive efforts. So let us not fool ourselves any longer. It is the government that is the chief cause of poverty. The solution lies in liberty, yes; but this liberty must also be accompanied by the ethic of self-help. I helped produce an Indian edition of Samuel Smiles’ classic text of the 1860s and I would like to quote at some length from the very first chapter. The strong flavour of classical liberalism that lay at the foundation of Victorian morality should not be missed:

*Heaven helps those who help themselves is a well-
tried maxim, embodying in a small compass the
results of vast human experience. The spirit of self-
help is the root of all genuine growth in the
individual; and, exhibited in the lives of many, it
constitutes the true source of national vigour and
strength. Help from without is often enfeebling in
its effects, but help from within invariably
invigorates. Whatever is done for men and classes,
to a certain extent takes away the stimulus and
necessity of doing for themselves; and where men
are subjected to over-guidance and over-
government, the inevitable tendency is to render
them comparatively helpless.*

*Even the best institutions can give a man no
active help. Perhaps the most they can do is, to
leave him free to develop himself and improve his
individual condition. But in all times men have
been prone to believe that their happiness and
well-being were to be secured by means of
institutions rather than by their own conduct.
Hence the value of legislation as an agent in
human advancement has usually been much over-
estimated. Moreover, it is every day becoming
more clearly understood, that the function of
government is negative and restrictive, rather than
positive and active; being resolvable principally
into protection – protection of life, liberty and
property. Laws, wisely administered, will secure*

men in the enjoyment of the fruits of their labour, whether of mind or body, at a comparatively small personal sacrifice; but no laws, however stringent, can make the idle industrious, the thriftless provident, or the drunken sober. Such reforms can only be effected by means of individual action, economy, and self-denial; by better habits, rather than by greater rights....

National progress in the sum of individual industry, energy, and uprightness, as national decay is of individual idleness, selfishness, and vice. It follows that the highest patriotism and philanthropy consist, not so much in altering laws and modifying institutions, as in helping and stimulating men to elevate and improve themselves by their own free and independent individual action.⁹¹

Indeed, to stimulate poor people to help themselves by using their own knowledge in liberty must be considered the highest philanthropy, for in this alone lies the dignity of the individual, which is more valuable than anything else. Our poor people have also lost their dignity, reduced to the status of supplicants before authority, no matter how petty; they have to beg before these very politicians who promise to help them and vote vast funds for such spending schemes. I am reminded of what the first followers of the Prophet told the citizens

⁹¹ Smiles, S. *Self-Help* (Liberty Institute: New Delhi; 2001), p. 1-2.

of Medina when they arrived there with just their meagre belongings: “Show us the way to the market and we will make our way by working”. This should be the ethic, the ruling morality.

There are no short cuts to lasting universal prosperity. The poor people of today will have to work. This does not mean only physical labour. Liberty means many poor people with talents can succeed phenomenally as musicians, entertainers, athletes and sportspersons – these are the precise areas where the blacks of America have shone. But they had New Orleans – and liberty.

Our poor people need just the same: cities and freedom. The Robin Hood ethic of ‘redistributive justice’ is actually a form of ‘legal plunder’ – and therefore no ethic at all. Because of this immoral precept, politics and government in socialist India has lost its moral bearings, and the nation has been plunged into deep-rooted corruption. All these hugely expensive schemes and subsidies designed to favour the poor are paid for by the long suffering taxpayer, but these moneys never ever reach their targeted beneficiaries. They are swallowed up during the ‘processes of redistribution’ by the government agencies themselves: the ‘leaky bucket syndrome’. Rajiv Gandhi once said that of every rupee his government spent on the poor, only 15 paise reached their target. This must be a huge overestimation. Even so, it means that of the 1,00,000 crore rupees sanctioned

in the last budget for welfare schemes and subsidies, 85,000 crores were swallowed up by the hands that aim to redistribute wealth. This ‘helping the poor’ is really all about helping themselves out of the resources in the common pool. It is ‘self-help’ alright, but in the manner of the plunderer who wants to live off the fat of the land.

This means that the interests of the taxpayers are not being represented at all in this ‘representative democracy’. Rather, a mixed bag of particular interests is milking the public treasury. The idea of ‘commonwealth’, of an interest in the ‘common profit of the realm’, is completely missing. This is reflected by the fact that the next Commonwealth Games are to be held in Delhi – and various government departments have been sanctioned huge funds to prepare for the grand event. Never mind the fact that in our overcrowded cities there is no place to play any game at all – not even carom or *gilli-danda*! Because of socialism and central planning, whatever little culture of sports we had some decades back has more or less vanished. All sports are spectator sports now. And public money is being poured into this grand but completely meaningless sporting extravaganza, in honour of a political ideal that lies in tatters in the ‘corridors of power’ of New Delhi itself. The games are just another excuse for spending our money via the ‘porous hands’ of the ‘government machinery’.

This, by itself, constitutes the most important reason why each and every government-owned enterprise must be immediately sold off. The funds thereby made available to the exchequer will go a long way towards funding the minimalist government that liberalism requires, for many, many years. During this period, all taxation should cease, thereby enabling all the people to accumulate capital. Inflationary finance should also cease, further lessening the burdens on the poor. We will then have all the right measures in place to become the free and prosperous commonwealth our forefathers dreamt of in 1947.

I recount my experience with a group of street hawkers and vendors once: they assured me that they need nothing from the government; they just want to be left alone. That is, street vendors cried *laissez faire*, something that our protected 'industrialists' never utter. They told me that they also manage to raise capital easily from the informal moneylenders that move among them. All I told them is that they are big taxpayers: since much of Indian revenue is raised from indirect taxation, everyone pays up, with everything he buys. In fact, the poor may more as a percentage of their income because they save less; a rich man, as a percentage of his income, would have considerable savings, and the burden of indirect taxation falling on him would be a lower proportion. I trust my reader is now convinced of the validity of this 'self-help' approach to curing

poverty, encouraging all to make wealth in liberty under law, while clamping down on all plunder, including taxation.

LIBERTY AND PRIVATE PROPERTY

The plain fact that there cannot be any liberty without private property being inviolable is best understood by examining the ‘freedom of expression’ that journalists defend so passionately. Actually, this ‘freedom’ cannot exist without private properties. For example: Suppose one of my articles is rejected by a newspaper. Does this mean that my ‘freedom of expression’ has been violated? Not so. The newspaper is the private property of its owner, and the editor he has appointed is free to publish whatever he deems fit while rejecting anything else. However, this does not mean that all is lost for me. I can still submit my article to the editors of all the other newspapers. If they all reject the piece, I can install the article on the blogosphere, where I have some friends who own blogs. Thus, my ‘freedom of expression’ as a journalist is vitally dependent on the existence of all these little, little bits of private property. If there had been just one monolithic Doordarshan-type government information bureau, not just me, but millions of others would have lost the ability to freely express their views, despite any constitutional guarantees.

Having understood this, it becomes fairly obvious that the ‘freedom of expression’ of the bar dancer depends on the inviolability of the private property rights of the owner of the dance bar establishment. Similarly, the ‘freedom of expression’ of MF Husain depends on the private property rights of galleries that exhibit his paintings and collectors who house them being protected against vandals.

We can take the arguments further into areas like nude photography and sex movies. Here, those who exhibit their naked bodies are the owners of their own bodies. The studios where the pictures are shot are private properties. The magazine or the film is private property too. The shop that sells these magazines and the theatre that screens these films (for ticket holders, who possess temporary property rights) are also private property. Thus, it becomes immediately obvious that the ‘freedom of expression’ will explode like never before if the principle of the inviolability of private property is the accepted basic law, the ‘ruling opinion’. Otherwise, as the bar dancers have found, the constitutionally guaranteed ‘freedom of expression’ is meaningless and empty, and totalitarianism rules.

In his *The Ethics of Liberty*, Murray Rothbard illustrates with countless examples the direct link between liberty and private property. This should be obvious if the reader were to do a little introspection: Where is he the

freest? The answer will surely be ‘in my own house’. In one’s own house one can walk around naked, howl gigantic curses, throw a private party with loud rock music, smoke illegal herbs, and so on, secure in the knowledge that, so long as one’s neighbours are not perturbed, no one will interfere. We can put up a ‘Trespassers will be Prosecuted’ and a ‘Beware of Dogs’ sign on our front gate, and our private property becomes our sanctuary against the world. It must always remain such a sanctuary: that must be the law.

In the context of the globally extended natural order that is slowly emerging, private property rights hold the key to the universal rejection of all legislation against immigration, and the end of the tyrannical visa regime. If anyone buys or even rents property (or even a hotel room) anywhere in the world, no official armed with man-made legislation should be able to stop him from peaceful occupation of his property. This extremely important freedom is also dependent on private property rights being inviolable.

SOCIAL ORDER IS ENDOGENOUS

All governments aim at ‘social order’, but that is not their purpose. On the contrary, governments that do not realize that their function is merely subsidiary to an endogenous natural order end up fomenting ever greater amounts of social unrest. In India, the existence of deep-

rooted and widespread unrest is indisputable. Kashmir, Manipur, Chhatisgarh, Naxalites active in 160 districts, Maoist insurgents in another 100 – this enormous amount of social unrest is only on account of the fact that the natural rhythms of society and its inner harmony have been torn asunder by bad government, man-made legislations, bureaucratic restrictions and regulations and all the other socially harmful activities of the vast ‘machinery of government’. This creaking, rotten, ugly machine uses force in order to achieve the ends that its political masters have commanded it to. But the natural order can only be sustained if justice prevails, and for that the force of government must be used only against those who perpetrate injustices, while leaving everyone else free to enjoy the most perfect liberty. If force is misused for 60 years, if masses of people go on losing their lands and their livelihoods year after year, if the police are above the law, and the courts are below it, a great majority of these people will surely rise in revolt. If this is happening, it should not be seen as proof that people are natural-born warriors engaged in a ‘war of each against all’ and that a Hobbesian state is required to overwhelm them. To think so would be a fatal error. The real solution lies in junking this derelict machine, along with all its repressive rules, regulations and restrictions. It is this machine and its insane operators that have caused unending chaos where a natural order could have easily ruled. This very country was

peacefully run by less than 2000 British civilians, relying on the bluff of force rather than force itself.

Socialist ideas and ideals are bound to cause a breakdown of society eventually. Anything that is not based on morality and justice, if imposed on a mass of people, will inevitably collapse. To Jawaharlal Nehru, profit was an ugly, immoral word. If profit-making were eradicated, the poor would benefit, he thought. There can be no greater error in political thought than this. If people cannot make rightful gains through voluntary exchanges, how else are they going to survive, feed themselves, and care for their families? The only other way is plunder. Nehru's blindness to the beauty and morality of profit lies at the root of our present disorder.

If this gross error in thought is eradicated from our midst, and if all the people are encouraged to gain through peaceful exchanges, the elusive social order our nation is searching for will be immediately restored. An order wherein morality and justice prevail is the only one masses of separate individuals will work to conserve.

It is a vain delusion that force and the might of arms can accomplish much. Had that been the case, the Kashmiris would have submitted to the yoke long ago, the Manipuris would have surrendered their weapons, and even Nelson Mandela would never have been released

by his captors. Why, even the mighty US army has scarcely been successful in instilling order in Iraq, and they have been there quite a few years now. We must accept that social order is endogenous. And we must recast our government and its laws to enable our society to achieve this inner order, which will be a strong order, because it will have the support of all honest citizens.

THE MARKET FOR JUSTICE

Recall Henry II – and the fact that he never paid his judges a penny! This was the practice in England for centuries and centuries thereafter – but that did not mean that judges were broke! Huge court fees were collected and these yielded rich rewards for the judges, as well as substantial revenues for the good king.

Recall, too, that the ‘inns of court’ where lawyers were trained were ‘private corporations’. Look around in any common law country (including India) and you will see these trained lawyers starting off as entrepreneurs, looking for business in the market for justice. You will also see that it is these entrepreneurs who later become judges! These are reasons enough to consider the proposition that law is an enterprise – and that therefore it should be a competitive enterprise. The market already offers many solutions to resolving disputes – like private arbitration. Professor Robert Cooter, author of the textbook on Law & Economics, told me of the

‘Rent-a-Judge’ companies of California, which succeed by being able to solve disputes speedier and cheaper than the government system. There is even property title insurance to protect the landowner from defective title deeds.

Insurance is actually the greatest invention of the free market, and in a free society, competing private insurance companies, with their very deep pockets, will have a huge role to play. If they are allowed the liberty to play this role well, many areas of government failure can be quickly attended to. For example: building permission for high-rises. Since the private builder will have to insure his building (or no one will buy a flat in it), it will fall on the insurance company to check the building plan and quality of construction. There isn’t a single skyscraper in India today. There can then be thousands – without any government permission, because of insurance.

Similarly, the provision of security: the operator of an establishment like Tamarind Court (where Jessica Lal was shot and killed) will insure the premises against fire, robbery, earthquake, flood etc. Obviously, then, the insurance company will exercise a say in ensuring that the premises are guarded by a very reputable private security company. Therefore, it is these guards, and not the government police, who will make sure that an

armed man is denied entry and that all the people inside are safe from harm.

There is abundant scope, therefore, of finding in the free, competitive market, lasting solutions to those problems caused by government failure.

GETTING THERE

The great American poet, Walt Whitman, began his *Leaves of Grass* with the lines:

*One's self I sing,
A simple, separate person.*

Having emphasized his individuality, Whitman then goes on to say:

*Yet utter the word Democratic,
The word En-Masse.*

And the little word 'yet' is pregnant with meaning. In the ultimate analysis, we all live individual lives, facing our own individual struggles in the battle for survival. The words 'democratic' and 'en-masse' – the ideas of a collective or a nation – have yielded nothing for us all these years precisely because they are utterly devoid of meaning. We may have formed this great big collective, and it encompasses this entire sub-continent of a billion

separate souls, but we are each still left with our own individual existence. Even after participating in a great big political rally and obtaining some sense of ‘oneness’ with countless others, we are still condemned to return to our homes and worry about what to cook for dinner.

Ancient Indian philosophy also emphasized the individual. When the sage tells Svetaketu *Tat Twam Asi*, he is teaching him the truth of his individual essence. If we ‘contemplate the navel’ as our philosophers asked us to, we also discover that we are ‘separate’ from all others. In the Hindu way of life, each individual is responsible for his own salvation and is therefore free to follow any *guru* he chooses to. That is why we are a nation of a million gods and a zillion god-men. Even they are individuals!

Let us now understand the predicament in which every honest and hard-working individual Indian is placed today. And that is this: He is following rules but his rulers are not. Even if we go Srinagar, Kashmir, where social order has proved so elusive to our rulers, we will find hundreds of these rule-following individuals: the numberless little *shikara* boats that draw up beside your houseboat-deck, each under the command of an individual tradesman, peddling his wares peacefully (and very skillfully, if I may add).

In this book I have attempted to reveal to the individual the rules he follows in the natural order. When many, many individuals voluntarily agree to follow these same rules, and continue extending the order indefinitely, a Great and Open Society will spontaneously arise. Bringing this about does not require a political party, voting, elections and all that. Rather, it requires a civilizing politics that cements a moral consensus in each and every separate civic community – the consensus being that the community wishes to live life by these rules and will fight those who break them.

It needs to be appreciated that socialist politicians who deprecate the ‘ugly profit motive’ have a far uglier motive of their own: the ‘vote motive’. We can attempt to understand a ‘business organization’ in which many people get together in order to pursue profits. But have we ever attempted to understand these ‘political organizations’ in which people get together to pursue votes?⁹² People who pursue profits keep customers happy. People who pursue votes have an interest in controlling the ‘machinery of government’ – but for what ends? Our ancients gave us a way of life – *dharma, artha, kama, moksha*. Have we not erred seriously by adding ‘politics’ to that list? This entire

⁹² To the interested reader, I recommend Gordon Tullock’s *The Vote Motive*, now in a new 30th anniversary edition from the Institute for Economic Affairs, London. A pdf download is also available. This little book is one of the classics of ‘public choice theory’, which Tullock helped pioneer. The analyses are based on the assumption that, just as businessmen pursue self-interest in the market, politicians and bureaucrats also pursue their own gains in the ‘political market’.

theatre of the absurd called ‘politics’ in India is an essential part of the larger problem called ‘government’.

As Ludwig von Mises said:

Common man does not speculate about the great problems. With regard to them he relies upon other people's authority, he behaves as "every decent fellow must behave," he is like a sheep in the herd. It is precisely this intellectual inertia that characterizes a man as a common man. Yet the common man does choose. He chooses to adopt traditional patterns or patterns adopted by other people because he is convinced that this procedure is best fitted to achieve his own welfare. And he is ready to change his ideology and consequently his mode of action whenever he becomes convinced that this would better serve his own interests.⁹³

This is our only hope: that each individual rethinks his own interests. And the most important questions are: How can I best survive? How can I look after my wife and kids better? And only thereafter comes the question: How can I peacefully co-exist with my fellow man? I hope that I have provided each individual reader with much to think about on these issues.

⁹³ From *Human Action*, Chapter 2, available online from mises.org.

As to those who comprise our political class and the ‘machinery of government’, I must remind them of the motto at the head of my very first chapter: *Burey nazar waley, tera bhi bhala ho*. My aim is not to physically eliminate you, but certainly I do hope to have eliminated most of the errors that prop you up, and which you disseminate. Like all individuals, you too must think of your own interests. So far, you thought in terms of plunder. Perhaps this was not in your theory, but this was and is your practice. There is therefore a possibility that if you change your theories, your practices will change too. You have assumed for yourselves an enormous task: of ‘governing’ a billion people, of ‘representing’ them, of bringing about ‘development’ and ‘industrialization’, of raising the lot of the poor and what not – all the way down to protecting the tigers and the elephants in our jungles. But you have failed miserably every step of the way. You aspire to be a universal teacher. I ask you to instruct yourselves. It is you who are woefully ignorant, and that is the root cause of your moral degeneration. As a great philosopher once said, “Struggling hard to think clearly is the first step towards moral conduct.” I am sure that this book will be of great use to you if you are really interested in thinking clearly and acting morally – and performing your tasks well. You began ‘economic reforms’ some 20 years ago, now pursue all-round governmental reform with conviction and a sense of urgency. And I wish you good luck.

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"In public administration, there is no connection between revenue and expenditure ... there is no market price for achievements."

– Ludwig von Mises

