

A BRIEF CHRONOLOGY OF COLLECTIVISM

by
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(October 1997)

The Collectivism Chronology is intended to expose the philosophy of pragmatism that has infected both our educational and legal systems. It is the result of many hundreds of hours of research at the University of Texas law library. I believe the origin of loose construction can be traced to Jesus and his debates with the Pharisees. That is, to Rabbinical Talmudism.

The Chronology reveals the Communism which pervades the West is a "spirit".

[A BRIEF CHRONOLOGY OF COLLECTIVISM - 1/4 -](#) [50KB](#)

In judicial opinions laws are now "presumed" to be constitutional. [Inalienable rights are not taught in school](#) and are looked upon from the bench primarily with scorn.

The earliest written laws were attributed "to a [divine source](#)."

[Calvinists](#) took the lead in developing the right of subjects to rebel against secular authority.

In 1780 Bentham stated: "I dreamt the other night that I was founder of a [sect](#)

[A BRIEF CHRONOLOGY OF COLLECTIVISM - 2/4 -](#) [45KB](#)

The Enlightenment abandoned [Biblical revelation](#) for reason and sensationalism.

Most people today have never been overtly confronted with the idea of [collectivism](#).

Pragmatists adopt expediency as the standard of truth. [Ethics is, therefore mutable](#), virtues and vices are relative and what counts is not abstract principles but results.

[A BRIEF CHRONOLOGY OF COLLECTIVISM - 3/4 -](#) [46KB](#)

Children who know how to [think for themselves](#) spoil the harmony of the collective society which is coming where everyone is interdependent. Dewey denied that there was any such thing as [absolute truth](#), that everything was relative, everything was doubtful, that there were no basic values. As early as 1927 it was estimated that "no fewer than [10,000,000 laws and ordinances](#) are theoretically operative in the United States today." By 1947 it was said that the then [prevailing teaching](#), of both political and legal philosophers "denies that the purpose of government is to secure these inherent and inalienable rights.

[A BRIEF CHRONOLOGY OF COLLECTIVISM - 4/4 - 53KB](#)

In July 1953 Professor Colin Clark, an Australian political economist, said that in the British Commonwealth countries and in the United States "[academic Marxism](#) -- or crypto-Marxism -- is stronger than ever."

Relativism denies outright that there are any [absolute truths](#), any fixed principles

The result of [pragmatism](#) on children has been summarized:

The terms "[natural rights](#)" or "the rights of man" have been replaced in this century by "human rights."

It has been noted about [individualism](#) as now "taught" in higher education:

Education as we know it may soon be abolished. The plan is based in part on the Russian system of [indoctrination](#) (in the mid-1980s education exchange agreements gave the Russian our technology while they explained how to brainwash children).

"We can't be so fixated on our desire to [preserve the rights](#) of ordinary Americans."

-- President Bill Clinton

ALSO See: [The Techniques of Communism: Invading Education](#)

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This is now an age of revocable rights and privileges. There once was an awareness of and belief in natural law and individual liberties. In fact, natural law was the basis by which the American Revolution was fought. Similar beliefs later motivated a revolution in Texas. Once the fighting stopped, the founders of each wrote written constitutions. The general idea was that each generation should not have to fight their own revolution to obtain freedom. Birthrights were provided in writing and were intended to be the paramount law known to each citizen.

Over the past century and a half these written inalienable individual rights, guaranteed most forcefully at the state level, were entrusted to the guardianship of the judiciary and lawyers. If you review various judicial opinions, over the years, it becomes apparent that there has been a gradual change of attitude disfavoring the individual and favoring the government. The people were sovereign when the government was established and have yielded their rights to elected representatives. Representative government is now the watchword of "democracy." If you can obtain a statute, you have rights. The necessity of forming groups to "lobby" comes from the stress on some sort of parliamentary system. America has become ever more English in its political nature. Unlike here, there is no written paramount law in England. Parliament reigns supreme and has no obligation to "follow" higher law.

In judicial opinions laws are now "presumed" to be constitutional. Inalienable rights are not taught in school and are looked upon from the bench primarily with scorn. If an individual is aware of rights and asserts them in opposition to a statutory scheme, judges now most often say that there is no such thing as an absolute right. All rights are relative. A "balancing" approach now weighs the government's interests against inalienable inviolate rights. The consequence is that judges most often rule in favor of "law-makers" and against citizens. The limiting purpose of Bills of Right have now been completely overthrown.

The assault on our individual rights has been philosophical. The origin of the contempt for mere individuals has come from both education and a varied assortment of elite societies and clubs. The particular individuals involved in what is here termed "collectivism" are among the most adored and respected in conventional history. They have preached collectivism in a most eloquent and convincing verbage. The purpose of this chronology is to set forth the particulars of what is most often called the "pragmatic" philosophical view. After reading through this short synopsis, you should experience a form of

"comprehension" and begin to hear the empty drumbeat of "pragmatism" being expressed in the world around you.

The earliest written laws were attributed "to a divine source." Benjamin Fletcher Wright, Jr., *AMERICAN INTERPRETATIONS OF NATURAL LAW* 4 (Harv. Univ. Press 1931). The Stoics first produced an interpretation of natural law. The Stoic conception of natural law had a place of great importance in the writings of Cicero and in the works of Roman jurists. Wright, pp. 4-5. Marcus Tullius Cicero put forward the first full-blown theory of natural law, in his *Commonwealth* (51 BC): "True law is right reason in accord with nature; it is of universal application, unchanging and everlasting. . ."

Middle Ages, together with the medieval principle of property rights with which the king could not interfere, expressed the idea of limitations on the power of rulers. Wright, p. 6.

While Blackstone upheld the absolute power of Parliament, he also said: "This law of nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe; in all countries and at all times; no human laws are of any validity, if contrary to this; and such of them as are valid derive their force and all their authority, mediately or immediately, from this original." Wright, p. 11. Blackstone wrote that "natural liberty consists properly in a power of acting as one thinks fit, without any restraint or control, unless by the law of nature; being a right inherent in us by birth, and one of the gifts of God to man at his creation, when he endowed him with the faculty of free will . . . Political . . . or civil liberty, so far restrained by human laws (and no further) as is necessary and expedient for the general advantage of the public." Wright, p. 11.

In 1772 Samuel Adams ("the Father of the American Revolution") wrote a report drafted for the Boston Committee of Correspondence which relied very heavily upon natural rights. It was adopted by the Town Meeting of November 20, 1772. Wright, p. 73. In the twenty five years following the passage of the Stamp Act, "the essays, pamphlets, state papers, and constitutions of the Americans were among the most significant political documents of the Western world. Wright, pp. 62-63. After 1773 there were few writings in America in which the natural law was not of real importance. Wright, p. 63.

After the passage of the Coercive Acts in 1774, the New England doctrine of natural law was whole-heartedly accepted in all the colonies. Wright, p. 75. In September of 1774, the First Continental Congress made the first official statement of the principle of total exemption of the colonies from the regulatory power of Parliament. Wright, p. 83. Between November 1774 and April 1775, a series of letters by John Adams were published in the *Boston Gazette* (*Novanglus*). Wright, pp. 87-88. He denied the supreme authority of Parliament on religious, moral and political matters. Wright, p. 88.

In the May 1776 publication of Virginia's Declaration of Rights, Mason noted among the inherent natural rights "among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and preserving and obtaining happiness and safety." Ferdinand Lundberg, *CRACKS IN THE*

CONSTITUTION 162 (1980).

Natural rights "are those rights which are necessarily inherent, rights which are innate, and which come from the very elementary laws of nature, such as life, liberty, and the pursuit of happiness, and self-preservation." *Byers v. Sun Sav. Bank*, 41 Okl. 728, 730, 139 P. 948. James Wilson, Chase, Marshall, Story, Kent, Cooley and Miller "were all of the opinion that courts have the right to set aside legislative enactments as against natural law even when there is no violation of any specific provision of the Constitution." Morris Raphael Cohen, *REASON AND LAW* (Collier Books 1961); 41 Yale L.J. 1102 (1932). By 1931 Morris R. Cohen described the status of natural law: "To defend a doctrine of natural rights today, requires either insensibility to the world's progress or else considerable courage in the face of it. Whether all doctrines of natural rights of man died with the French Revolution or were killed by the historical learning of the nineteenth century, every one who enjoys the consciousness of being enlightened knows that they are, and by right ought to be, dead. The attempt to defend a doctrine of natural rights before historians and political scientists would be treated very much like an attempt to defend the belief in witchcraft. It would be regarded as emanating only from the intellectual underworld." Morris R. Cohen, *REASON AND NATURE* 401 (1931).

While many causes have been assigned to the American Revolution, one relatively unknown issue was the lack of accountability of the Parliament to higher law. When England pushed and pursued the principle of "parliamentary absolutism" and insisted that the rights of English subjects were exclusively and precisely what the Parliament declared them to be, this was at variance with all the great traditions of the natural and common law. Manion, p. 16.

American colonists determined the need for written constitutions that protected rights grounded in "the immutable laws of nature". They had a novel concept of "constitution" which signified a supreme law creating government, limiting it, unalterable by it and paramount to it. Leonard W. Levy, *ORIGINAL INTENT AND THE FRAMER'S CONSTITUTION* 143 (1988).

The American Revolution invented written constitutions: "The idea of a written constitution as the means of giving supremacy and permanence to the fundamental law was an American invention of the Revolutionary era. Apart from the Cromwellian aberration, there was no precedent for it in English experience, and, of course, the glory of the English constitution was coming to be associated with a degree of parliamentary freedom and flexibility that was incompatible with a written frame of government." Merrill D. Peterson, *The Idea of A Written Constitution in the Thought of the Founders*, *THE UNITED STATES CONSTITUTION* (Ed. by A.E. Dick Howard 1992).

The most fundamental difference between the early American and the British view was that not even a Parliament possessed all political powers. Natural rights became the rallying cry for the revolution. As we will see, over the past century or so, the original view of Americans has been subtly and gradually replaced with a re-established British parliamentary view. This was crucial to installing socialism and Big Government to the American New World.

Henry Campbell Black said the right of revolution "is a fundamental, natural right of the whole people, not existing by virtue of the constitution, but in spite of it. It belongs to the people as a necessary inference from the freedom and independence of the nation." HANDBOOK OF AMERICAN CONSTITUTIONAL LAW 10 (1895). It is not a right recognized by the law: "But revolution is entirely outside the pale of law. 'Inter armes silent leges.'" *Id.* A revolution is "either a forcible breach of the established constitution or a violation of its principles. Thus, as a rule, revolutions are not matters of right, although they are mighty natural phenomena, which alter public law." *Id.* at 11.

In 1835 the informal Texas Declaration of Independence stated: "Now, the good People of Texas, availing themselves of their natural rights . . ." 20 ST. MARY'S L.J. 95. The League of Women Voters noticed the purpose of the 1876 Constitution's Bill of Rights: "(T)he Texas Bill of Rights . . . reflects the very special determination of the constitutional convention of 1875 that the natural rights of Texas would never be violated." TEXAS CONSTITUTIONAL REVIEW 6 (1966).

Thomas Jefferson left us this very solemn warning:

The spirit of the times may alter, will alter. Our rulers will become corrupt, our people careless . . . From the conclusion of this (Revolutionary) war we shall be going down hill. It will not be necessary to resort every moment to the people for support. They will be forgotten, therefore, and their rights disregarded. They will forget themselves in the sole faculty of making money, and will never think of uniting to effect a due respect for their rights. The shackles, therefore, which shall not be knocked off at the conclusion of this war, will be heavier and heavier, till our rights shall revive or expire in a convulsion.

Quoted In THE HERETIC'S HANDBOOK OF QUOTATIONS 100 (Charles Bufe Ed. 1988).

It was once stated "that 'laws abridging the natural right of the citizen should be restrained by rigorous constructions within their narrowest limits.'" *Thomas v. Groebl*, 147 Tex. 70, 212 S.W.2d 625, 630 (Tex. 1948); *Wooley v. Sterrett*, 387 S.W.2d 734, 738 (Tex. Civ. App. -- Dallas 1965, no writ).

Today the principle of inalienable rights has been replaced by relative rights that are merely notions: "The notion of 'natural' rights is the notion that rights have independent authority in absolute right, so that they are not relative or contingent, but absolute." I ESSAYS OF WILLIAM GRAHAM SUMNER 358 (Yale U. Press Dec. 1934). Collectivists, both ancient and modern, believe that human society should be "set up like the beehive." Henry Grady Weaver, THE MAINSPRINGS OF HUMAN PROGRESS 38 (1953). Collectivism brings control: "The more complete the collectivization, the greater the degree of control that can be exercised." Rev. Clarence Kelly, CONSPIRACY AGAINST MAN AND GOD 15 (1974). Where rights are collective and relative, there are no boundaries to prevent even further government intrusions on individual liberty.

Plato's Republic was "one of the world's most brilliant expositions of the theory that the community should completely dominate the private citizen, coupled with the doctrine that control over the community should rest, not with the vulgar mob, but with a small specially gifted minority." William Montgomery McGovern, FROM LUTHER TO HITLER 21 (1941). Plato believed that the "community as a whole" was the standard of value. He advocated a life of self-sacrificing service. Peikoff, p. 27. Men were to wipe out their individuality, become a cell and merge into the living organism of the state or community. Id. Plato advocated a state with unlimited authority that indoctrinated citizens with government-approved ideas in government-run schools, censorship of all art, literature and philosophy, assigned vocations, and the regulation of economic and even sexual activities. In his Republic and Laws Plato wrote "the first blueprint of the totalitarian ideal." Id. at 28. Peikoff, p. 27. He believed that the mass of men were entangled in personal concerns, enslaved to the lower world revealed to them by their senses and incapable of achieving mystic contact with a super-natural principle. They were fit only to obey orders. Id. at 28-29. Rule was to be by "philosopher kings."

Plato held that individuals could have arms only with the permission of the state although he did support mandatory military training for all citizens. 9 HAMLIN L. REV. 69, 79 (1986). Plato "believed not in political liberty, but in order." C.M. Bowra, CLASSICAL GREECE 140 (1965). While the idea that private citizens should have certain innate or "natural" rights with which the polis should not interfere was more ignored than attacked by early Greeks, Plato theorized "that the state, through its rulers or guardians, should regulate in minute detail the moral and economic actions, the literature, the music, and even the thoughts of its citizens." William M. McGovern, "Collectivism and Individualism," ESSAYS ON INDIVIDUALITY 237 (Felix Morley Ed. 1958). The outline for Plato's utopia was Sparta although it was "a little blurred by a strange indifference to Ideas. Weary and fearful of the vulgarity and chaos of democracy, many Greek thinkers took refuge in an idolatry of Spartan order and law." Will Durant, THE LIFE OF GREECE 87 (1939).

Under collectivism, the individual is viewed merely as a means to satisfy the needs of "society." The state is the instrument for organizing people to meet those needs. So it is the state, not the individual, that is sovereign. Under individualism, the individual is sovereign. The individual is an end in himself, whose cooperation is to be obtained only through voluntary agreement. All people are expected to act as traders, either voluntarily agreeing to interact or going separate ways; it's either "win-win, or no deal." The government is limited strictly to ensuring that coercion is banished from human relations, that "voluntary" is really voluntary, that both sides choose freely to deal and both sides live up to their agreements.

Individualism and collectivism represent opposite views of the nature of humans, society and the relationship between them. Under Individualism, it is the individual who is the primary unit of reality and the ultimate standard of value. This view does not deny that societies exist or that people benefit from living in them, but it sees society as a collection of individuals, not something over and above them. Collectivism holds that the group, the nation and the community is the primary unit of reality and the ultimate standard of value.

This view does not deny the reality of the individual. But ultimately, collectivism holds that one's identity is determined by the groups one interacts with, that one's identity is constituted essentially of relationships with others. Individualists see people dealing primarily with reality; other people are just one aspect of reality. Collectivists see people dealing primarily with other people; reality is dealt with through the mediator of the group; the group, not the individual, is what directly confronts reality. Individualism holds that every person is an end in himself and that no person should be sacrificed for the sake of another. Collectivism holds that the needs and goals of the individual are subordinate to those of the larger group and should be sacrificed when the collective good so requires. Individualism holds that the individual is the unit of achievement. While not denying that one person can build on the achievements of others, individualism points out that achievement goes beyond what has already been done; it is something new that is created by the individual. Collectivism, on the other hand, holds that achievement is a product of society. In this view, an individual is a temporary spokesman for the underlying, collective process of progress.

Collectivism may describe a political or economic system in which the means of production and the distribution of goods and services are controlled by the people as a group. Generally this refers to the state. Collectivism is the opposite of capitalism or free enterprise, in which the means of production are owned by private individuals and distribution is determined by free trade and considerations of personal profit. The concept of collectivism is derived from the social theory holding that the interests and welfare of the collective group are of greater importance than the interests and welfare of any individual. As a political-economic theory, collectivism differs little from theoretical socialism. Modern revolutionary communism is a more extreme type of collectivism in which not only capitalistic enterprise but also most private property is abolished, by violent means if necessary. Communalism is a form of collectivism in which ownership of the means of production is vested in a smaller unit, the commune, with a corresponding reduction in the authority of the state. Variations on collectivism include: Communism, Eurocommunism, Fascism, Government ownership, Socialism, Dialectical materialism. In each system the rights of the group take precedence over the rights of the individual.

Those who seek to get in position to tell others what to do oppose individualism. Those who have higher degrees and positions, often bought with much sweat and debt, feel they have the right to make their living correcting individuals in the name of the state. However, they too find that the destruction of individualism makes them also subject to some higher person in the chain of compulsory command.

At its root, collectivism is the submergence of the individual to an elite group -- no matter whether it is called socialism, communism or fascism. responsibility and cause. Vladimir I. Lenin said in *STATE AND REVOLUTION* (1916): "From each according to his ability; to each according to his needs." He also said: "It is true that liberty is precious -- so precious that it must be rationed." Vladimir I. Lenin, *SOVIET COMMUNISM: A NEW CIVILIZATION?* (1916). Mao later said: "Communism is not love. Communism is a hammer which we use to crush the enemy."

Today it is largely the group, not the individual, that matters. Individuals are identified as members of a group. Their identity is not in their individuality but in their membership of some group. Their identity is defined in terms of how they fit in with others. They are blacks, whites, men, women, gays, straights, etc. first, and individuals second. Not only is the individual identified by his group, but so is his behavior. We can no longer tell if one's behavior is good or bad, right or wrong, until we find out his group identity. And individuals are taught to test their behavior, not against any individual standard, but against how it compares with what is socially -- collectively -- acceptable. Ours is the collectivist age of style and image, groups and groupies, and the fruitless search for inner-identity and self-esteem in others. Few want to be seen as out-of-step. We are mere spectators in the stadium with no chance of getting on the playing field. Belonging is more important than what one belongs to. Being in step is more important than the tune of the drummer. Singers put words in our mouths. When something is "in" and "trendy", no one is allowed to dissent. Most people have become conformist "otherists" and function only within the premises of collectivism. They struggle to understand its nuances and principles, thinking, like Machiavelli that there is only one way to deal with man, believing that group thinking is the last word, unaware that there is any alternative.

A Frenchman, Claude Adrien Helvetius (1715-1771) contributed the most to our (Benthamite) vein of thought. Helvetius was the product of the social and moral decline of 18th century France. At the college of Louis le Grand, young Helvetius made friends with Voltaire and the Encyclopedists. In Paris he frequented salons where radicals discussed social issues that would soon throw France into bloody revolution. The illustrious Freemasons d'Alembert, Diderot, Helvetius, d'Holback, Voltaire, Condorcet "completed the evolution of minds and prepared the new era." Nesta H. Webster, SECRET SOCIETIES AND SUBVERSIVE MOVEMENTS 162 (1924). In 1758 Helvetius's *De l'Esprit* appeared. Mordecai Grossman, THE PHILOSOPHY OF HELVETICUS 16 (1926). [This book was No. 210 in a series for Teacher's College at Columbia University. Grossman's dissertation committee, according to the July 1925 Foreword, consisted of Professors W.H. Kilpatrick, John Dewey, E.H. Reisner and J.R. Randall. Grossman was most indebted to Kilpatrick and Dewey. He was also stimulated by W.F. Ogburn of Columbia, J.H. Tufts of the University of Chicago and Francis Tyson of the University of Pittsburg.]

Both civil and religious authorities were angered when the book appeared. They pronounced it "atheistic, sacrilegious, immoral and subversive!" D.W. Smith, A STUDY IN PERSECUTION 25 (1965). It was forbidden by order of Council and burned, together with the Encyclopedia. Grossman, p. 17.

The philosophy of Helvetius contained the essence of humanism. He defined the object of life as earthly happiness, rather than salvation, and advocated legislation, certainly not preaching, as the means by which happiness for the greatest number would be achieved. He said that great virtues were made possible by great passions. Grossman, p. 107.

Christianity was in this way construed to be a deterrent to virtue. Helvetius believed man to be entirely a product of his environment. D.W. Smith, A STUDY IN PERSECUTION 14 (1965). Men develop according to the cultural

pressures to which he is subject. Education accounts for all differences between individuals and must be utilized to realize "the ideal of general intelligence, virtue, and happiness." Even though he admitted there was no way to prove this, he said society must act as though it were true. Grossman, p. 122. Denying all absolutes of justice, good and evil, Helvetius held that self-love is the mainspring of human action. In his system, the only pleasure that is immoral is one that conflicts with the pleasure of the greatest number. Grossman, p. 100. The final test of any action, then, is its utilitarian value -- its use to the public. The ideal government, he believed, would bring the greatest happiness to the greatest number, and universal education would make children useful to such a society. He advocated legislation of punishments and rewards to force men to contribute to public welfare. Under such a system, he felt only madmen could prevent themselves from being good citizens. Individual preferences and rights are lost to Helvetius in the all-consuming importance of public interest. He believed "only the union, the identification, of private and public interests," and suggested that "fine women" be offered as prizes for publicly beneficial acts. He found Christianity to be at cross-purposes with his entire scheme. Id.

The effort to find a moral code more palatable to the Church became futile when *De l'esprit* brought the entire movement into conflict with authorities. Helvetius, who held that sexual enjoyment was the greatest of all human pleasures, made self-love the basis of ethics. After his book was published, he was seen as principle spokesman for an "organized philosophic movement that proposed to supplant the Church." D.W. Smith, *A STUDY IN PERSECUTION* 48 (1965).

Helvetius had a powerful impact upon on Jeremy Bentham. Mill wrote about Bentham: "The generalities of his philosophy itself have little or no novelty: to ascribe any to the doctrine that general utility is the foundation of morality, would imply great ignorance of the history of philosophy, of general literature, and of Bentham's own writings. He derived the idea, as he says himself, from Helvetius; and it was the doctrine no less, of the religious philosophers of that age, prior to Reid and Beattie." John Stuart Mill, *Bentham, London and Westminster Review*, (Aug. 1838), revised in 1859 in *Dissertations and Discussion*, vol. 1. Mills continued: "But it is selfish interest in the form of class-interest, and the class morality founded thereon, which Bentham has illustrated: the manner in which any set of persons who mix much together, and have a common interest, are apt to make that common interest their standard of virtue, and the social feelings of the members of the class are made to play into the hands of their selfish ones; whence the union so often exemplified in history, between the most heroic personal disinterestedness and the most odious class-selfishness. This was one of Bentham's leading ideas, and almost the only one by which he contributed to the elucidation of history: much of which, except so far as this explained it, must have been entirely inexplicable to him. The idea was given him by Helvetius, whose book, '*De l'Esprit*', is one continued and most acute commentary on it; and, together with the other great idea of Helvetius, the influence of circumstances on character, it will make his name live by the side of Rousseau, when most of the other French metaphysicians of the eighteenth century will be extant as such only in literary history." John Stuart Mill, *Bentham, London and Westminster Review*, (Aug. 1838), revised in 1859 in *Dissertations and Discussion*, vol. 1.

Thomas Hobbes represented "the high-water mark in seventeenth century absolutism. By absolutism is meant the belief in the absolute right of the state to control the individual, and also the belief that the state itself should be controlled by a single person. On both points Hobbes must be regarded as an early but important precursor of Fascism." William Montgomery McGovern, *From Luther To Hitler* 80 (1941). Hobbes, in his *Leviathan*, stated: "The name of tyranny signifieth nothing more or less than the name of sovereignty." John Neville Figgis, *THE DIVINE RIGHT OF KINGS* 241 (1922). After Hobbes: "The idea of an entity completely empowered to regulate all behaviours made a resounding entry into political science. It was the hour of sovereignty in itself, whose existence hardly anyone would thenceforth have the hardihood to deny; the efforts of all would be directed merely to its division, and to such attribution of it was seemed to promise its least dangerous use. But it is the idea itself which is dangerous." Bertrand De Jouvenel, *SOVEREIGNTY* 198 (1957). As Hobbes was writing, however, a new movement was taking form that would put a renewed interest in individualism. The early Jesuits and Calvinists laid the foundations for the new individualism. Both agreed that the state was a purely human organization that should be subordinated to the divine church. William M. McGovern, "Collectivism and Individualism," *ESSAYS ON INDIVIDUALITY* 244 (Felix Morley Ed. 1958).

Calvinists took the lead in developing the right of subjects to rebel against secular authority. While Calvin was supreme in Geneva, his followers were forced to rebel in France, the Netherland and Scotland. William M. McGovern, "Collectivism and Individualism," *ESSAYS ON INDIVIDUALITY* 245 (Felix Morley Ed. 1958). In England the Calvinists strongly influenced the Puritans who rebelled against Charles I. Initially the orthodox Puritans wanted to get rid of the bishops, curb the king and Calvinize the national church: "But Cromwell and many of his fellow soldiers went beyond orthodox Calvinism in their views regarding the church. Instead of a national church, they wanted a free association of local churches and claimed that within limits each church should be allowed to formulate its own doctrines. This helped to popularize the belief that it was a duty to rebel against any government which attempted to interfere with ideas, or with actions based upon the individual's conscientious sense of what was right or wrong. This doctrine received its most eloquent expression in the *Areopagitica* of John Milton, at one time Cromwell's Latin Secretary. In this essay Milton argued convincingly not only for freedom of thought and expression, but also for freedom of moral action -- the right of each man to do as he pleases so long as he does not injure his neighbors." *Id.* at 245-246. In a sense the separation of church and state also represents competition between church and state. So long as religion and state advocates competed, the concept of individual survived.

After the death of Cromwell, the Stuarts were brought back to the English throne: "The works of Milton were burned by the public hangman." William M. McGovern, "Collectivism and Individualism," *ESSAYS ON INDIVIDUALITY* 246 (Felix Morley Ed. 1958). Individualism was not revived until a new revolution against James II thirty years later in 1688. *Id.* It was in John Locke's *Civil Government* that a well-reasoned and stirring plea for individualism was made. *Id.*

Later, through John Austin (Bentham's disciple), Hobbe's views served the

ends of middle-class liberalism. George H. Sabine, *A HISTORY OF POLITICAL THEORY* 388 (3rd Ed. 1951). The theory of parliamentary absolutism was derived from Blackstone, Bentham and Austin. Kenneth Pennington, *THE PRINCE AND THE LAW, 1200-1600* 285 (1993). Austin and Bentham wrote in response to the dominant theory of English law before the 19th century -- Blackstone's theory of common law. Anthony J. Sebok, *Misunderstanding Positivism*, 93 *MICH. L. REV.* 2054, 2062 (1995).

Gradually restraints on the government, contained in written constitutions, have been softened as the "representative" legislature has become much more prominent and deferred to. Philip Dormer Stanhope, 4th Earl of Chesterfield (1694-1773) said in a speech written for the House of Lords in 1737: "(A)rbitrary Power has seldome or never been introduced into any Country at once. It must be introduced by slow degrees, and as it were step by step, lest the people should perceive its approach." George Seldes, *THE GREAT THOUGHTS* 77 (1985).

In 1763 at the age of 16, Jeremy Bentham (1748-1832) began to eat dinners at Lincoln's Inn and to attend the Court of King's Bench "where his father had secured for him a student's seat." In December he returned to Oxford to hear Blackstone's lectures. Later he wrote: "I attended with two collegiates of my acquaintance. They both took notes; which I attempted to do, but could not continue it, as my thoughts were occupied in reflecting on what I heard. I immediately detected his fallacy respecting natural rights; I thought his notions very frivolous and illogical about the gravitating downwards of hereditas; and his reasons altogether futile, why it must descend and could not ascend -- an idea, indeed, borrowed from Lord Coke. Blackstone was a formal, precise and affected lecturer -- just what you would expect from the character of his writings: cold, reserved, and wary -- exhibiting a frigid pride. But his lectures were popular, though the subject did not then excite a wide-spread interest, and his attendants were not more than thirty to fifty." Charles Warren Evertt, *THE EDUCATION OF JEREMEY BENTHAM* 37 (Columbia U. Press 1931).

Along with David Hume and other utilitarians, Bentham in his early writings did not show any faith in the common man. He believed in a benevolent tutelage furnished by the better class: "This English version of the continental doctrine of benevolent despotism Bentham grounded in the belief that ordinary men were unlikely to take a rational view of their self-interest, or to follow it if they saw it." Carl J. Friderich, *THE NEW IMAGE OF THE COMMON MAN* 8 (1950). At the time of the French Revolution Bentham was a Tory rather than a democrat -- he believed in the aristocracy. Id. Austin wrote that "(L)aw, simply and strictly so called [is] law set by political superiors to political inferiors." Sebok, p. 2063; *AUSTIN, PROVINCE* at 1.

Classical legal positivism was developed in England by Jeremy Bentham and John Austin. Sebok, p. 2054. In classical positivism, law consists of a series of general propositions which Bentham insisted must be reducible to a command that one person might give to another. Sebok, p. 2064. Under the third principle, every valid legal norm can be traced to a sovereign. Sebok, pp. 2064-2065. A sovereign, according to Austin, has two attributes: 1) habitual obedience from the population and 2) habitual noncompliance with the

commands of any other human superior. Sebok, p. 2065. Austin wrote: "The most pernicious laws, and therefore those which are most opposed to the will of God, have been and are continually enforced as laws by judicial tribunals . . . The existence of laws is one thing; its merit or demerit another." John Austin, LECTURES ON JURISPRUDENCE 114-115 (5th Ed. 1885).

According to Jonathan Clark, Bentham and Austin stripped Blackstone's "unreformed common-law sovereign of its Anglican and natural law limitations. That done . . . law was merely whatever the sovereign commanded." Kenneth Pennington, THE PRINCE AND THE LAW, 1200-1600 287 (1993).

In 1780 Bentham stated: "I dreamt the other night that I was founder of a sect; of course, a personage of great sanctity and importance. It was the sect of the utilitarians." This was, historically speaking, a prophetic dream. BENTHAM'S POLITICAL THOUGHT 13 (Edited by Bhikhu Darekhl 1973). In the 19th century Bentham and Austin proclaimed the sovereignty of Parliament. Austin did so largely under the influence of German jurisprudence. Carl J. Friderich, THE NEW IMAGE OF THE COMMON MAN 45-46 (1950). For a long time the great bulk of Englishmen had accepted as an axiom that certain rights came from a higher source than the civil government and that legislation could not abridge or destroy such rights. It was due to the influence of John Austin, more than anyone else, with the possible exception of Bentham, that the tenet of natural rights was discredited and abandoned "by almost every scholar in England and America. Austin's teachings on this subject were not, however, altogether original with him, but were derived from Hobbes, whose writings, except when occasionally mentioned with a shudder, slept unnoticed for two hundred years until brought into prominence again by his great disciple." A. Lawrence Lowell, The Limits of Sovereignty, 2 HARV. L. REV. 70, 72 (1889). In 1895 it could be said: "To the influence of Bentham and his followers is chiefly due the almost complete discredit into which in England the doctrine of natural law has fallen. Till the days of Kant on the Continent and of Bentham in England, there was no striking discordance between English and Continental jurisprudence. It is not possible to draw a sharp line of distinction between the teaching of Hobbes, Locke, Cumberland and Blackstone on one side of the Channel, and that of Grotius, Puffendorf, Spinoza, Thomasius and Wolff on the other. All were the inheritors of the same traditions. The acceptance, however, of Kant's metaphysical theory on the one hand, and of Bentham's sceptical theory on the other, established between English and Continental juridical and ethical thought a wall of separation that has not yet been broken down." John W. Salmond, "The Law of Nature," XLII LAW Q. REV. 121, 137 (1895). By 1920 it was stated: "Oblivion went so far that it was possible for Bentham and his followers to suppose quite honestly that the Law of Nature meant nothing but individual fancy." Sir Frederick Pollock, ESSAYS IN THE LAW 62 (1922).

While Blackstone had a tremendous influence on the early American colonists at the time just prior to the American Revolution, Bentham's significant impact came much later. It was stated in 1991: "But Bentham had a terrific impact on thoughtful minds and has had widespread influence among legal scholars and reformers. Many philosophers and professors of law of this country and in England avow themselves to be Benthamites. It was through his colleague, John Austin, that his legal theory was cogently elaborated. Its influence in

America increased incalculably through the prestige and eloquent exposition of Justice Oliver Wendell Holmes, Jr., who gave it a pragmatic twist." Beryl Harold Levy, *Anglo-American Philosophy of Law* 22 (1991). A threesome predominates: "From Bentham to Austin to Holmes is the triple play of Anglo-American jurisprudence." Bentham's revolt led to "sociological jurisprudence" in America. *Id.* at 27. While Blackstone has been called "an unsuccessful practitioner" Bentham never practiced law. *Id.* at 21-22. Bentham, consistent with Kant and Fichte, attacked Blackstone's reliance on both the doctrine of natural law and the doctrine of the social contract--both concepts that were firmly and even derisively rejected by Bentham. *Id.* at 23.

Natural law was "nonsense on stilts." Levy, p. 23. A legislator who claims to know absolute principles is guilty of a conviction syndrome Bentham labeled as "ipsedixitism." *Id.* at 24. He disdained the Declaration of Independence and said that if the doctrine that men's liberties and properties are beyond government tampering, then it would be impossible to imprison anyone for crimes or to tax property to support government activities. *Id.* at 25. In 1839 J.S. Mill wrote: "The father of English innovation, both in doctrine and in institutions, is Bentham: he is the great subversive, or, in the language of Continental philosophers, the great critical thinker of his age and country . . . He introduced into morals and politics, those habits of thought and modes of investigation, which are essential to the idea of science . . . It was not his opinions, in short, but his method, that constituted the novelty and value of what he did . . . He found the practice of law an Augean stable: he turned the river into it which is mining and sweeping away mound after mound of its rubbish." Charles Warren Evertt, *THE EDUCATION OF JEREMY BENTHAM* xviii (Columbia U. Press 1931).

Bentham, using flattery, said in 1789 that America was "one of the most enlightened, if not the most enlightened, at this day on the globe." Joseph Hamburger, "Utilitarianism and the Constitution," *CONFRONTING THE CONSTITUTION* 235 (1990). He described himself as "at heart more of a United-States-man than an Englishman." *Id.* However, utilitarians opposed the very idea of constitutional limitations. Austin taught that a sovereign body (parliament) was "incapable of legal limitation." *Id.* at 236. Austin also wanted to emancipate sovereign power to maximize opportunities to confer benefits by legislative means. *Id.* at 238. Bentham said it was "an abuse of language" to speak of them exceeding their unlimited authority. *Id.* at 236. Bentham sought to play Newton's role for a science of law which would discover how to maximize the general happiness; sovereign authority guided by the science of law ought not to be limited by constitutional checks. *Id.* at 237. He rejected all rights that were not created by sovereign power and were not legally established. Hamburger, p. 238. Natural rights diminished the authority of government and encouraged insurrection. *Id.* He said the drafters of the Declaration of Independence had "outdone the utmost extravagance of all former fanatics" and compared them to the German Anabaptists. All declarations of rights, said Bentham, were "rights asserted as against government in general, [and they] must be . . . the rights of anarchy -- the order of chaos." *Id.* His views were shared by Austin and Mill. In *ON LIBERTY* Mill made it plain that he did not ground his argument on an assertion of individual right. *Id.* at 239.

Both Austin and Bentham enthusiastically advocated centralization or a

"common centre." Hamburger, p. 239. In 1846 Austin wrote a long article to set forth the advantages of centralization. Id. at 254. While giving lip service to local self-government, Mill said the centralized administration of the New Poor Law was "in its general conception almost theoretically perfect." Id. at 239. Bentham trounced the idea of a separation of powers as "a confused idea" and countered that "a house divided against itself cannot stand. Id. at 240. He was opposed to judicial interference with legislation: "Give to the Judges a power of annulling the legislature's] acts; and you transfer a portion of the supreme power from an assembly which the people have had some share, at least, in chusing, to a set of men in the choice of whom they have not the least imaginable share." Id. at 241.

John Austin did not oppose what Bentham had called "by the disrespectful . . . name of judge-made law." Hamburger, p. 241. Utilitarians (including Bentham, Austin and Mill) rejected common law. Id. at 242. They claim, in politics, to write laws on behalf of the people. Id. at 245. John Stuart Mill, after reading Bentham on law and morals said the principle of utility "gave unity to my conceptions of things. I now have opinions; a creed; a doctrine, a philosophy; in one among the best senses of the word, a religion." Id. at 250. Mills in 1835 defended the making of governments "by preconceived and systematic design" -- what he called "the practicability of Utopianism." Id. at 250-251. The utilitarians were often indifferent to liberty or equivocal about it. Maximizing liberty created a threat of anarchy. Id. at 251. Bentham thought of liberty as a means for obtaining security rather than an end in itself. Id. at 252. Bentham was highly critical of juries. Id. at 253. He had a "most inveterate hatred" for lawyers as a class. Id. at 253. Bentham regarded religion as incompatible with rational politics. Id. Tyranny, to Mill, came from the middle class. Id. at 254.

The Boston Tea Party was held on the decks of East India Company ships. Bentham's East India Company (EIC) has a fascinating history. Thomas Malthus, an EIC employee, attributed Indian hunger to overpopulation. Other senior EIC employees included Adam Smith, David Ricardo, and Jeremy Bentham. Anton Chaitkin, TREASON IN AMERICA 56 (March 1984). James Mill (1773-1836) was Examiner of Correspondence for the EIC for eighteen years, an economist and also was the disciple of Jeremy Bentham. His son, John Stuart Mill (1806-1873), was a key policy making official of the EIC and was the central organizer of the Radical Party which planned the policies of England and the U.S. in the 19th century. Chaitkin, p. 279. Mill lived with Bentham with his son John Stuart -- as worshippers and tenants. James Mill told Bentham that in his son he would have "a disciple able and anxious to devote his whole life to 'the propagation of the (EIC) system.'" Id. James Mill became the EIC chief of intelligence Department in 1830. Id. John Stuart Mill helped create Ralph Waldo Emerson and Thomas Carlyle. Chaitkin, p. 56. Robert Dale Owen, known as the Father of Socialism, was an intimate of Jeremy Bentham who he called his "favorite author." Aaron Burr, a British intelligence agent killed Alexander Hamilton in a duel. Bentham was his controller and the man to whom he fled afterwards. DOPE, INC. 126 (1992). After his death, Bentham was decapitated, embalmed, affixed with a wax replica of his head, and dressed in his customary clothes. The spectacle of the natural rights foe is still preserved in that condition at University College, London. In his Last Will and Testament, Bentham left his entire estate to London Hospital on the condition that his preserved remains be permitted to preside over its board meetings. Dr. Southward Smith performed the

complete Bentham body dissection. A glass-fronted mahogany case displays Bentham sitting upright in an armchair. For 92 years after he died in 1832, the wax apparition was present, although duly noted as "not voting" at the board meetings. David Wallechinsky, and Irving Wallace, THE PEOPLE'S ALMANAC 1329 (1975).

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A BRIEF CHRONOLOGY OF COLLECTIVISM

by
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(October 1997)

The Enlightenment abandoned Biblical revelation for reason and sensationalism. THE DEVELOPMENT OF MODERN EDUCATION, p. 426. Rousseau attacked Helvetius's pretense that feeling and judging were the same thing which amounts to materialism. Many passages in Emile were directed against Helvetius but he did not mention his name. Id. at 495. The differences have been summarized: 1) on the emptiness of the soul of the child at birth, 2) on the assumption that sensibility is the only mental faculty and that all other faculties are derived from sensations, 3) on the claim of original equality and equal capabilities of all individuals, 4) on the claim that inner growth and development rather than outer environment are the primary source of change in individuals and 5) on educational procedures. Id.

A group of French philosophers, including Condillac, Diderot, Helvetius, and Voltaire, later expressed their anti-institutional views on morality, politics, and religion in the Encyclopedie (1765). The Encyclopedists removed from Deism the great factor of natural religion, retaining only its critical method as applied to the history of religion. In this spirit the main religious topics were treated conservatively, but by a subtle infusion of the spirit of Bayle and the expedient of cross-references from these articles to topics which might be handled with greater freedom, Diderot succeeded in supplying the desired corrective. It was the circle of Holbach (d. 1789) that dared to apply the most extreme consequences of materialism to religious questions. Some of the most rhetorical pages in De l'Esprit were contributed by Denis Diderot (1713-1784) - the most prominent of the French Encyclopedists -- who was educated by the Jesuits. Helvetius expounded a morality of self-interest and a materialistic psychology and ethics. Their moral theories, deriving though they did from Hobbes and Hume, lost all connection with the position of Deism, which became for them a mere armory of weapons for the destruction of all religion with its consequences, intolerance and moral corruption. From Holbach and his circle, and from the cognate group of the Encyclopedists, proceeded the so-called ideological school, who held the main problem of philosophy to be the analysis of the mental conceptions aroused by sensations from the material world (Condorcet, Naigeon, Garat, Volney, Dupuis, Saint-Lambert, Laplace, Cabanis, De Tracy, J. B. Say, Benjamin Constant, Bichat, Lamarck, Saint-Simon, Thurot, Stendhal). Out of this school, in turn, developed the positivism of Comte.

In the late eighteenth century Immanuel Kant (1724-1804) consummated an anti-Aristotelian revolution. Piekoff, p. 31. He held that our minds are unable to acquire any knowledge of reality. Piekoff, p. 32. Kant postulated the innate or natural right of the individual to freedom which necessitated a state in

which the exercise of all official powers was limited by the conditions inherent in its own laws and constitution. Charles Corell, *THE DEFENCE OF NATURAL LAW* 9 (1992). But Kant also taught that mankind should be more concerned with its duties than its rights. He believed that all human conduct must be regulated by the "Categorical Imperative." William Montgomery McGovern, *FROM LUTHER TO HITLER* 142 (1941). While many of the older liberal thinkers had regarded the state as a necessary evil, Kant thought that the state was, or should be, a positive good. McGovern, p. 145. He argued that the state should be all-powerful and agreed with Hobbes and Rousseau that when men created a state they give to it all their rights: "The will of the people is naturally un-unified and consequently it is lawless. Its unconditional submission under a sovereign will, uniting all particular wills by one law, is a fact which can originate in the institution of a supreme power, and thus is Public Right founded.." McGovern, p. 146. Kant denied that the state is, or necessarily should be, based on consent of the governed. He rejected the idea of a social contract: "The Supreme Power in the state has only rights and no [compulsory] duties toward the subject." McGovern, p. 149. He stated: "It is the duty of the people to bear any abuse of the supreme power, even though it should be considered unbearable." McGovern, p. 150.

In the summer of 1817 Comte met Henri Saint-Simon (1760-1825). Comte became his secretary and close collaborator. The young Republican advocate of equality was converted to an elitist point of view soon after meeting Saint-Simon. Seven years after the initial meeting, Comte broke with Saint-Simon. Eventually his positive doctrine received considerable attention in England. A physicist, Sir David Brewster, wrote about Comte in the *Edinburgh Review* in 1838. Then John Stuart Mill became a close admirer and spoke of Comte in his *SYSTEM OF LOGIC* (1843) as "among the first of European thinkers." Comte and Mill corresponded regularly, and Mill even arranged for a number of British admirers of Comte to send him a considerable sum of money to tide him over his financial difficulties.

In 1851 Comte (1798-1857) described a "popular dictatorship with freedom of expression." Arthur S. Miller, *DEMOCRATIC DICTATORSHIP: THE EMERGENT CONSTITUTION OF CONTROL* 118 (1981); A. Comte, *SYSTEM OF POSITIVE POLITY* (1851). St. Simon had wanted to remold the Catholic Church in the socialist reverie. Comte, his disciple, wanted to replace Deity with a Great Being, Humanity, and a priesthood which would exercise a systematic direction over education. William Robert Plumme, *THE MODERN CRISIS* 2 (1965). Comte was a high priest of gnosticism, a key founder and teacher of positivism with the self-appointed role as "spiritual dictator of mankind." Eric Voegelin assessed Comte: "The satanic Apocalypse of Man begins with Comte and has become the signature of the Western crisis." John P. East, *THE AMERICAN CONSERVATIVE MOVEMENT 196-197* (1986). Comte said there were three choices: 1) to obey church doctrine, 2) to reconcile science and the church or 3) abandon the church entirely and make science the world's religion. He advocated the third choice. Robert L. Cooke, *PHILOSOPHY, EDUCATION AND CERTAINTY* 139 (1940).

When the *Systeme* finally appeared between 1851 and 1854, Comte lost many, if not most, of those rationalist followers he had acquired with so much difficulty over the last fifteen years. John Stuart Mill and Emile Littré were not willing to concede that universal love was the solvent for all the difficulties of

the age. Nor could they accept the Religion of Humanity of which Comte now proclaimed himself the High Priest. Comte decided to sign all his circulars "The Founder of Universal Religion, Great Priest of Humanity."

On September 5, 1857, Comte died. A small group of his disciples, friends, and neighbors followed his bier to the Pere Lachaise. There his tomb became the center of a small positivist cemetery where, buried close to the master, are his most faithful disciples.

After Comte, collectivism was taught subtly by both educational and theological intellectuals or elites:

Most people today have never been overtly confronted with the idea of collectivism. Most do not know that it is a philosophical idea used by some intellectuals to identify a movement whose goal is to mold man into a docile, subservient creature. Most have absorbed collectivism from their parents and teachers without hearing the word "collectivism." Most believe that belonging to a group, engaging in group activities and fostering group goals are good. Most, therefore, see group membership as a civilizing influence in man's history. Robert Villegas, Jr., INDIVIDUALISM (1997).

A totalitarian state is founded upon the denial of individual rights. Collectivism is "the theory that the group (the collective) has primacy over the individual. Collectivism holds that, in human affairs, the collective-society, the community, the nation, the proletariat, the race, ect., -- is the unit of reality and the standard of value. On this view, the individual has reality only as part of the group, and value only insofar as he serves it; on his own he has no political rights; he is to be sacrificed for the group whenever it -- or its representative, the state -- deems this desirable." Leonard Peikoff, THE OMINOUS PARALLELS 17 (Mentor 1983).

William T. Harris (1835-1909) has been called one of the three main creators of the U.S. school system: "The consensus among historians of education and students of social thought clearly indicates that Horace Mann, William Torrey Harris, and John Dewey can be considered the triumvirate whose thought has most affected the creation and development of the present philosophy of the American public school." Neil Gerard McCluskey, PUBLIC SCHOOLS AND MORAL EDUCATION 6 (1958). Nicholas Murray Butler said that "the history of American education and of our American contributions to philosophical thought cannot be understood or estimated with knowing of the life work of Dr. William Torrey Harris. Id. at 99-100. Merle Curti said that while Mann laid the foundations for the American system, Harris presided over the rearing of the structure. Id. at 100-101.

Modern alturists adopted the principle of self-sacrifice from the medievalists, then dislodged God and replaced him with men. Hegel went one step further and said that service to others should also include obedience to them. Peikoff, p. 88. He also revived the old sixteenth century idea of the duty of passive obedience where "subjects as are disobedient or rebellious against their princes disobey God and procure their own damnation." McGovern, p. 21. In the place of passive obedience he substituted the doctrine of the supremacy of the state over the individual -- the state as the end in itself. Unlike past

defenders of absolutism, Hegel did not attack the principles of liberty or freedom. He taught that the state was the "actualization of Freedom." Id. at 299. True freedom, however, was voluntary but complete subservience to the dictates of the state. Hegel adopted the definition of liberty laid down by Kant, which was accepted in some form by Fichte, Carlyle and by Green -- that liberty consists of the ability to do what one ought to do. McGovern, p. 301. Mazzini once said: "True liberty doesn't consist of the right to choose evil, rather in the right to choose only among paths that lead to good." Hegel wrote that "The State is the absolute reality and the individual himself has objective existence, truth and morality only in his capacity as a member of the State." Anthony Sutton, AMERICA'S SECRET ESTABLISHMENT 103 (1986).

Hegel rejected the consent of the governed, did not believe authority was delegated by the people, believed that the broad mass of the people should be excluded from politics, that sovereignty resided in the ruler rather than in the people and in short, that the many should be guided and controlled by the few -- who, in turn, were subordinate to the supreme head of the state. McGovern, p. 321. Hegel proved "to be the great forerunner or 'morning star' of the Fascist theory of the state." Id. at 335. Karl Marx was "largely inspired by Hegel." George Knupffer, THE STRUGGLE FOR WORLD POWER 33 (4th Ed. 1986). The Hegelians defined the individual as a dialectic of self and other necessarily involving society: "As pure being the individual was nothing." Bruce Kuklick, CHURCHMEN AND PHILOSOPHERS 179 (1985).

Harris, a Yale graduate, first became acquainted with idealism through the Transcendentalists. Although initially inspired by the Transcendentalists, the St. Louis group came to focus on Hegelian social philosophy as the solution to problems in American education. The unpublished manuscript of Brokmeyer's translation of Hegel's Logic, became the theoretical text of the group.

In the winter of 1856-1857, Harris met Amos Bronson Alcott who thereafter became a lifelong inspiration and friend. Alcott came to look upon Harris as his spiritual heir. Id. at 103. Harris came under the influence of the "four great philosophical lights" that "had ascended into the sky to shine for ages." These lights were Kant, Fichte, Schelling and Hegel. Id. at 108. Hans Conrad Brockmeyer. Harris saw Henry (Hans) Conrad Brockmeyer (1828-1906), a student of Kant and enthusiast of Hegel, as a Plato reincarnate. Id. They met in 1858. Id. at 109. Brokmeyer went on to be Lieutenant Governor of Missouri. Bruce Kuklick, CHURCHMEN AND PHILOSOPHERS 180 (1985). Brokmeyer convinced Harris of Hegel's relevance and the two spread his ideas to public school teachers. Members of the St. Louis Philosophical Society included Brokmeyer, Harris, Denton J. Snider, Thomas Davidson, Adolph Ernest Kroeger (the American translator of Fichte), J. Gabriel Woerner (the novelist), George H. Howison (builder of the University of California's Department of Philosophy, John Calvin Learned, James Kendall Hosmer, Susuan E. Blow, Anna Callender Brackett, Senator Carl Schurz and Joseph Pulitzer. Neil Gerard McCluskey, PUBLIC SCHOOLS AND MORAL EDUCATION 112-113 (1958). "Hegel had put a master key to the universe in the talented hands of these people." Id. at 113. But Emerson's pen was much more known; not a single paper classic emerged from the St. Louis group. Id. In 1866 the St. Louis Philosophical Society was founded. Denton Snider (1841-1925) was a central figure within the St. Louis and became its historian He lectured widely

and was involved in developing visionary educational projects such as the Communal University in Chicago and later St. Louis, the Chicago Kindergarten College, and the Goethe School in Milwaukee. Thomas Davidson (1840-1900), who detested both Hegel and idealism, was considered a key player in the original St. Louis movement. He established the Breadwinner's College in New York City, a school devoted to the education of the working class, and later established a summer school at his home in Glenmore, New York. Morris R. Cohen was Davidson's chief friend and assistant in the Breadwinners School. William Knight, MEMORIALS OF THOMAS DAVIDSON: THE WANDERING SCHOLAR 137 (1907).

When Darwin's Origin of Species appeared in 1859, the book instantaneously ushered in a new period of toughness in English and American philosophy. Morton White, THE AGE OF ANALYSIS 137 (1955). Darwin's theory, however, was not new: "It had been suggested in vague fashion by Lamarck, Goethe, Kant and others . . ." Abram Leon Sachar, A HISTORY OF THE JEWS 321 ((1964). Boston Brahmin Oliver Wendell Holmes, Jr., like William James, John Fiske and Henry Adams "devoured The Origin of Species." Irving Berstein, The Conservative Mr. Justice Holmes, 23 NEW ENGLAND Q. 435, 443 (1950). Afterwards, Holmes, in common with Maitland, Maine, Dicey, Pollock, and Vinogradoff, substituted a evolving biological view of society in the law in place of the mechanical (fixed) view. Id. When Hegel was combined with Darwin after the Civil War, the organic views of Bushnell and others became credible: "These views dominated the new theology of the 1880s and 1890s. Organic anti-individualism was also critical to the social Christianity that was part of the intellectual response to industrialism at the end of the nineteenth century." Bruce Kuklick, CHURCHMEN AND PHILOSOPHERS 195 (1985).

The English turned their attention to the United States: "In the 1860s and 1870s, the very same English oligarchs who turned loose the radical movements against America's emulators in Europe, turned their attention to the problem of reforming an uncontrolled United States of America." Chaitkin, p. 302. The War Between the States "was the second military phase of the political battle which raged between Britain and the United States from the time a formal ceasefire was concluded at Yorktown in 1781." Allen Salisbury, THE CIVIL WAR AND THE AMERICAN SYSTEM: AMERICA'S BATTLE WITH BRITAIN, 1860-1876 1 (1978). Arthur Tappan, the patron of Harriet Beecher Stowe, and William Lloyd Garrison were both on the Board of Directors of Albert Gallatin's Baring-connected bank. Salisbury, p. 16. The London-based Cobden Clubs included as directors leading members of the House of Rothschild and Thomas Baring. John Stuart Mill was their chief political economist. Salisbury, pp. 16-17. Mill who popularized the idea of raising taxes on landowners only after first compensating them, thus buying the right to tax them. J.E. Cairnes, who took the lead against English support of U.S. slavery, also was a member of Mill's and Alfred Russel Wallace's Land Tenure Reform Association.

The Journal of Speculative Philosophy, the official organ of the St. Louis Society, began in 1867. Harris's journal provided a forum for Pierce, Howison, Morris, Royce, James and Dewey. Id. The journal was largely dedicated to the dissemination of European idealism. In an early article Harris wrote: "By nature he (man) is totally depraved; that is, he is a mere animal, and

governed by animal impulses and desires, without ever rising to the ideas of reason . . . " Neil Gerard McCluskey, PUBLIC SCHOOLS AND MORAL EDUCATION 120 (1958). In his Journal of Speculative Philosophy, Harris "struck gold . . ." It was the first philosophical periodical in Britain and America; during its existence the only one in the entire country: "Despite the fact that they were amateurs of ordinary ability, Harris and his associates revolutionized the life of the mind. They participated, first, in the overthrow of theology for philosophy as the speculative science commanding respect among the educated elite. Second, the journal helped to professionalize the new primary speculative science. Few would remember Borkmeyer or Harris, or the magazine. But commentators would almost exclusively focus on those thinkers to whom the magazine gave a voice: Charles Pierce, William James, Josiah Royce, and John Dewey, whose first essay appeared in it." Bruce Kuklick, CHURCHMEN AND PHILOSOPHERS 183 (1985).

Soon after the Civil War students began to be divided into "grades" largely as a result of the influence of Harris. Martin Mayer, THE SCHOOLS 48 (1961). Harris sought to bring about a rapprochement between the western and New England idealists. He invited Alcott, Harris's former mentor, and Ralph Waldo Emerson to St. Louis. The Concord School of Philosophy was a summer school headed by Alcott that merged the two groups within its faculty. Harris's disquisitions on Hegel became the most popular of the faculty's offerings.

On January 3, 1868, William James wrote to Holmes from Berlin: "When I get home let's establish a philosophical society . . . "

In the mid-19th century a new school of political philosophy -- idealism -- originated mostly from secluded university professors. William Montgomery McGovern, FROM LUTHER TO HITLER 130 (1941). Idealism has been summarized: "Instead of starting from a central individual to whom the social system is supposed to be adjusted, the idealist starts from a central social system, to which the individual must find his appointed orbit." Sir Ernest Barker, POLITICAL THOUGHT IN ENGLAND 1848 TO 1914 5 (2nd Ed. 1947). Initially attractive to those with an interest in metaphysics, "the idealist doctrines began to infect many outstanding writers in the fields of history and law and thus came to appeal to a much broader public." McGovern, p. 130. Two English thinkers, Thomas Carlyle and T.H. Green, took over many of Kant's ideas and marked an important break with the old liberal tradition: "With all these thinkers, the old complete individualism was rejected and greater emphasis laid upon the importance and power of the state. All three, moreover, refused to give complete adherence to the old liberal doctrine of democracy and espoused to a greater or to a lesser extent the cause of authoritarianism." Id. at 209.

The first four major proponents of idealism came from Germany (Kant, Fichte, Schelling and Hegel) but it soon was spread to France, Italy, England and America. William Montgomery McGovern, FROM LUTHER TO HITLER 132-133 (1941). In 1870 Oxford decided that Kant and Hegel had been dead long enough. The conversion from Plato and Aristotle came largely in the teachings of Thomas Hill Green (1836-1882). Other exponents of idealism included D.G. Richie, F.H. Bradley, B. Bosanquet. Later idealists included A.D. Lindsay and Ernest Barker. Id. at 155. F.H. Bradley's notes on T.H.

Green's lectures are said to have at least four references to Sparta being a model for Plato's Republic. T.H. Green got his first academic post through the Plato translator Jowett who was his friend and patron. William Montgomery McGovern, *FROM LUTHER TO HITLER* 156 (1941). After starting model "coffee shops" in his crusade against rum, Green advocated that the state should abolish institutions and conditions that led to immorality. *Id.* at 159. In sympathy with the nonconformists, he advocated state control over rights associated with the ownership of land and even breaking up of the great estates. *Id.* In Green's philosophy he rejected the purely empirical, inductive approach in favor of the use of pure reason with occasional flashes of intuition. *Id.* at 160.

T. H. Green played an important role in changing liberal assumptions by moving from a negative' conception of freedom towards a more 'positive' one. He argued that freedom should be conceived in broader terms than had been previously allowed. Moral and ethical considerations were now brought to bear so that "the ideal of true freedom is the maximum of power for all members of human society alike to make the best of themselves." Quoted in Anthony Arblaster, *THE RISE AND DECLINE OF WESTERN LIBERALISM* 286 (1984). A belief in the autonomy of the individual was discarded in favour of an organic notion of the individual as a part of society and with corresponding obligations to it. Rather than restricting freedom, the state should now be used as the means to enhance it as well. The traditional liberal antithesis between the state and the individual, Green argued, should be discarded, particularly in an emerging democratic nation. Green was followed by other liberal thinkers such as David Ritchie, John Hobson and Leonard Hobhouse who all contributed to the movement of liberalism away from laissez-faire towards a more interventionist path.

In 1870 a "radical revolution" in "the methodology of legal instruction" was inaugurated when President Eliot of Harvard University invited Christopher Columbus Langdell to occupy the chair of Dane Professor at Harvard Law School. Jacob Henry Landman, *The Case Method of Studying Law* 13 (1930). Langdell, Dean of the Harvard Law School (1870-1895), focused on the case method. Wilfrid E. Rumble, *The Legal Positivism of John Austin and the Realist Movement in American Jurisprudence*, 66 *CORNELL L. REV.* 986, 996 (1981). In the first words, of his first major essay, Holmes wrote: "It is the merit of the common law that it decides the case first, and determines the principles afterwards." In that same year (1870) Langell joined the faculty and became the Dean of the Harvard Law School. Rather than give the customary lecture, he opened his fall class on Contracts by asking: "Mr. Fox, will you state the facts in the case of *Payne v. Cave*?" Thomas C. Grey, *Langdell's Orthodoxy*, 45 *U. OF PITT. L. REV.* 1 (1983). The method of teaching that Langdell launched by shifting the class focus from abstract principles to cases coincided with Holme's case-centered view of adjudication. *Id.* at 2. Langdell held that "what qualifies a person to teach law is not experience in the work of a lawyer's office, and not experience in dealing with men, nor experience in the trial or argument of cases, not experience, in short, in using law, but experience in learning law." Gerry Spence, *WITH JUSTICE FOR NONE* 59 (1989). Between 1870 and 1920 "virtually every law school in the nation adopted Langdell's casebook method of instruction and revamped its facilities so that these teachers enriched with years in the practice were replaced with professional scholars." *Id.*

Langdell was as subscriber to the Historical School of Jurisprudence that had been founded by F.C. von Savigny and Sir Henry Maine. Jacob Henry Landman, *THE CASE METHOD OF STUDYING LAW* 13 (1930). The German historical school exalted the state at the expense of the individual and regarded individuals solely as a member of a group. Law was the emanation of the Volk: "What is surprising is that they were all vigorous opponents of democracy and supporters of authoritarianism . . . the interpretation and administration of customary law should lie in the hands of a small select group of judges appointed by the king." William Montgomery McGovern, *FROM LUTHER TO HITLER* 395 (1941). It has been opined that "one of the best defenses every written on behalf of monarchic and aristocratic as opposed to democratic control "ever penned was Sir Henry Maine's *Popular Government*." Id. at 396. William Montgomery McGovern, *FROM LUTHER TO HITLER* 396 (1941). Holmes "built on the evolutionary theories of Savigny and Maine" and in *The Common Law* (1881) cited them both. 85 COL. L. REV. 38, 50 (1985).

The "Metaphysical Club" at Harvard included Charles Pierce, Chauncey Wright, Walter Lippman, and Oliver Wendell Holmes, Jr. (the class poet). See: Philip P. Wiener, *EVOLUTION AND THE FOUNDERS OF PRAGMATISM* (Harv. U. Press 1949); Max H. Fisch, *Was There A Metaphysical Club in Cambridge?* In Edward C. Moore and Richard S. Robin, eds., *STUDIES IN THE PHILOSOPHY OF CHARLES SANDERS PIERCE* 3-32 (U. Mass. Press 1964); H.S. Thayer, *MEANING AND ACTION* 488-492 (1968). This group also included Nicholas St. John Green and William James. Thomas C. Grey, *Holmes and Legal Pragmatism*, 41 *STAN. L. REV.* 787, 864 (1989). Holmes was "a major figure" in this "coterie of pragmatic philosophers . . ." Samuel Krislov, *Oliver Wendell Holmes: The Ebb and Flow of Judicial Legendry*, 52 *NW. U. L. REV.* 515 (1957). Earlier theology had attracted the best intellects. The major figures in the Golden Age of American Philosophy (Pierce, James, Royce, Santayana, Whitehead and Dewey) used the lecture hall to outdo the pulpit which offered little competition. Bruce Kuklick, *CHURCHMEN AND PHILOSOPHERS* 196 (1985). By 1871-1872 the Metaphysical Club was flourishing. The core group was James (teaching physiology at Harvard), Holmes (lecturing on jurisprudence at Harvard Law School), Charles Pierce (assistant at the College observatory), Chauncey Wright, Nicholas St. John Green (Boston attorney who lectured at the Harvard Law School) and Joseph Bangs Warner (a Pierce protege who was studying law under Holmes and Green). Bruce Kuklick, *THE RISE OF AMERICAN PHILSOPHY* 47-48 (1977). Charles Pierce was interested in logic, semiotics and metaphysics. Wright was a mathematician, a "warm admirer of Darwin . . ." and "seems to have influenced Homes more than any of the others did." Fiske was a follower of Darwin and Spencer "and author of a work on cosmic philosophy . . ." Green was "a Benthamite and a philosophical lawyer . . ." Jerome Frank, *AMERICAN LEGAL PHILOSOPHY* 4.51 at 474-476. Pierce called Nicholas St. John Green "the grandfather of pragmatism." Grey, p. 803. Green, along with William and Henry James and Chauncy Wright, was one of the young intellectuals and writers of Boston and Cambridge who were companions of Holmes. Id. at 839. Those who were inside by outside the main six included: Frank Abbott (a close friend of Pierce), John Fiske (a Spencer defender), John Chipman Gray (lawyer and friend of Holmes and James), William Montague, Henry Putnam and Francis Greenwood Peabody. Id. at 48. Green talked about British psychologist Alexander Bain (1818-1903) who defined

belief as "that upon which a man is prepared to act." *Id.* at 49. Although the Metaphysical Club was sympathetic to Darwinian science and its antecedents were in the British tradition, their empiricism was modified by the work of Kant. They held that the only religion and only science defensible in a Darwinian age "were those based on Kant's thinking." *Id.* at 61-62. The club was "an elite group. As James had written to Holmes, the society was 'to be composed of none but the very topmost cream of Boston manhood,' and only a few of its members were middle class in origin. Philosophy interested well-to-do professional men." *Id.* at 48.

Harris, as superintendant of St. Louis schools, was the first to incorporate kindergarten into the public school system in 1873. In Boston Thomas Davidson met Longfellow who helped him get an examinership at Harvard. William Knight, *Memorials of Thomas Davidson: The Wandering Scholar* 13 (1907). In 1873 Mr. Elliot Cabot told James about Davidson. Davidson and James first met in Boston in the following year. *Id.* at 110. James met with a little Boston philosophical club every fortnight that existed before Davidson came on the scene. Members included James, W.T. Harris, G.H. Howison, J.E. Cabot, C.C. Everett, B.P. Browne and sometimes G.H. Palmer. *Id.* at 111. George Herbert Palmer studied Hobbes and English moral philosophy. While the English looked upon man as self-centered, Palmer said: "There is no such solitary person. One person is no person." Bruce Kuklick, *THE RISE OF AMERICAN PHILSOPHY* 223 (1977). The year before Davidson arrived, the club had covered Hegel under Emery and McClure from Illinois who had the 3-volume Brockmeyer translation of Hegel. Knight, p. 111. The Metaphysical Club was reorganized in 1876. New members included Bowen, C.C. Evertt, George Holmes Howison, Thomas Davidson and James Elliot Cabot. The assigned text began with Hume's *Treatise*. The emphasis shifted from Hume to Kant and then to Hegel. Kuklick, p. 54. During this phase, the club was led by Davidson and Cabot. It disintegrated in the spring of 1879. *Id.*

In 1878 Charles S. Pierce published an article in *Popular Science Monthly*. Pierce said that beliefs were nothing more than rules for action. Catherine Drinker Bowen, *YANKEE FROM OLYMPUS* 276 (1944).

In his preface to his *SOCIALISM, UTOPIAN AND SCIENTIFIC*, Engels wrote on September 21, 1882: "We German socialists are proud that we trace our descent not only from Saint Simon, Fourier and Owen, but also from Kant, Fichte and Hegel."

In 1894 Judge Davidson held: "Where there is doubt, the law should fail, and the Constitution prevail. This proposition is founded in that higher law setting forth the rights reserved by the citizen to himself, as the creator of the organic law." *Lynn v. The State*, 33 Tex. Crim. R. 153, 158 (1894).

In his *Principles of Political Economy*, John Stuart Mill "the prophet of individualism" was "found to be drawing a distinction between the laws of production and the laws of distribution, which opened the gates for the entry of Socialism." Sir Ernest Barker, *POLITICAL THOUGHT IN ENGLAND 1848 TO 1914* 1 (2nd Ed. 1947). Mill became less individualistic and more inclined towards social utility. *Id.* The Fabians were less influenced by Marx than by Mill. They attacked rent as an "unearned increment." *Id.* at 189. A German

writer once said that Webb was the Bentham and Shaw the Mill. Id. at 190.

In the mid-1880s the Fabians Sidney and Beatrice Webb saw themselves as "intellectual proletarians" or members of the enlightened elite that Auguste Comte expected to rule society in its positivist stage. Neither wanted the proletariat to take power: "By education and reforms which would improve the condition of the working classes, the experts were to engineer a new, humane and hygienic society." IV, The Diary of Beatrice Webb, p. xii. They saw themselves as "archetypes of the new breed of experts . . ." IV, The Diary of Beatrice Webb, p. xiii. They found allies in the bureaucracy: "High-minded bureaucrats, naturally inclined to collectivist principles because of the trend of social evolution were the most likely and best instruments of permeation, for they would offer soundly based advice to any part politicians who might be shopping for a policy." Id. Beatrice Webb "saw the Communist Party in Russia (she thought little of the Comintern and the British Communists) as a latter-day incarnation of August Comte's social priesthood, and Communist ideology as the "religion of humanity" which would combine a puritan morality with the application of science to politics." IV, The Diary of Beatrice Webb, p. xv.

Bertrand Russell once remarked that: "The three founders of pragmatism differ greatly inter se; we may distinguish James, Schiller (the English philosopher) (1864-1937), and Dewey as respectively its religious, literary and scientific protagonists." Reuben Abel, THE PRAGMATIC HUMANISM OF F.C.S. SCHILLER 3 (1955). Kant was the spiritual ancestor of all pragmatists. Reuben Abel, THE PRAGMATIC HUMANISM OF F.C.S. SCHILLER 3 (1955). Pragmatism is primarily a method rather than a body of dogma. Reuben Abel, THE PRAGMATIC HUMANISM OF F.C.S. SCHILLER 12 (1955). The triumvirate who fathered "pragmatism" was Charles Pierce, William James (1842- 1910) and John Dewey (1859-1952). Mortimer Smith, THE DIMINISHED MIND: A STUDY OF PLANNED MEDIOCRITY IN OUR PUBLIC SCHOOLS 78 (1954). Pragmatism has been called the first important and original American thought. Julian Marias, HISTORY OF PHILOSOPHY 393 (1967). Pragmatism, however, is, in reality, an exported philosophy of British (German) origin. Julian Marias, HISTORY OF PHILOSOPHY 242 (1967). Pragmatism was the only 20th-century philosophy to gain broad, national acceptance in the United States. Piekoff, p. 134. The British, like pragmatic philosophers, share a horror for the absolute. Kuehnelt-Leddihn, p. 515.

In a paper delivered in 1872, Charles Sanders Pierce first used the name "pragmatism" in a Boston meeting of the Metaphysical Club. Thomas C. Grey, Holmes and Legal Pragmatism, 41 STAN. L. REV. 787, 864 (1989). William James and John Dewey would later embrace and expound the philosophy. Pierce took the word from Kant who defined "pragmatic" beliefs as those that were "contingent only . . ." Grey, p. 802; Immanuel Kant, CRITIQUE OF PURE REASON 661 (2nd Ed. 1896). In a letter to Lady Welby, on December 1, 1903, Charles Pierce wrote: "(T)he objections that have been made to my word 'pragmatism' are very trifling. It is the doctrine that truth consists in future serviceableness for our needs." George Seldes, THE GREAT THOUGHTS 327 (1985). Justice Holmes thought that James and Pierce had added nothing essentially new to Bentham and Mill. Thomas C. Grey, Holmes and Legal Pragmatism, 41 STAN. L. REV. 787, 870 (1989). Much pragmatic instrumentalism was "Benthamite in spirit." Robert S. Summers, Pragmatic Instrumentalism in Twentieth Century American Legal Thought -- A Synthesis

and Critique of Our Dominant General Theory About Law and Its Use, 66 CORNELL L. REV. 861, 869 (1981). Yet pragmatic instrumentalism "will be recorded as America's only indigenous general theory of law." *Id.* at 873 (emphasis added).

Pragmatists adopt expediency as the standard of truth. Ethics is, therefore mutable, virtues and vices are relative and what counts is not abstract principles but results. Piekoff, p. 89. Humanist Corliss Lamont defended pragmatism against Marxist critics. Lenin once said that "practice alone can serve as a real proof." Lamont said that "the pragmatic view of truth as developed in American philosophy comes close to authoritative Marxist thought." Corliss Lamont, *THE PHILOSOPHY OF HUMANISM* 224 (1965). Corliss Lamont (Harvard 1924) was named by HUAC as "probably the most persistent propagandist for the Soviet Union to be found anywhere in the United States." W. Cleon Skousen, *THE NAKED CAPITALIST* 54 (1970). Corliss Lamont said to the Association of Foreign Press Correspondents: "We will use violence if necessary to reach the Socialist goal . . . the capitalist class will not allow democratic procedure." E. Merrill Root, *COLLECTIVISM ON THE CAMPUS* 153 (1956).

Thomas Davidson, the initial founder of the Fabian Society, wrote to Havelock Ellis on October 3, 1883: "Kant and Comte have done their work, taken the sun out of life, and left men grouping in darkness." William Knight, *MEMORIALS OF THOMAS DAVIDSON: THE WANDERING SCHOLAR* 37 (1907). The word "etatism" comes from the French term "etat" meaning state and implies political emphasis and devotion to the state as opposed to the private individual. McGovern, p. 15. While Kant was a semi-etatist and semi-authoritarian, Hegel was a radical throughgoing etatist and authoritarian. McGovern, pp. 132-133.

After being unable to land a position at Harvard, Howison accepted the Mills Professorship in Philosophy at UC. From 1884 to 1911 George Holmes Howison (1834-1917) "made Berkeley a center for philosophic discussion and instruction." He attracted such individuals as James, Harris, John Dewey, John Watson, James Ward, J.M.E. McTaggart and Hasting Rashdall. His best students were funnelled to Harvard for graduate school. Howison also hired Harvard products. Bruce Kuklick, *THE RISE OF AMERICAN PHILSOPHY* 61-62 (1977). Hastings Rashdall, in *The Theory of Good and Evil* (1907) attempted to synthesize Idealism and Utilitarianism by holding that "the right action is always that which . . . will produce the greatest amount of good upon the whole."

In 1888 Stammler, in Germany, was one of the first to point out that the historical school of jurisprudence had not really succeeded in refuting the standpoint of natural law. Morris R. Cohen, *REASON AND NATURE* 401 (1931).

The University of Chicago began as the educational program of Hull House. Hull House was founded in 1889 and funded by the core of British supporters in the United States. Money was raised by Louis Brandeis, future Chief Justice, and by John D. Rockefeller and Marshall Field. Hull House "encompassed the entire group of future department heads at the University

of Chicago." Brandeis also had a law professorship created at Harvard for soon-to-be Massachusetts Justice Holmes.

At the third Summer School at Farmington in 1890 the first morning course was on the Philosophy of T.H. Green -- the doctrine of reason and spirit. William Knight, Memorials of Thomas Davidson: The Wandering Scholar 48 (1907). Other lectures on Green followed. H.N. Gardiner, Professor of Philosophy at Smith College lectured on "Green's Treatment of the Relation of Feeling to Reality." Id. at 56. On June 19th Stephen F. Weston lectured on "Green's Ethical System." Id. Percival Chubb lectured on June 23 on "Green's Political Theory." Id. John Dewey, Professor of Ethics, History of Philosophy and Logic at the University of Michigan, lectured on June 24th on "Green's Religious Philosophy." Id. On June 25, 1890 Professor John Dewey lectured on "The Politicio-Philosophical View," of the Church and State. Id. On June 27th W.T. Harris, Commissioner of Education, lectured on "The Historical-Philosophical View." Id. at 57.

The notion that there are no natural or inalienable rights has been supported by the philosophical contention that all rights are relative. If rights come solely from legislative bodies, then constitutions can be regarded as superfluous -- including the now emptied phrases in the Bill of Rights of the U.S. and of each state. The "regulation" of non-absolute rights is said not to be the same as "infringement". State v. Workman, 35 W. Va. 367, 14 S.E. 9, 11, 14 L.R.A. 600 (W. Va. 1891).

Around 1897 Morris Cohen described his studies: "Calling ourselves the Student's League or Marx Circle, we began to read the socialist classics." A DREAMER'S JOURNEY: THE AUTOBIOGRAPHY OF MORRIS RAPHAEL COHEN 166 (The Free Press 1949). In his junior year at City College, Morris R. Cohen read Hegel's Encylopadie. Id. at 148. He added: "My search for enlightenment led me to the Neo-Hegelians. The books which offered me most food for reflection were Watson's Comte, Miller and Spencer, and Dewey's Psychology." Id. at 117. Cohen attended Harvard Graduate School from September of 1904 to June of 1906. He wrote: "I managed to emerge from my two years at Cambridge with the respect and friendship of such teachers as William James, Josiah Royce, Ralph Barton Perry, Hugo Munsterberg, and George Herbert Palmer." Id. at 131. Cohen's greatest teacher at Harvard was Josiah Royce while "the best friend I found on the Harvard faculty was William James." Id. at 132. Royce taught that individualism was "the sin against the Holy Ghost." Piekoff, p. 118. Cohen did not embrace Jame's views: "James never seemed to go beyond Mill, who was killed for me by Hegel and Russell." A DREAMER'S JOURNEY: THE AUTOBIOGRAPHY OF MORRIS RAPHAEL COHEN 132 (The Free Press 1949). Cohen stated: "(Bertrand) Russell came closer to being my philosophical god than any one before or since." Id. at 169.

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A BRIEF CHRONOLOGY OF COLLECTIVISM

by
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(October 1997)

John Dewey stated in 1899: "Children who know how to think for themselves spoil the harmony of the collective society which is coming where everyone is interdependent."

On May 14, 1899 Davidson wrote Cohen: "I am glad to have you look upon me as a father . . ." Knight, p. 139. Davidson added: "(T)hat you are attached to socialism neither surprises nor disappoints me. I once came near being a socialist myself, and, indeed, in that frame of mind founded what afterwards became the Fabian Society. But I soon found out the limitations of socialism, and so I am sure will you, 'if you are true to yourself.' I have not found any deep social insight, or any high moral ideals, among the many socialists I know." Id. at 139. Socialism would worsen rather than improve society: "Further, I suppose, we both see that mere economic socialism -- that it, the owning of all the means of production by the state -- would not necessarily insure economic well-being, that Crokerian socialism, for example, would be sure to do the opposite. Socialism could not abolish 'bossism,' but would rather increase its opportunities and power." Id. at 142. He predicted: "Historically, nations have been great . . . in proportion as they have developed individualism on a basis of private property . . . If socialism once realized should prove abortive, and throw power and wealth into the hands of a class, that class would be able to maintain itself against all opposition, just as did the feudal chiefs for so long." Id. at 143.

Davidson wrote to Cohen on June 12, 1899: "You are altogether mistaken in thinking that I am an idealist. I have fought idealism for forty years with all my might." Id.

James claimed that Davidson was never critical of Kant: "Hegel, it is true, he detested; but he always spoke with reverence of Kant. Of Mill and Spencer he had a low opinion." William Knight, MEMORIALS OF THOMAS DAVIDSON: THE WANDERING SCHOLAR 109 (1907). James lent Davidson Paulsen's *Einleitung in die Philosophie*. Davidson shot back: "It's the shabbiest, seediest pretence at a philosophy I have ever dreamed of as possible." Id. at 109-110. James labeled Davidson as "a Platonizer." Id. at 110. Davidson thought that academic life subdued individualism and made for "philistinism." On the way back to Glenmore one night, Davidson lit into James by the lantern light denouncing him as an academic. Id. James again, less gratefully, acknowledged Davidson's Glenmore library: "His own cottage was full of books, whose use was free to all who visited the settlement." Id. at 114. Davidson did not relate well to James's politics: "It was this individualistic religion that made Davidson so indifferent, all democrat as he nevertheless

was, to socialisms and general administrative panaceas. Life must be flexible. You ask for a free man and these Utopias give you an interchangeable part,' with a fixed number, in a rule-bound social organism." Id. at 115. James learned little from Thomas Davidson: ". . . Personally I never gained any very definite light from his more abstract philosophy. Id. at 118.

While the people have continued to believe in their reserved rights, some scholars have disagreed in favor of unlimited government. In 1902, for instance, Dr. James Sullivan, in an address before the American Historical Association, referred to the popular discussion of inalienable rights as only serving to "illustrate the wide gulf which separates the scholarly world from the general public. The world of learning has long abandoned the state of nature theory." Morris R. Cohen, REASON AND NATURE 401 (1931); Report of the American Historical Association for 1902, pp. 67-68.

American pragmatists embraced the central ideas of Kant and Hegel. It was German metaphysical idealism given an active development. Piekoff, p. 124. Plain anticipations of pragmatism can be found in the idealism writings of Kant, Fichte and Nietzsche. Henry David Aiken, THE AGE OF IDEOLOGY 264 (Mentor 1956). Pragmatism became "the dominant force in American sociology, education and jurisprudence" after being fostered by John Dewey and Roscoe Pound. Paul L. Gregg, The Pragmatism of Mr. Justice Holmes, 31 GEO. L.J. 262, 284 (1943).

In a letter to Lady Welby, on December 1, 1903, Charles Pierce wrote: "(T)he objections that have been made to my word 'pragmatism' are very trifling. It is the doctrine that truth consists in future serviceableness for our needs." George Seldes, THE GREAT THOUGHTS 327 (1985).

The views of William James echoed Utilitarianism. Pound as a Harvard colleague of James and was greatly influenced by him in his basic approach. Pound taught that the law was involved with "social engineering." In his classes on "experimental logic" John Dewey at Columbia was fond of using the engineer as a prime example of "man thinking." Felix Frankfurter, in his Memoirs, said that he and Pound were brought to the Harvard Law School at the same time to bring social referents to bear on the law. Beryl Harold Levy, ANGLO-AMERICAN PHILOSOPHY OF LAW 77-78 (1991). By blending sociology and law, Roscoe Pound became "the leading theoretician of the Progressive movement, whose theories provided the underpinning for natural resources conservation and, though rarely acknowledged, for the modern environmental movement." 69 CHICAGO-KENT L. REV. 847, 851 (1994).

Roscoe Pound, styled as a great legal educator, repeatedly revealed his low opinion of individualism. He wrote in 1905: "No amount of admiration for our traditional system should blind us to the obvious fact that it exhibits too great a respect for the individual, and for the entrenched position in which our legal and political history has put him, and too little respect for the needs of society, when they come in conflict with the individual, to be in touch with the present age." Pound, Do We Need A Philosophy of Law?, 5 COLUM. L. REV. 339, 344 (1905). Pound much later made an address to the annual meeting of Phi Beta Kappa entitled "The End of Individualism and Development of a 'Relational' Society." New York Times 17:7 (February 20, 1932). Later Pound

would write against an "individual" Second Amendment.

Less than a month after being appointed to the U.S. Supreme Court, Holmes upheld "judicial tolerance" of state action in economic and social matters -- the practice of giving the states the benefit of any doubt: "If the State thinks that an admitted evil cannot be prevented except by prohibiting a calling or transaction not in itself necessarily objectionable, the courts cannot interfere, unless, in looking at the substance of the matter, they can see that it 'is a clear, unmistakable infringement of rights secured by the fundamental law.'" *Otis v. Parker*, 187 U.S. 606 (1903); Max Lerner, *The Mind and Faith of Justice Holmes* 128 (1940). Two years later Holmes's language was even stronger in urging a liberal treat of state economic legislation. *Lochner v. New York*, 198 U.S. 45 (1905).

On July 10, 1906 Attorney Robt. G. Street read a paper to the Texas Bar Association in which he quoted President Elliot of Harvard University: "The new ideal in American life is the idea of unity for the common good, individualism with collectivism, each to perfect the other. The first half of the 19th century saw the development of individualism, the last half of collectivism . . ." PROCEEDINGS, p. 232.

John Dewey read the ideas of Schelling and Hegel. John E. Wise, *THE HISTORY OF EDUCATION* 421 (1964). Like Holmes and Bentham, Dewey left behind the theory of natural law. Beryl Harold Levy, *ANGLO- AMERICAN PHILOSOPHY OF LAW* 82 (1991). C.S. Morris at Johns Hopkins University was an Hegelian idealist who shaped Dewey's early philosophical thought. Id. When G. Stanley Hall arrived at Johns Hopkins University from Leipzig, Dewey, a Hegelian in philosophy, was there waiting to write his doctoral thesis on "The Psychology of Kant." Anthony C. Sutton, *AMERICA'S SECRET ESTABLISHMENT* 102 (1986). Auguste Comte, systematized his ideal of social investigation and called it positivism. Young Dewey read Harriet Martineau's condensation of Auguste Comte's *Positive Philosophy* which "awakened his lifelong interest in the interaction of social conditions with the development of thought in science and philosophy." Neil Gerard McCluskey, *PUBLIC SCHOOLS AND MORAL EDUCATION* 180 (1958). While Dewey studied with Morris: "Thomas Hill Green and other English neo-Hegelians, Lord Haldane and his group who wrote the *Essays in Philosophical Criticism*, were part of a movement in England which Dewey says was at the time the vital and constructive one in philosophy. This was the influence that fell in with and reinforced that of professor Morris." Neil Gerard McCluskey, *PUBLIC SCHOOLS AND MORAL EDUCATION* 182-183 (1958).

In the period 1907-1908 Dewey detailed pragmatism's claim that there are no ultimate principles by which ends, means and actions are assayed. The only critical rule was that an idea or "plan of action" is true if it works. Paul L. Gregg, *The Pragmatism of Mr. Justice Holmes*, 31 *GEO. L.J.* 262, 284 (1943); John Dewey, 16 *MIND* 335-336 (1907) and 5 *JOURNAL OF PHILOSOPHY* 88 (1908). Aaron Sargent, a consultant to the Senate Internal Security Committee, said: "Professor Dewey denied that there was any such thing as absolute truth, that everything was relative, everything was doubtful, that there were no basic values and nothing which was specifically true . . . you automatically wipe the slate clean, you throw historical experience and

background to the wind and you begin all over again, which is exactly what the Marxians want someone to do." Rene A. Wormser, FOUNDATIONS: THEIR POWER AND INFLUENCE 144 (1958).

William James of Harvard defined pragmatism as "the attitude of looking away from first things, principles, 'categories,' supposed necessities, of looking towards last things, fruits, consequences, facts." In Lecture 1 (1907) he also wrote: "Pragmatism is uncomfortable away from facts. Rationalism is comfortable only in the presence of abstraction . . ." George Seldes, THE GREAT THOUGHTS 204 (1985). As a youth, Mussolini became acquainted with several Italian disciples of William James. In an April 1926 Sunday Times interview, Mussolini stated: "The pragmatism of William James was of great use to me in my political career. James taught me that an action should be judged rather by its results than by its doctrinary basis. I learnt of James that faith in action, that ardent will to live and fight, to which Fascism owes a great part of its success...For me the essential was to act." Leonard Piekoff, THE OMINOUS PARALLELS 321 (1982); Ralph Barton Perry, II THE THOUGHT AND CHARACTER OF WILLIAM JAMES 575 (1935).

In 1908 the first "Brandeis Brief" was submitted to the court which made the surrounding facts and circumstances important in due process cases. Muller v. Oregon, 208 U.S. 412 (1908). Brandeis joined the Court after urging that all social legislation and business regulation be given a presumption of constitutionality. Justice Cardozo most frequently joined Holmes and Brandeis in seeking their liberal objective. Pat Baskin, "The Dual Theory of the Presumption of Legislative Validity: A History and Critical Analysis," 3 (1949?).

Since 1910 "it has not been uncommon to find reference to James, Dewey or other pragmatists in judicial decisions of state and national courts, including the Supreme Court of the United States." 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 310 (Edwin Seligman Ed. 1934). The influence of pragmatism in judicial decisions can be seen when an opinion begins by stating that a fundamental right "is not absolute." Once a right is thus limited, regulation is said to be fully permissible.

In April of 1913 the first Conference on Legal and Social Philosophy was held. Many lawyers, social scientists and philosophers "were excited by what Cohen himself called "The Process of Judicial Legislation." David A. Hollinger, MORRIS R. COHEN AND THE SCIENTIFIC IDEAL 167-168 (MIT Press 1975). The conference was organized by Morris R. Cohen and chaired by John Dewey. Roscoe Pound opened the conference with an appeal to let judges improve society by putting the appropriate social ideals into effect. This was also Cohen's theme -- judges were to calculate the social consequences of alternatives open in a given case and make a decision according to a clearly articulated set of social priorities. Id. at 168. Cohen blasted Hans Wustendorfer, Ernst Fuchs, Arthur F. Bentley and Brooks Adams for their denial of "all value to logic and general principles." Cohen's son later boasted that it is from this conference that "much of the social and philosophical consciousness of modern American jurisprudence derives."

In 1917 Holmes wrote in a dissenting opinion: "I recognize without hesitation

that judges do and must legislate, but they can do so only interstitially; they are confined from molar to molecular motions." Thomas C. Grey, *Molecular Motions: The Holmesian Judge in Theory and Practice*, 37 WILL. & MARY L. REV. 19, 33 (1995); *Southern Pacific v. Jensen*, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

In August of 1918, Holmes wrote: "The jurists who believe in natural law seem to me to be in that naive state of mind that accepts what has been familiar and accepted by them and their neighbors as something that must be accepted by all men everywhere." Oliver Wendell Holmes, Jr., *Natural Law*, -- HARV. L. REV. 40, 41 (1918). The natural law school holds that a minimum residue of inalienable rights exist that are essential to dignity of citizens. In the absence of such rights, man is reduced to an animal no matter how well governed, housed and fed. Paul L. Gregg, *The Pragmatism of Mr. Justice Holmes*, 31 GEO. L.J. 262, 291 (1943).

In 1921 Chief Justice Taft held: "The Constitution was intended -- its very purpose was -- to prevent experimentation with the fundamental rights of the individual." Holme's dissented: "There is nothing that I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making or social experiments that an important part of the community desires, in the insulated chambers afforded by the several states, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." *Truax v. Corrigan*, 257 U.S. 312 (1921).

John Dewey, in 1922, maintained that the individual achieves his meaning only in his relations with others -- in associational activity. *HUMAN NATURE AND CONDUCT: AN INTRODUCTION TO SOCIAL PSYCHOLOGY* (1922); Quoted by Miller, *SOCIAL CHANGE AND FUNDAMENTAL LAW* 55-56 (1979).

In 1923 it was held that there was an unbroken line of decisions upholding an act of Congress "unless overcome beyond reasonable doubt." *Adkins v. Children's Hospital*, 261 U.S. 525 (1923). In 1923 the Court began a process of using the Fourteenth Amendment to protect fundamental rights. *Meyer v. Nebraska*, 262 U.S. 390 (1923).

In 1923 G. Stanley Hall wrote of his experiences in Germany: "(F)or I had read Buchner and Moleschott; had wrestled with Karl Marx and half accepted what I understood of him; thought Comte and the Positivists had pretty much made out their case and that the theological if not the metaphysical stage of thought should be transcended." Samuel L. Blumenfeld, *N.E.A.: TROJAN HORSE IN AMERICAN EDUCATION* 45 (1984); G. Stanley Hall, *LIFE AND CONFESSIONS OF A PSYCHOLOGIST* 219 (1923).

Brandeis dissented in 1924 accusing the Court of assuming "the powers of a super legislature." *Burns Baking Co. v. Bryan*, 264 U.S. 504 (1924).

John Dewey described Holme's "impatience with the attempt to settle matter of social policy by dialectic reasoning from fixed concepts" and his "faith that .

. . . our social system is one of experimentation, subject to the ordeal of experienced consequences." John Dewey, Justice Holmes and the Liberal Mind, 53 NEW REPUBLIC 210-211 (1928). Late in life Holmes praised the work of John Dewey in highest terms. On December 15, 1926 he wrote to Laski that Dewey's Experience and Nature was "truly a great book." Thomas C. Grey, Holmes and Legal Pragmatism, 41 STAN. L. REV. 787, 868 (1989); 2 HOLMES-LASKI LETTERS 904. Dewey had quoted Holmes for two pages and called him "one of our greatest American philosophers . . ." John Dewey, EXPERIENCE AND NATURE 417 (2nd Ed. 1929).

Dewey stated in 1927: "(T)he human being whom we fasten upon as individual par excellence is moved and regulated by his association with others; what he does and what the consequences of his behavior are, what his experience consists of, cannot even be described, much less accounted for, in isolation." THE PUBLIC AND ITS PROBLEMS 188 (1927).

It has long been preached that ignorance of the law is no excuse. As early as 1927 it was estimated that "no fewer than 10,000,000 laws and ordinances are theoretically operative in the United States today." Indeed: "Even the most conscientious observer can hardly fail during the course of a single day to violate unwittingly some of them. The law has become so complex and extensive that no living man can hope to learn its provisions or observe it in full." William P. Helm, Jr., "The Plague of Laws," The American Mercury 16 (January 1927).

In 1928 Justice Stone demanded that some presumption be made that New Jersey's legislature was acting with knowledge of conditions making legislation necessary. Robnick v. McBride, 277 U.S. 350 (1928) (dissenting).

The plain meaning doctrine began to blur at least as early as 1930: "The words he (a judge) must construe are empty vessels into which he can pour nearly anything he will." Judge Learned Hand, SPIRIT OF LIBERTY 81 (Dillard Ed.); 79 U. PA. L. REV. 1, 12 (1930).

In May 1930 H.L. Mencken wrote about Holmes's lawmaker-centered views:

My suspicion is that the hopeful Liberals of the 20s, frantically eager to find at least one judge who was not violently and implacably against them, seized upon certain of Mr. Justice Holme's opinions without examining the rest, and read into them an attitude that was actually as foreign to his ways of thinking... Finding him, now and then, defending eloquently a new and uplifting law which his colleagues proposed to strike off the books, they concluded that he was a sworn advocate of the rights of man. But all the while, if I do not misread his plain words, he was actually no more than an advocate of the right of lawmakers. There, indeed, is the clue to his whole jurisprudence. D.P.B., Mencken and Holmes, 2 CONSTITUTIONAL COMMENTARY 277, 282-283 (1985).

In 1931 Justice Frankfurter stated: "New winds are blowing on old doctrines, the critical spirit infiltrates traditional formulas, philosophical inquiry is pursued without apology as it becomes clearer that decisions are functions of some

juristic philosophy." Francis E. Lucy, Homes -- Liberal -- Humanitarian -- Believer in Democracy? 39 GEO. L.J. 523, 560 (1951); Frankfurter, The Early Writings of O.W. Holmes, Jr., 44 HARV. L. REV. 717 (1931).

In 1932 it was stated: "The courts . . . have formed the habit of reading into the venerable text principles and provisions which not even exhaustive scholarship can discern; thus, in another line, contributing to the process of weakening the real authority behind its provisions." Samuel Bell Thomas, OUR WEAKENED CONSTITUTION 308 (1932).

Justice Sutherland dissented in 1934: "If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned." Home Building and Loan Association v. Blaisdell, 290 U.S. 398, 483, 78 L.Ed. 413, 452, 54 S.Ct. 231, 88 ALR 1481 (1934).

Deweyites Counts and Rugg added the concept of using the schools for building "a new social order." John A. Stormer, NONE DARE CALL IT TREASON 101 (1964). Counts directed a 17-volume study financed by the Carnegie Foundation. The final volume was published in 1934 and said: "Cumulative evidence supports the conclusion that in the United States as in other countries, the age of individualism and laissez-faire in economy and government is closing and a new age of collectivism is emerging." Id. at 102. Harold Laski, the British Socialist and friend of both Holmes and Felix Frankfurter, wrote in the New Republic of the Count-study: "At bottom, and stripped of its carefully neutral phrases, the report is an educational program for a socialist America." Id. The traditional subjects of history, geography, sociology, economics, political science, etc. were to be consolidated into "social studies." Id. at 105.

On December 31, 1934, Dewey wrote: "The reactionaries are in possession of force, in not only the army and police, but in the press and the schools." George Seldes, THE GREAT QUOTATIONS 203 (1966); N.Y. World-Telegram (December 31, 1934). Dewey also said: "We are all for some kind of socialism, call it by whatever name we please." Seldes, p. 205.

Harold Laski, in 1935, published THE STATE IN THEORY AND PRACTICE. This work was "a skillful exposition of the Marxist theory of the state." Carl J. Friedrich, THE NEW IMAGE OF THE COMMON MAN 52 (1950).

In the late 1930s and 1940s of the theory of "bureaucratic collectivism" emerged. The impact of the first War and the Great Depression has been summarized by Maurice W. Cranston, Professor of Political Science at the London School of Economics and Political Science: "(F)abianism flourished when the double impact of WWI and the Great Depression had destroyed many other illusions. In spite of its claim to be a form of socialism, Fabianism became assimilated by liberals, as liberalism took on the ideas of state regulation of the economy, bureaucratic planning, income transfers to relieve poverty, and the subordination of civil and political rights to so-called social and economic rights. This is as true of American as of English liberals, despite America's deep traditional attachment to economic freedom." "1890-1990: up from Fabian Socialism," 27 SOCIETY 71 (Jan./Feb.1990).

In 1933 Felix Cohen published ETHICAL SYSTEMS AND LEGAL IDEALS. He "sought to employ Bentham's hedonistic utilitarianism to give philosophical content to Morris Cohen's ideal of 'natural law.'" David A. Hollinger, MORRIS R. COHEN AND THE SCIENTIFIC IDEAL 187 (MIT Press 1975). Morris Cohen used the phrase "natural law with a changing content" as the slogan for his jurisprudence. He acknowledged Stammler as the originator of the phrase. Id. at 194.

In 1933 Ernst Huber, Nazi party spokesman said: "The authority of the Fuhrer is not limited by checks and controls, by special autonomous bodies or individual rights, but it is free and independent, all-inclusive and unlimited." Peikoff, p. 16. Up went the State and down went the individual: "The concept of personal liberties of the individual as opposed to the authority of the state had to disappear . . ." Peikoff, p. 16. The Nazis had no use for inalienable rights: "There are no personal liberties of the individual which fall outside the realm of the state and which must be respected by the state . . . The constitution of the nationalistic Reich is therefore not based upon a system of inborn and inalienable rights of the individual." Peikoff, p. 16. In Hitler's Germany every detail of life was prescribed or proscribed; the only private individuals were those that were asleep. Peikoff, p. 17. Gobbels said: "To be a socialist is to submit the I to the thou; socialism is sacrificing the individual to the whole." Peikoff, p. 19. Germans were told the idea that totalitarians of every kind stress as the justification for a total state: collectivism. Peikoff, p. 17. Huber also wrote that private property was a reversal of true property. German socialism overcame the earlier version of the right of the individual to manage and to speculate with inherited or acquired property without regard to the general interests; all property was common property. Peikoff, p. 18.

In 1936 Chief Justice Charles Hughes stated that no distinction could be made between constitutional rights pertaining to liberty and those pertaining to property. *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 52 (1936). Justice Brandeis, in his concurring opinion, however, said a distinction should be made when dealing with property. 298 U.S. 38, 77 (1936).

In 1937 there were still four rock-ribbed conservatives on the Supreme Court (McReynolds, Sutherland, Van Devanter and Butler). Three liberals were on the Court (Brandeis, Cardozo and Stone). Hughes and Roberts were considered unpredictable. Arthur Cecil Bining and Philip Shriver Klein, A HISTORY OF THE UNITED STATES 503 (1951). Congress passed a bill allowing retirement of justices at the age of 70. FDR eventually appointed eight new justices and named Harlan F. Stone Chief Justice. Arthur Cecil Bining and Philip Shriver Klein, A HISTORY OF THE UNITED STATES 506 (1951). A vacancy was created with the resignation of Van Devanter: "The turnabout of the Supreme Court resulted primarily from the attitude of Hughes and Roberts, who now joined Brandeis, Cardozo and Stone to constitute a liberal majority of five." Id. at 505. The Justices appointed by FDR were Hugo L. Black, Felix Frankfurter, Stanley Reed, William O. Douglas, Frank Murphy, Robert H. Jackson, James F. Byrnes and Wiley B. Rutledge. Id. at 506.

After FDR's court-packing scheme had been unveiled, the Supreme Court took "several steps to the left." Daniel Lazare, THE FROZEN REPUBLIC 160 (1996). The year 1937 represented the dividing line between the "negative,

nightwatchman state" and the "Positive State." Arthur S. Miller, *THE MODERN CORPORATE STATE: PRIVATE GOVERNMENTS AND THE AMERICAN CONSTITUTION* 91 (1976). The turning point for "a new type of government" came when Chief Justice Hughes held: "In prohibiting that deprivation, the Constitution does not recognize an absolute and uncontrollable liberty. Liberty in each of its phases has its history and connotation. But the liberty safeguarded (by the 14th Amendment) is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals, and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process." Arthur S. Miller, *THE SUPREME COURT: MYTH AND REALITY* 352 (1978); *West Coast Hotel Co. v. Parrish*, 300 U.S. 370 (1937) (emphasis added by Miller).

For the first time due process could be "used to restrain liberty." Miller said this was the modern version of Thomas Hill Green's concept of "positive freedom" and of collective well-being. *Id.* The purpose of government, according to Green, was not to maximize individual freedom but "to insure the conditions for at least a minimum of well-being -- a standard of living, of education, and of security below which good policy requires that no considerable part of the population shall be allowed to fall." *THE SUPREME COURT: MYTH AND REALITY* 352 (1978); *SABINE, A HISTORY OF POLITICAL THEORY* 674 (1937). For the first time liberty "became a social, as distinguished from an individual, right." Arthur S. Miller, *THE MODERN CORPORATE STATE: PRIVATE GOVERNMENTS AND THE AMERICAN CONSTITUTION* 95 (1976). Edwin S. Corwin wrote: "From being a limitation on legislative power, the due process clause becomes an actual instigation to legislative action of a leveling nature." *Id.*; Corwin, *LIBERTY AGAINST GOVERNMENT* 161 (1948). It was at this time, with little contemporary appreciation, that "a quiet but massive constitutional revolution began." Arthur S. Miller, *THE MODERN CORPORATE STATE: PRIVATE GOVERNMENTS AND THE AMERICAN CONSTITUTION* 95 (1976).

T.H. Green, the founder of the Oxford idealist school, was one of the first to attract general attention to the Hegelian system. Although he was unable to embrace all the features of Hegel's radical etatism (statism), many of Green's successors were willing to go much further than Green himself. William Montgomery McGovern, *From Luther To Hitler* 266 (1941). In England Bernard Bosanquet and F.H. Bradley (1846-1924) adopted most, if not all, of Hegel's philosophy. *Id.* In the place of passive obedience Hegel substituted the doctrine of the supremacy of the state over the individual -- the state as the end in itself. William Montgomery McGovern, *FROM LUTHER TO HITLER* 299 (1941). Unlike past defenders of absolutism, Hegel did not attack the principles of liberty or freedom. He taught that the state was the "actualization of Freedom." *Id.* True freedom, however, was voluntary but complete subservience to the dictates of the state. Hegel adopted the definition of liberty laid down by Kant, which was accepted in some form by Fichte, Carlyle and by Green -- that liberty consists of the ability to do what one ought to do. *Id.* at 301.

Social legislation and statutes of economic regulation will be held valid under the Constitution "unless in the light of facts made known or generally

assumed it is of such character as to preclude the assumption that it rests upon some rational basis within the knowledge and experience of the legislature." *United States v. Carolene Products Co.*, 304 U.S. 144 (1938). Attempts to limit civil liberties will "be subjected to a more exacting judicial scrutiny . . . than are most other types of legislation." 304 U.S. 152.

The Texas high court held in 1941: "It is not only the right, but the duty of the judicial branch to determine whether or not a Legislative Act contravenes or antagonizes the fundamental law; and in determining such we are unalterably wedded to the principle that the Constitution means what it meant when it was written." *Friedman v. American Surety Company of New York*, 151 S.W.2d 570, 580 (Tex. 1941); *Swayne v. Chase*, 88 Tex. 218, 30 S.W. 1049, 1053 (Tex. 1895).

In 1941 the Reverend William J. Kenealy, S.J. Dean of the Boston College Law School, stated that the alien philosophies of Kant, Hume, Herbert Spencer, John Stuart Mill, Hobbes, Marx and Holmes were "cutting away at the foundations of American jurisprudence," and might "topple the superstructure which we are proud and happy to call our American Way of Life." Biddle, p. 33.

In 1942 Mortimer Adler described legal positivism: "Positivism, which is the prevailing mood of modern thought generally, is also found in the special field of legal theory. In jurisprudence, the positivist denies natural law, affirming the contingent and variable enactments of political communities to be the only laws there are; as, more generally, the positivist denies the necessary truths of philosophical knowledge, affirming the contingent and variable conclusions of scientific research to be the only valid knowledge there is. And, in both cases, the same result occurs: positive law, like positive science, becomes unintelligible; positive law, like positive science, tends toward the dangerous extreme of being entirely conventional, entirely man-made and arbitrarily imposed." Mortimer J. Alder, *A Question About Law*, *ESSAYS IN THOMISM* 207 (Robert E. Brennan Ed. 1942).

In 1942 the lawmaker-centered view of was explained: "The state of the others' is thus the sole source of rights., that is to say that once man has arbitrarily decided that he wants to live, he finds that he must live with others and that when he lives with others, the others demand certain things of him and grant him certain rights. The state is the mouthpiece and overseers employed by the others. Rights and duties come from the state. The result then is that our rights depend on our brute power to demand and secure what we desire, and are duties are simply those things which we must do, because others will force us to do them." E.W. Simms, *A Dissent From Greatness*, 28 VA. L. REV. 467, 477-478 (1942). Simms added: "The principle that the individual has rights which he may assert, even as against the state, is the foundation stone of democracy." *Id.* at 480.

In 1944 Matthew Page Andrews (1879-1947) wrote *Social Planning By Frontier Thinkers*. The book opened with a quote from "The Witch's Curse" Comic Opera by Gilbert and Sullivan. The "Professor" was quoted: "Our Educational Planner are careful to avoid the term subversive'; but if the American way fails to provide the most abundant life, then it must give place

to something better and more beautiful. As one Planner has said: Our frontier must be given the opportunity to create a design and the freedom to establish it." Matthew Page Andrews, SOCIAL PLANNING BY FRONTIER THINKERS 7-8 (1944). The Professor further stated: "The Brain Trust, not being amendable to any established order, will get around the Constitution or override it." Id. at 10. In this same year G. Edward Merriam cited Aristotle as holding that the individual could not exist except as a stone hand: "The lone individual does not figure either in family relations, in neighborhood relations, in state relations, in social relations, or in the higher values of religion. Nowhere is he left without guiding social groups, personalities, and principles." PUBLIC AND PRIVATE GOVERNMENT 16 (1944).

In 1945 Ben Palmer wrote: "The fact that Holmes was a polished gentleman who did not go about like a storm trooper knocking people down and proclaiming the supremacy of the blonde beast should not blind us to his legal philosophy that might makes right, that law is the command of the dominant social group." Ben Palmer, Hobbes, Holmes, and Hitler, 31 A.B.A.J. 571, 572 (1945).

When the times emphasises individualism, individuals have rights. When stress is constantly made on community, the age is one of collectivism: "Man is an individual; he is also a member of society. As an individual, he demands freedom of action. As a member of a social group, he conforms and expects his fellows to conform to the established group standards. Individualism stresses the rights of the individual; collectivism stresses those of the community." Scott Nearing, UNITED WORLD 125 (1945). Talk about inalienable rights is a sign that the interests of the individuals in the society are not parallel to the ruling social groups. A One World proponent noted: "When the interests of the individual closely parallel those of the social group there is little talk of inalienable rights; little agitation for freedom. Under other circumstances, the group makes demands that lead the individual to take a stand against collective authority. If he carries his opposition far enough, he will be denounced, proscribed and punished for his refusal to accept group discipline." Scott Nearing, UNITED WORLD 125 (1945).

President Truman once said: "If we don't have a fundamental moral background, we will finally end up with a . . . government which does not believe in rights for anyone except the state." Steve C. Dawson, GOD'S PROVIDENCE IN AMERICAN HISTORY 13:1 (1988).

By 1947 it was said that the then prevailing teaching, of both political and legal philosophers "denies that the purpose of government is to secure these inherent and inalienable rights. It asserts that because there are no immutable principles of human conduct, there is no ultimate standard of justice and the lawmaker is responsible to nothing but his own unfettered will. It asserts that since there are no natural rights, all man's rights come to him from the state, and what the state grants, the state may take away. It asserts that since men possess no natural, inherent rights, the purpose of government is not to secure these rights but rather the purpose of man is to serve the state." Harold R. McKinnon, The Higher Law: Reaction Has Permeated Our Legal Thinking, AM. BAR ASSOC. J. 106 (February 1947).

Professor Oliver P. Field stated in 1947: "The Court is still struggling with the problem of 'interest' on the part of those who seek to challenge the validity of statutes. Little can be done to extricate the law from the bog into which it has fallen on this point so long as the idea prevails that constitutionality should be sparingly dealt with by the courts. It should be just the opposite . . ." Oliver P. Field, "Separation and Delegation of Powers," 41 Am. Pol. Sci. Rev. 1161, 1168-1169 (1947).

Byron C. Utecht wrote in 1949:

The Texas Constitution consists of 105 printed pages, and for the most part, at least 95% of it, is written in such unmistakable, plain English that there is no chance for misunderstanding or misinterpretation. Statutes are verbose and full of legal twists and turns, but the Constitution is blunt and plain-spoken; nevertheless, there are plenty who seek to override it constantly, insisting that it does not mean what it says. There are many provisions in the Texas Constitution in the same status as the forgotten man or the unknown soldier, for these provisions are thrown overboard frequently, and there is no secret made of it. THE STATE OF TEXAS OR THE STATE OF TAXES? 52 (1949).

John P. Keith, shortly after World War II, wrote: "Constitutional revision is rooted in the field of politics and not in the field of law." John P. Keith, METHODS OF CONSTITUTIONAL REVISION 53 (Bureau of Municipal Research: U.T. 1949). In that same year, it was contended:

In the course of the many decades since our independence was declared, and since the Constitution was set up to protect our God-given rights against the encroachments of civil government, dry-rot has afflicted our jurisprudence, and some of the alien philosophies which our fore fathers fled have found willing protagonists here in America. So much is this the case that the very existence of the Natural Law is challenged, even in the highest courts of the land. What five men think is the will, or even the whim of the people, may come to have the force of statute. The 'divine right of kings' was not a more pernicious doctrine.

Rev. John F. O'Hara, Honorary Chairman, First Natural Law Institute Proceedings, I UNIVERSITY OF NOTRE DAME NATURAL LAW INSTITUTE PROCEEDINGS (1949).

Peter Drucker stated in 1950 that it is "the organization rather than the individual which is productive in an industrial system." THE NEW SOCIETY 6 (1950). In the same year John R. Commons stated: "This is an age of collective action." THE ECONOMICS OF COLLECTIVE ACTION 23 (1950). Those who favor absolute government have no belief in absolute individual rights. The Hutchins Commission's position on absolute (individual) rights was stated in 1950: "The notion of rights, costless, unconditional, conferred by the Creator at birth, was a marvelous fighting principle against arbitrary governments and had its historic work to do. But in the context of an achieved political freedom the need of limitation becomes evident. The unworkable and invalid conception of birth-rights, wholly divorced from the condition of duty, has tended to beget an arrogant type of individualism which makes a mockery

of every free institution, including the press." Frank Hughes, PREJUDICE AND THE PRESS 165 (1950). Sidney Hook wrote: "Whoever then looks to Dewey to find out whether God or chance is the cause of the universe, whether the soul of man is immortal, whether life is good, bad, or has an absolute meaning, is doomed to disappointment." Neil Gerard McCluskey, PUBLIC SCHOOLS AND MORAL EDUCATION 194 (1958).

In 1951 Harvard Law Professor Hart commented on Holme's positivism: "It is not what the judges say which is important but what they do. It is not the reasons for decision which the judges think they follow to which we should look but the behavioral patterns which, willy-nilly, they do follow. And so we arrive, if we take this path, at the monstrous conclusion that reason and argument, the conscious search for justice, are vain." Henry M. Hart, Jr., Holme's Positivism -- An Addendum, 64 HARV. L. REV. 929, 933 (1951).

In 1951 Justice Vinson stated for the U.S. Supreme Court: "Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phrases, a standard has meaning only when associated with the considerations which give birth to nomenclature. To those who would paralyze our Government in the face of impending threat by encasing it in a semantic strait-jacket, we must reply that all concepts are relative." Erik von Kuehnelt-Leddihn, LEFTISM 207 (1974). Felix Morley commented: "So it becomes definitely dangerous to the spiritual welfare of this Republic when the chief law officer of its government declares, irrelevantly and even irreverently, that 'all concepts are relative.'" Morley traced such relativism to the "positivist" school of philosophy. Lucy, p. 559; Felix Morley, "Affirmation of Materialism," Barron's 3 (June 18, 1951). Earl Latham wrote in 1952 that "the chief social values cherished by individuals in modern society are realized by groups." THE GROUP BASIS OF POLITICS 1 (1952).

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A BRIEF CHRONOLOGY OF COLLECTIVISM

by
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(October 1997)

In July 1953 Professor Colin Clark, an Australian political economist, said that in the British Commonwealth countries and in the United States "academic Marxism -- or crypto-Marxism -- is stronger than ever." E. Merrill Root, COLLECTIVISM ON THE CAMPUS 6 (1956). On July 25, 1953, Congressman Reece of Tennessee discussed the ENCYCLOPEDIA OF SOCIAL SCIENCE which had been produced in consecutive volumes during 1930-1935. Alvin Johnson, the editor, stated in PIONEER'S PROGRESS (pp. 310-312) that two of his assistant editors were Socialists and the other a Communist. In the series, described by Reece as "a sort of supreme court of the social sciences," subjects on the left were assigned to leftists while subjects on the right were also assigned primarily to leftists. Root, p. 205.

Pragmatism is now the American way. Mortimer Smith wrote in 1954: "I do not think anyone will challenge the statement that pragmatism has become the official philosophy of public school education; there may be an occasional maverick scattered here and there but the great majority of the professors of education are committed to this philosophy and they transmit it to the future teachers and administrators whom they train to run the American public school system." THE DIMINISHED MIND: A STUDY OF PLANNED MEDIOCRITY IN OUR PUBLIC SCHOOLS 78-79 (1954). The result of pragmatism is ultimately disillusion: "Pragmatism dissolves dogmas into beliefs, eternities and necessities into change and chance, conclusions and finalities into processes. But men have invented philosophy precisely because they find change, chance and process too much for them, and desire infallible security and certainty. Pragmatism is no philosophy for them. It calls for too complete a disillusion." Horace M. Kallen, 12 ENCYCLOPEDIA OF THE SOCIAL SCIENCES 311 (Edwin Seligman Ed. 1934). Among the weaknesses in pragmatism "is that it tends to produce results that are episodic, intuitive, individualistic and in this sense arbitrary." Jerome Frank, AMERICAN LEGAL PHILOSOPHY 4.50 at 468.

In the early 1950s, William H. Whyte, Jr. stated in Fortune: "A very curious thing has been taking place in this country almost without our knowing it. In a country where individualism -- independence and self-reliance -- was the watchword for three centuries the view is now coming to be accepted that the individual himself has no meaning except as a member of a group." Vance Packard, THE HIDDEN PERSUADERS p. 173 (1957).

In 1957 Roscoe Pound wrote: "In the urban industrial society of today a general right to bear efficient arms so as to best resist oppression by the government would mean that gangs could exercise an extra-legal rule which

would defeat the whole Bill of Rights." Roscoe Pound, *Development of Constitutional Liberty* 72 (1957). However, the right of self-preservation is "a fundamental right that has been recognized since time immemorial." Irvin M. Kent, *Under the Ninth Amendment What Rights Are the Others Retained By the People?* 29 *Fed. B.J.* 219, 226 (1970).

Fascism, according to a leading spokesman, Alfredo Rocco, stressed: "(T)he necessity for which the older doctrines makes little allowance, of sacrifice, even up to the total immolation of individuals, in behalf of society . . . For Liberalism (i.e., individualism), the individual is the end and society the means; nor is it conceivable that the individual, considered in the dignity of an ultimate finality, be lowered to mere instrumentality. For Fascism, society is the end, individuals the means, and its whole life consists in using individuals as instruments for its social ends." Peikoff, p. 17. In 1958 Mussolini was quoted: "The highest personality is that of the Nation . . . The Fascist State, synthesis and unity of all values, interprets, develops and actuates the whole life of the People. . . For Fascism the State is an absolute, in whose presence individuals and groups are relative." Arthur S. Miller, *DEMOCRATIC DICTATORSHIP: THE EMERGENT CONSTITUTION OF CONTROL* 67 (1981); O. Gierke, *NATURAL LAW AND THE THEORY OF SOCIETY 1500 to 1800* (E. Barker trans. 1958).

Conservative thinkers emphasize that some of the constitutional limits placed on government power have been misconstrued as grants of more power to government to restrict the rights of some citizens in favor of others. Burnham has suggested: "Instead of operating as limits on the power of government, they (the first ten amendments) are on occasion accepted as authorizations or grants of additional governmental power over the daily affairs of citizens. The ironic result is that the enforcement of civil rights becomes an instrument not of liberty but of despotism." James Burnham, *CONGRESS AND THE AMERICAN TRADITION* 73-74 (1959); Melvin J. Thorne, *AMERICAN CONSERVATIVE THOUGHT SINCE WORLD WAR II* 109 (1990).

In 1959 Justice Samuel H. Hofstadter, a Holmes devotee, eloquently held in New York that "petitioner should be willing to be deprived of his pistol in order to protect his son and the community. Stress of rights must often be balanced by public interest -- even if there results an individual loss." *Application of Grauling*, 183 N.Y.2d 654, 658 (N.Y. 1959). He then stated that although the right to bear arms is a "precious" one, it no longer applies in a non-frontier society: "But while we are a society still pioneering in the realm of space and spirit, we are no longer a frontier community. The great master of the law correctly observed that 'Most rights are qualified.' (*American Bank & Trust Co. v. Federal Bank*, 256 U.S. 350, 358, 41 S.Ct. 499, 500, 65 L.Ed. 983), and this right too is subject to regulation." *Id.*

The paramount principles of communistic and totalitarian jurisprudence include 1) the omnipotence of the state, 2) the insignificance of the individual, and 3) the rule of public policy (which quickly becomes party policy and then the leader's policy in the determination of rights). Dr. Fred Schwartz, *YOU CAN TRUST THE COMMUNISTS (TO BE COMMUNISTS)* 28 (1960).

Francis Biddle wrote in 1961 that the underlying differences between Holmes

and his critics "boiled down to whether or not you believe in absolutes."
Francis Biddle, MR. JUSTICE HOLMES, NATURAL LAW AND THE
SUPREME COURT 41 (1961).

In 1961 Henry Kissinger wrote: "Pragmatism, at least in its generally accepted forms, produces a tendency to identify a policy issue with the search for empirical data. It sees in consensus a test of validity. Pragmatism is more concerned with method than with judgment. Or, rather, it seeks to reduce judgment to methodology and value to knowledge. The result is a greater concern with the collection of facts than with the interpretation of their significance." THE NECESSITY FOR CHOICE 342 (1961). In California one court in 1961 indicated the fate of natural rights in the Soviet Union: "Natural rights are those which grow out of the nature of man and depend upon his personality and are distinguished from those which are created by positive laws enacted by a duly constituted government to create an orderly civilized society . . . Soviet legal theory denies that natural rights exist and asserts that all 'rights' are grants bestowed by the government upon its citizens." In Re Gogabashvele's Estate, 16 Cal. Rptr. 77, 91 (4th Dist. Ca. 1961).

A professor of English at the University of Chicago summarized the essence of relativism:

"Relativism denies outright that there are any absolute truths, any fixed principles, or any standard beyond what one may consider his convenience. A theory is true only relative to the point of view of the individual, or to the circumstances which prevail at the moment. Truth is forever contingent and evolving, which means, of course, that you can never lay hands on it. Relativism is actually the abdication of truth." Richard M. Weaver, RELATIVISM AND THE CRISIS OF OUR TIMES 4 (1961).

Martin Glasser wrote in 1962: "The 19th century liberal attempted to limit state power and activity and to foster the liberty of the individual." Martin Glasser, "The Judicial Philosophy of Felix Frankfurter," Vol. 1, No. 4, New Individualist Review 29 (Winter 1962). Now it is said: "Liberalism stands for, above all, individual rights and is compatible with a strong state that is supposed to ensure those rights." Joshua Miller, THE RISE AND FALL OF DEMOCRACY IN EARLY AMERICA, 1630-1790 13 (1991).

The U.S. Supreme Court has adopted a policy of due deference to legislation which in reality is a return to the old British parliamentary system without an enforceable written constitution:

In reality this [balancing] approach returns us to the state of legislative supremacy which existed in England and which the Framers were so determined to change once and for all. On the one hand, it denies the judiciary its constitutional power to measure acts of Congress by the standards set down in the Bill of Rights. On the other hand, though apparently reducing judicial powers by saying that acts of Congress may be held unconstitutional only when they are found to have no rational legislative basis, this approach really gives the Court, along with Congress, a greater power, that of overriding the plain commands of the Bill of Rights on a finding of weighty public interest. In effect, it changes the direction of our form of

government from a government of limited powers to a government in which Congress may be anything that courts believe to be 'reasonable.'

Hugo Black, "The Bill of Rights and the Federal Government," in THE GREAT RIGHTS 60 (Cahn ed. 1963).

According to Mark DeWolfe Howe, Holme's editor and biographer, the "collectivism and Darwinism" of Holme's in the Common Law "deserve special attention." Howe, Introduction to O. Holmes, THE COMMON LAW (M. Howe, Ed. 1963). More than six decades after his death, he still casts an unequalled legal shadow. His life, too, was most eventful. While a Yankee soldier, Holmes in 1864 was at Fort Stevens while it was under Southern attack. He screamed at a tall civilian peering over the top of the fort to "GET DOWN, YOU DAMNED FOOL!". The civilian was President Lincoln. Since 1892, public employment has been considered a "privilege." The origin of the distinction was a Holme's opinion: "The right-privilege distinction, as it appeared in an early statement by Justice Holmes, has long hampered individuals within the public sector in protecting themselves against arbitrary government action." W. Alstynne, The Demise of the Right-Privilege Distinction in Constitutional Law, 81 HARV. L. REV. 1439, 1439 (1968); 23 VALPARAISO UNIV. L. REV. 587, 607 (1989); McAuliffe v. Mayor of New Bedford, 155 Mass. 216, 220, 29 N.E. 517, 517 (1892) (policeman had right to talk politics but had no constitutional right to be a policeman). The thesis of Holmes that societies are constantly reinterpreting legal forms to serve new purposes has been labeled "evolutionary pragmatism." P. Weiner, EVOLUTION AND THE FOUNDERS OF PRAGMATISM 172 (1949). Holme's idea that legal doctrines evolve in response to changes in the social environment has become virtually a canon of professional faith for American lawyers. E. Levi, AN INTRODUCTION TO LEGAL REASONING 102-104 (1949). The U.T. Law Library (TALLONS) today uses Holmes as its sample name for legal research. Homes had a great formative influence on the thinking of Alger Hiss. In 1929 Felix Frankfurter at Harvard chose Hiss as Holme's law clerk. John Chabot Smith, ALGER HISS: THE TRUE STORY 58 (1976). When the day's work was done, Hiss would read aloud to Holmes. One of the book's was Trotsky's autobiograph which Holmes "detested but read because his Marxist friend Harold J. Laski . . . insisted on it." Id. at 60. Holmes stayed on the U.S. Supreme Court bench until the age of 91. He resigned from the Supreme Court in 1932. Late in Holme's life, Carl Becker, an author of pro-1776 material, visited him. Holmes asked Becker: "Becker, do you love the human race?" The reply was: "I've never discovered anything within myself which you, Mr. Justice, would define as a heart overflowing with human kindness, but I wish them well." Homes retorted: "I don't Becker. God damn them all, I say." Irving Berstein, The Conservative Mr. Justice Holmes, 23 NEW ENGLAND Q. 435, 435-436 (1950). In 1933, Holmes was visited by President-elect Franklin Roosevelt. He found Holmes reading Plato in the Greek language. When asked the reason, Holmes answered, "Why, to improve my mind."

It was said in 1966: "The substance of the matter is that while it is the duty of every institution established under the authority of a Constitution and exercising powers granted by a Constitution, to keep within the limits of those powers, it is the duty of the Courts, from the nature of their function, to say what these limits are. And that is why Courts come to interpret a Constitution.

K.C. Wheare, MODERN CONSTITUTIONS, 101 (1966).

Adolfe A. Berle (1895-1971), a key New Deal "braintrust" member, candidly wrote before his death: "This is a report on a revolution. The unique fact is that the revolutionary committee is the Supreme Court of the United States." THE THREE FACES OF POWER vii (1967). Thirty-four states, reacting to Baker v. Carr, by 1967 had called for a constitutional convention. Id. at viii. Berle continued: "The thesis can be briefly stated. Ultimate legislative power in the United States has come to rest in the Supreme Court of the United States." THE THREE FACES OF POWER 3 (1967). In Brown v. Board of Education "the reserve legislative power of the Supreme Court became overt." THE THREE FACES OF POWER 10 (1967); 347 U.S. 483 (1954). The case "pushed judicial legislation into public awareness." THE THREE FACES OF POWER 11 (1967)

In his James Madison Lecture at the New York University Law School, Associate Justice Abe Fortas of the Supreme Court stated on March 29, 1967: "It is fascinating, although disconcerting to some, that the first and fundamental breakthrough in various categories of revolutionary progress has been made by the courts -- and specifically the Supreme Court of the United States." Adolfe A. Berle, THE THREE FACES OF POWER vii (1967).

In 1969 it was said of Justice Jackson: "Justice Jackson saw as clearly as the next the inevitability of a continuing thrust towards centralized power in the constitutional evolution of our Nation. . . He knew that every coercive and centralizing court decision deals a blow, if sometimes only a little blow, first to the ability and then to the will of the democratic process to operate with responsibility and vigor." Potter Stewart, "Robert H. Jackson's Influence on Federal-State Relationships," MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR 84-85 (1969).

In the Spring of 1969, Indiana Law Professor Robert Force foresaw that state charter revision commissions might delete a Bill of Rights using the argument that: "State Bills of Right are obsolete." At that time the notion of using state Bills of Right to safeguard individual rights was said to be "dorment or disappearing rapidly." R. Force, State Bills of Rights, 3 VALPARALSO U.L. REV. 125, 164 (1969).

In 1971 G. Edward White wrote: "Here one finds a disturbing dissonance between Holme's very conspicuous social and professional style and professional success -- it is hard to imagine a life less marred by physical, social or economic deprivations or one marked by a greater length and breadth of acheivement -- and his gloomy musings that the crowd has substantially all there is, ' that we all are very near despair,' that men are like flies,' and that man has no more cosmic significance than a baboon or a grain of sand." G. Edward White, The Rise and Fall of Justice Holmes, 39 U. CHICAGO. L. REV. 51, 76 (1971).

Justice William Douglas, dissenting in a 1972 Supreme court opinion, said: "There is no reason why all pistols should not be barred to anyone but the police." Later he added: "But if watering down is the mode of the day, I would prefer to water down the Second Amendment rather than the Fourth

Amendment." *Adams v. Williams*, 407 U.S. 143, 152 (1972).

The lack of prominent "right" Hegelians has hinted at in 1972: "Socialists like Moses Hess, Karl Marx, and Ferdinand Lassalle related their philosophies to Hegel in one way or another, just as did liberals like T.H. Green, Bernard Bosanquet and Benedetto Croce, and fascists like Giovanni Gentile; although, interestingly enough, one would be hard-pressed to recall a comparatively prominent conservative thinker who could be termed a Hegelian." Shlomo Avineri, *HEGEL'S THEORY OF THE MODERN STATE* vii (1972).

Burnham P. Beckwith wrote in 1972: "The retention of democratic ritual under government by experts will facilitate the peaceful and rapid acceptance of government by experts. A very large number of voters will remain unaware of the fundamental change if the old ritual is preserved." *GOVERNMENT BY EXPERTS* 150 (1972).

Professor Mark Yudof wrote in 1973: "In a popular play by the French playwright and novelist Albert Camus, a character gleefully defends a law that is so complex that virtually no one can ascribe any meaning to it: 'It's intended to get them used to that touch of obscurity which gives all government regulations their peculiar charm and efficacy. The less these people understand, the better they'll behave.'" M. Yudof, 51 *TEX. L. REV.* 885 (1973).

In 1973 the U.S. Supreme Court ruled consistently with an absence of god-given absolutes: "Holme's philosophy manifest itself in the *Roe v. Wade* decision, in which the right of abortion-on-demand was upheld. This decision was the result of Holme's philosophy taken to its logical conclusion. Without absolutes, who is to say whether or not a fetus should live or die. Man's God-given right to life is ignored." Thomas R. Trueax, Oliver Wendell Holmes, Jr.: Secularizer of American Jurisprudence, *THE SIMON GREENLEAF L. REV.* 78; *Roe v. Wade*, 410 U.S. 1113 (1973). Only one absolute remains: "By insisting on absolutes, the Christian base has been eliminated from the law. The only absolute remaining is the insistence that there is no absolute." *Id.*

In 1974 *Saturday Review* celebrated the 50th anniversary of education. The leading educator from 1924-1974, according to those educators polled, was John Dewey. The August 10, 1974 issue quoted him: "There is no God and no soul. Hence, there are no needs for the props of traditional religion. With dogma and creed excluded then immutable truth is also dead and buried. There is no room for fixed, natural law or permanent absolutes." A. Ralph Epperson, *THE UNSEEN HAND* 378 (1985).

Holmes and Charles Pierce "were part of a conceptual revolution in American thought that rejected individualism and shifted toward collectivism in epistemology, science, and law. In *The Common Law* this revolution was expressed as an attack on a conception of legal rules as private, internal, and subjective. In Pierce's early philosophy this revolution was expressed as an attack on the epistemology of Rene Descartes, the 17th century French philosopher." Holmes, Pierce and Legal Pragmatism, 84 *YALE L.J.* 1123, 1126 (1975). Holme's (pro government) preference of social over individual

interests resulted from his demand for objective legal standards while Pierce's attack on Decartes led him to demand agreement among a community of inquirers as a measure of truth. *Id.* at 1140.

T. David Horton was quoted in 1975 as noting the failure of law schools to teach students the text of our constitutions:

It has been suggested that we are a nation of constitutional illiterates, and to a degree, I think this is so. The Constitution appears to be a subject that everybody talks about but nobody reads. . . . I remember the first of three courses I took in Constitutional Law. I was nearly bounced out for having the temerity to suggest to the Professor that, since this was a course that was labeled Constitutional Law, possibly we ought to read the Constitution. The course that lawyers take today called Constitutional Law, frankly doesn't consist of studying the Constitution. It involves memorizing the catechism -- studying the sophistries -- by which one provision after another of our Constitution is construed out of existence. This is one reason why in our present Constitutional Crisis, we find lawyers among those who are most derelict in failing to advance any remedy to correct the situation. Quoted by Archibald E. Roberts, *THE REPUBLIC: DECLINE AND FUTURE PROMISE* 69 (Betsy Ross Press 1975).

By the time of the American Bicennial, Justice Stanley Mosk of the California Supreme Court predicted a trend where state judges recognized interpreting their own constitutions in a way that "neither required nor necessarily prefers (conformity) to the United States Supreme Court's interpretation of the federal constitution." S. MOSK, "The State Courts," *AMERICAN LAW: THE THIRD CENTURY* 213, 224-225 (B. Swartz Ed. 1976).

Dr. Francis Schaeffer wrote in 1976: "We must not think of an overnight change, but rather a subtle trend by the leadership toward a greater control and manipulation of the individual. Of course, some might feel uncomfortable about this increased control and manipulation in a relativistic age, but where would they draw the line? Many who talk of civil liberties are also committed to the concept of the state's responsibility to solve all problems." Schaeffer further added: "At that point the words left or right will make no difference. They are only two roads to the same end. There is no difference between an authoritarian government from the right or left; the results are the same. An elite, an authoritarianism as such, will gradually form on society so that it will not go to chaos. And most people will accept it -- from the desire for personal peace and affluence, from apathy, and from the yearning for order to assure the functioning of some political system, business, and the affairs of daily life. That is just what Rome did with Caesar Augustus." Paul McGuire, *WHO WILL RULE THE FUTURE?* 36-37 (1991); Vol. 5, *How Should We Then Live?* 243-244 (1976).

In 1977 it was stated: "For decades now, there have been no positions in the national or local educational lobbies for any but professed liberals." Richard D. Mandell, *THE PROFESSOR GAME* 44 (1977).

George D. Braden noted in August of 1977 that the Texas Constitution had not been the focus of law courses:

In the law schools themselves future lawyers and judges typically study United States constitutional law. They learn how great and lesser justices of the United States Supreme Court have interpreted the United States Constitution and they dip into the great mass of literature which deals with these subjects. But where are the courses in state constitutional law, where are the twentieth century treatises on state constitutions, and where are the articles explaining them? The answer is that, with very rare exception, they simply do not exist." I THE CONSTITUTION OF THE STATE OF TEXAS: AN ANNOTATED AND COMPARATIVE ANALYSIS 5 (1977).

In 1978, Dean Roger C. Cramton described "the ordinary religion of the law school classroom" as "a moral relativism tending towards nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, and individualism tending towards atomism, and a faith in reason and democratic processes tending toward mere crudity and idolatry." Charles E. Rice, Some Reasons for the Restoration of Natural Law Jurisprudence, 24 WAKE FOREST L. REV. 539 (1989); Cramton, The Ordinary Religion of the Law School Classroom, 29 J. LEGAL ED. 247, 262-263 (1978).

Former Justice Charles G. Douglas opined in 1978: "The fact that law clerks working for state judges have only been taught or are familiar with federal cases brings in a federal bias to the various states as they fan out after graduation from 'federally' oriented law schools. The lack of treatises [or] textbooks developing the rich diversity of state constitutional law developments could be viewed as an attempt to 'nationalize' the law and denigrate the state bench." Douglas, State Judicial Activism -- The New Role for State Bills of Rights, 12 Suffolk U.L. Rev. 1123, 1147 (1978) (emphasis in original).

In 1978 Law professor Miller described the Supreme Court Justices as the "high priesthood," the founders as "saints," the law clerks as "alter boys," law professors and some political scientists as "Pharisees" and lawyers as "acolytes." He quoted Justice Jackson: "We are not final because we are infallible, but we are infallible only because we are final." Brown v. Allen, 344 U.S. 443, 540 (1953); THE SUPREME COURT: MYTH AND REALITY 15 (1978). In America the Jefferson idea was "that government is best that governs least." The prevailing notion, said Miller, in the words of Robert Hutchins, is that "that government is best that governs best." THE SUPREME COURT: MYTH AND REALITY 352 (1978).

Philip Kurland stated in 1978:

The concept of a written constitution is that it defines the authority of government and its limits, that government is the creature of the constitution and cannot do what it does not authorize . . . A priori, such a constitution could only have a fixed and unchanging meaning, if it were to fulfill its function. For changed conditions, the instrument itself made provision for amendment which, in accordance with the concept of a written constitution, was expected to be the only form of change. WATERGATE AND THE

CONSTITUTION 7 (1978).

In 1979 Professor Arthur S. Miller stated: "Orthodox constitutional theory and doctrine recognize the existence of but two entities; government and the individual person. Nothing intermediate is envisaged. The Constitution limits government in favor of individuals, a notion based on the unstated assumption that individuals live and act as autonomous units." SOCIAL CHANGE AND FUNDAMENTAL LAW 55 (1979). However, said Miller: "But it has become widely recognized in the past few decades that the completely autonomous, 'isolated' individual does not exist as such. The individual spends his life as a member of groups and is significant only as a member of a group." *Id.* (emphasis in original).

The "unalienable" rights asserted in the Declaration of Independence and added by the first Ten Amendments, have been replaced by the "procedural" rights in the U.S. Constitution. The consequence is that "inalienable" rights can be violated so long as the correct procedure is followed. Herbert Hirsch and Bruce Grube, THE RIGHT OF THE PEOPLE: AN INTRODUCTION TO AMERICAN POLITICS 16 (1980).

Justice Hans A. Linde wrote in 1980: "(I)t is a curious fact that when we speak of individual rights, not only the newspaper reading public but no doubt most members of the legal profession take it for granted that we speak of federal law, pronounced by federal courts." Justice Hans A. Linde, First Things First: Rediscovering the States' Bills of Rights, UNIV. OF BALT. L. REV. 379 (1980). He also noted "while state courts routinely assume their charges to declare individual rights against other individuals or private entities, the curious fact is that they seldom and hesitantly assume the same responsibility for individual rights against public authority." *Id.* at 380.

In 1981 Francis Schaeffer defined sociological law as "law that has no fixed base but laws in which a group of people decides what is sociologically good for society at the given moment; and what they arbitrarily decide becomes law." Francis Schaeffer, A CHRISTIAN MANIFESTO 41 (1981). Today we live in a society governed by sociological law which is exactly what Holmes expounded. Thomas R. Trueax, Oliver Wendell Holmes, Jr.: Secularizer of American Jurisprudence, THE SIMON GREENLEAF L. REV. 78.

The courts once were "guardians" of the rights of property rather than defenders of government. Property rights are now largely subordinated to the government. A legal essay stated in 1981 that the scales have turned: "At least it will be only in the extreme case -- one perhaps of very arbitrary, very capricious, very selective government conduct -- that the Court will intervene in favor of the property-rights holder." James L. Oakes, 2nd Circuit Judge, 'Property Rights' in Constitutional Analysis Today, 56 WASH. L. REV. 583, 623 (1981).

It was said in 1982: "It is, by now, a familiar process: people asserting rights in order to extend the power of the state into what once were spheres of freedom." George Will, THE PURSUIT OF VIRTUE AND OTHER TORY NOTIONS 92-93 (1982); Melvin J. Thorne, AMERICAN CONSERVATIVE THOUGHT SINCE WORLD WAR II 110 (1990).

In 1982 Wisconsin Supreme Court Justice Shirley Abrahamson predicted that the 1980s would be "the decade of state courts." S. Abrahamson, *Reincarnation of State Courts*, 36 S.W. L.J. 961 (1982). In that same year Justice Pollock held: "Although the state constitution may encompass a smaller universe than the federal Constitution, our constellation of rights may be more complete." *Right to Choose v. Byrne*, 91 N.J. 287, 300, 450 A.2d 925, 931 (1982).

Louisiana Justice James Dennis stated that while respect must be given to decisions of the U.S. Supreme Court, state judges had the right of "independent judgment in construing the constitution adopted" by the people of each state. *State v. Hernandez*, 410 So. 2d 1382, 1386 (1982).

Judge Marvin O. Teague of the Texas Court of Criminal Appeals stated in 1983: "By its decisions, (the U.S. Supreme Court) appears to be abdicating its position as the role maker and champion of individual rights." *Brown v. State*, 657 S.W.2d 797, 808 (Tex. Crim. App. 1983) (en banc) (dissenting).

Vermont Justice William C. Hill said in 1983: "We are saying for the first time in many years that our state constitution means something." "Rebirth of Reliance on State Charters," *THE NATIONAL LAW JOURNAL* 1 (March 12, 1984).

Tennessee Justice Joseph Henry wrote that fundamental rights and liberties do not end with federal law: "If this were not true, the frictions of federalism would be fierce and frustrating and state courts would be reduced to mere conduits through which federal edicts would flow." *Miller v. State*, 584 S.W.2d 578, 760 (1983).

A survey of Texas appellate decisions from November 1972 through 1982 found that in only one of twenty-five cases was a violation of the Texas Equal Rights Amendment upheld. Rodric B. Schoen, *The Texas Equal Rights Amendment After the First Decade: Judicial Developments 1978-1982*, 20 *HOUSTON. L. REV.* 1321, 1368 (1983).

In 1985 Professor Harold Berman wrote that in the past two generations "the public philosophy of America shifted radically from a religious to a secular theory of law, from a moral to a political or instrumental theory, and from a historical to a pragmatic theory." Charles E. Rice, *Some Reasons for the Restoration of Natural Law Jurisprudence*, 24 *WAKE FOREST L. REV.* 539, 540 (1989); Berman, *The Crisis of Legal Education in America*, 26 *B.C.L. REV.* 347, 348 (1985). The basis for the present legal philosophy is legislative omnipotence: "The triumph of the positivist theory of law -- that law is the will of the lawmaker -- and the decline of rival theories -- the moral theory that law is reason and conscience, and the historical theory that law is an ongoing tradition in which both politics and morality play important parts -- have contributed to the bewilderment of legal education. Skepticism and relativism are widespread..." *Id.* In both law and medicine pragmatism substituted the "case" system for reasoning from general principles. Arthur Cecil Binig and Philip Shriver Klein, *A HISTORY OF THE UNITED STATES* 621 (1951). In

law schools, students are taught with casebooks rather than treatises. As a result, "law students are taught cases and little else. If the cases got it 'wrong,' it is foolish to expect the hurried practitioner or overburdened judge to undertake original scholarship. Today, it is rare for even the Supreme Court to rely on anything more than its own precedent." 39 CATH. U.L. REV. 1, 18 (1989). The case-method is judicial-opinion centered.

The Supreme Court of Vermont held in 1985: "Since 1970 there have been over 250 cases in which state appellate courts have viewed the scope of rights under state constitutions as broader than those secured by the federal constitution as interpreted by the United States Supreme Court." State v. Jewett, 500 A.2d 233, 234 (Vermont 1985).

It was also stated in 1985: "There is no question that the development of new remedies for state constitutional law must occur in state courts rather than federal courts."). J. Friesen, Recovering Damages for State Bill of Rights Claims, 63 TEX. L. REV. 1269, 1271 (1985).

In 1985 Larry Abraham noted: "We are given the choice between Communism (international socialism) on one end of the spectrum, Nazism (national socialism) on the other end, or Fabian socialism in the middle." Larry Abraham, CALL IT CONSPIRACY 30 (1985).

The result of pragmatism on children has been summarized:

While the youngest mind is taught that there are no absolutes, that no decision is final; that no authority figure except the State has the last word; that everything is equally acceptable; that real objectivity is the absence of any standard of right and wrong; then I contend that these young minds will be learning the ruthlessness which is so prevalent in today's youth and being acted out on all sides in today's society . . . In the Educationists' terminology, the logical consequences of this philosophy, real freedom is achieved only when one is a slave to the state. It is worth mentioning here that democracy is not seen by the educationist as a form of government, but a way of life. It is in reality a socialized society . . . There is something vastly more sinister to be pointed out here than just production of the group mentality. The implication of such a group mind is that the person goes on through life looking to the group to validate all of his decisions. The corollary of this insistence on relating everything to the group, relating from smaller to larger groups, and taking the largest group decision as the ultimate, is that the family is downgraded to just another small group with no special meaning. Thus, all family decisions, especially in the area of values, are open at all times to modification through group dynamics in the classroom, and eventually become of little importance at all to the child. Estalvin Dee Lillywhite, SECRETS THAT EVERY AMERICAN SHOULD KNOW 193-194 (Hawkes Press: 1985).

The antecedent of relativism is the heresy of nominalism: "Nominalism infected the American political character through its agent of relativism." John P. East, THE AMERICAN CONSERVATIVE MOVEMENT 54 (1986).

David Richards wrote to Mike Wallace: "The Texas Supreme Court has

recently moved to the forefront among the state courts willing to utilize state constitutional doctrines to preserve and protect our essential liberties." While federal courts are retreating, state justices are taking up the mantle and more closely examining their own state Bill of Rights guarantees. J. Harrington, 17 TEXAS TECH L. REV. 1487, 1495 (1986).

While rights guaranteed by the U.S. Constitution cannot be limited in state constitutions, the Texas high court said in 1986 that "state constitutions can and often do provide additional rights for their citizens." *LeCroy v. Harlon*, 713 S.W.2d 335, 338 (Tex. 1986). In Texas courts apply "an individual rights perspective," rather than "a societal perspective." J. Harrington, *Framing A Texas Bill of Rights Argument*, 24 ST. MARY'S L.J. 399, 417 (1993); *LeCroy v. Harlon*, 713 S.W.2d 335, 342 (Tex. 1986); *DuPuy v. Waco*, 396 S.W.2d 103, 106 (Tex. (1965).

Arthur S. Miller, late Professor Emeritus of Constitutional Law at George Washington University, and in his day the foremost proponent of "living" constitutions, wrote in 1987: "Today . . . the states exist more as administrative districts for centrally established policies than as sovereign entities." *THE SECRET CONSTITUTION AND THE NEED FOR CONSTITUTIONAL CHANGE* 119 (1987) He even added: "No reason whatsoever exists for having a political subdivision called Rhode Island or Idaho or even Texas or California." *Id.* at 123. Miller, whose work was sponsored in part by the Rockefeller Foundation, also said that "a pervasive system of thought control exists in the United States . . . the citizenry is indoctrinated by employment of the mass media and the system of public education . . . people are told what to think about . . . the old order is crumbling . . . Nationalism (love of country) should be seen as a dangerous social disease...A new vision is required to plan and manage the future, a global vision that will transcend national boundaries and eliminate the poison of nationalistic solutions . . . a new Constitution is necessary."

The terms "natural rights" or "the rights of man" have been replaced in this century by "human rights." *THE BLACKWELL ENCYCLOPAEDIA OF POLITICAL THOUGHT* 222 (David Miller Ed. 1987).

Article I, Section 8 of the Texas Bill of Rights has been distinguished from the First Amendment in the U.S. Constitution. Chief Justice Evans held in 1988:

There is an important distinction between the free speech guarantee of article 1, section 8 of the Texas Constitution and the related, but quite different first amendment provisions of the federal constitution. The Texas Constitution, in positive terms, guarantees that every person has the right to speak, write, or publish their opinion on any subject. The federal constitution, on the other hand, expresses first amendment freedoms in negative terms, simply restricting governmental interference with such freedoms. Thus, the Texas constitutional provision, which is similar to those adopted in 38 other states, affirmatively guarantees that each individual shall have the right of free speech." *Jones v. Memorial Hospital System*, 746 S.W.2d 891, 893 (Tex. App. Houston [14th Dist.] 1988, no writ).

It was suggested in 1989 that the influences of utilitarianism and legal

positivism in America "have produced an ominous shift in the foundation of our legal system." What is emerging is unlimited government without justice: "Ultimately legal positivism is unacceptable as a jurisprudential framework because it provides no inherent limits on the power of the state and no basis for determining what is just." Charles E. Rice, *Some Reasons for the Restoration of Natural Law Jurisprudence*, 24 WAKE FOREST L. REV. 539 (1989).

In the Edgewood I opinion, it was stated, for the first time in Texas, that the meaning of constitutional provisions was to be sought "with the understanding that the Constitution was ratified to function as an organic document to govern society and institutions as they evolve through time." Edgewood I.S.D. v. Kirby, 777 S.W.2d 391, 394 (Tex. 1989). This opinion cited no direct precedent and can only be viewed as a forbidden fruit of Miller's "living" constitution view. In 1982, Arthur Selwin Miller had urged the ideology of a "living" Constitution as opposed to what the Founders understood to be a Constitution of fixed principles. A. Miller, *TOWARD INCREASED JUDICIAL ACTIVISM: THE POLITICAL ROLE OF THE SUPREME COURT* 9 (1982).

Bill Moyers wrote in 1990: "Secrecy is the freedom zealots dream of: no watchman to check the door, no accountant to check the books, no judge to check the law. The secret government has no constitution. The rules it follows are the rules it makes up." Bill Moyers, *THE SECRET GOVERNMENT: THE CONSTITUTION IN CRISIS* 7 (1990).

It has been noted about individualism as now "taught" in higher education:

It has become practically axiomatic in the academy that one cannot invoke so jaded a notion as individualism without an elaborate garland of reservations, qualifications, and caveats . . . any academic discussion of the subject of individualism is likely to be taken as a red flag by progressive academics for whom individualism is tantamount to racism. Because individualism is widely recognized as one of the bedrocks of Western liberal thought and society, no, as it were, self-respecting (not to say individualistic) academic would dream of taking it 'straight,' of dealing with it on its own terms as an idea that continues to have a profound claim on us morally and intellectually. Individualism in this sense is only slightly less disreputable in the academy these days than the ultimate term of abuse, bourgeois. Roger Kimball, *TENURED RADICALS* 46-47 (1990) (emphasis in original).

In 1992, in *MAKING ELITE LAWYERS*, Robert Granfield, a sociologist at the University of Denver, stated that legal education often turns idealists into amoral pragmatists: "A lot of people who go into law school have a strong sense of right and wrong and a belief in moral truths. Those values are destroyed in law school, where students are taught that there is no right and wrong and where such idealistic, big-picture concepts get usurped. They actually come to disdain right-versus-wrong thinking as unprofessional and naive." Ralph Nader and Wesley J. Smith, *NO CONTEST* 334 (1996).

The fact of "revolution" in law was openly asserted in 1994: "Revolutionary decisions are the result of adjudication where the judge is acting like a

legislator, though a legislator of a unique kind.". Indeed, it is contended now that constitutional law in this country has always been revolutionary: "American constitutionalism has always relied upon revolutionary adjudication in interpreting the Constitution." 42 BUFFALO L. REV. 317, 380-381 (1994)

By 1995 it could be stated: "Almost a quarter of Americans work in public schools as students or staff." David Tyack & Larry Cuban, TINKERING TOWARD UTOPIA: A CENTURY OF PUBLIC SCHOOL REFORM 141 (1995).

Throughout the confirmation proceedings for the last two Supreme Court nominees, Holmes was invoked as a model judge. Thomas C. Grey, Molecular Motions: The Holmesian Judge in Theory and Practice, 37 WILL. & MARY L. REV. 19 (1995). Ruth Bader Ginsburg pledged to "continue to try to follow the model Justice Holmes set in holding that duty sacred" (to resist reading personal convictions into the Constitution). *Id.*

In 1996 the lingering legacy of British Benthamism was described: "If the greatest good for the greatest number meant anything, it was that the interests of society as a whole predominated over those of any single person or group." Daniel Lazare, THE FROZEN REPUBLIC 244 (1996).

In his January 1996 State of the Union speech, President Clinton said the "era of big government is over." Later he would say that instead we were in an era of the volunteering "big citizen." Jeff Gerth, "Smaller Government, More Liabilities," Austin American-Statesman A4 (February 23, 1996).

In his remarks celebrating Texas' 150th birthday Texas Governor George Bush told some 2,000 people gathered at the Capitol: "Texas is still the land of dreamers and doers, of rugged individualists willing to take risks." Peggy Fikac, "2,000 Celebrate Texas' 150th Birthday," Austin American-Statesman B3 (February 20, 1996). The first sentence in Hillary Clinton's 1996 village book was: "Children are not rugged individualists."

Education as we know it may soon be abolished. The plan is based in part on the Russian system of indoctrination (in the mid-1980s education exchange agreements gave the Russian our technology while they explained how to brainwash children). John Loffler, "Beyond Goals 2000: Workers for the 21st Century," Personal Update 2 (May 1997). Diplomas will be replaced by a Certificate of Initial Mastery (CIM). Without a CIM it will be virtually impossible to find work. The NCEE has stated that workers without the certificate "will be condemned to dead-end jobs that leave them in poverty even if they are working." Later it will become illegal to hire anyone without a CIM. The focus will be on lifetime learning. The work force in the U.S. will be monetarized by a national computer containing everyone's academic and psychological work profiles. This totalitarian creation, modeled after the Communist Chinese Dangan system, will also include employee career histories. There will be no exception for home schoolers -- all will be forced to participate to get a job. The system is said to be "voluntary" but states will be forced to participate or lose federal funds. The educational agenda is being driven by an interlocking set of laws, government departments and private foundations. Loffler, p. 3.

In 1997 William Greider published his latest book -- *One World, Ready or Not*. It is a call for still more government intervention with a number of interesting observations: "The deepest social meaning of the global industrial revolution is that people no longer have free choice in the matter of identity. Ready or not, they are already of the world. As producers or consumers, as workers or merchants or investors, they are now bound to distant other through the complex strands of commerce and finance reorganizing the globe as a unified marketplace." In the end nations will lose their rights too: "The capacity of nations to control their own affairs has been checked by finance and eroded by free-roving commerce, but politicians continue to pretend they are in charge." William Greider, *ONE WORLD, READY OR NOT* 333-334 (1997).

In his exchange with President Clinton, on October 29, 1997, Chinese President Jiang Zemin answered a question about Tiananmen Square by saying pragmatically that "it is relative."

"Remove not the ancient landmark, which thy fathers have set."

-- Proverbs XXII

"A nation of well informed men who have been taught to know and prize the rights which God has given them cannot be enslaved. It is in the region of ignorance that tyranny begins."

-- Ben Franklin

"We can't be so fixated on our desire to preserve the rights of ordinary Americans."

-- President Bill Clinton (USA Today, March 11, 1993, p. 2)

"When we got organized as a country and we wrote a fairly radical Constitution with a radical Bill of Rights, giving a radical amount of individual freedom to Americans . . . "

"And so a lot of people say there's too much personal freedom. When personal freedom's being abused, you have to move to limit it. That's what we did in the announcement I made last weekend on the public housing projects, about how we're going to have weapon sweeps and more things like that to try to make people safer in their communities."

-- President Bill Clinton (The Free American, April, 1997, p. 3)

"When a society is perishing, the true advice to give those who would restore it is to recall it to the principles from which it sprang."

-- Pope Leo XIII

"People will not look forward to posterity who never look backwards to their ancestors."

-- Edmund Burke

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