

THE
PRINCIPLE
OF
NON-INJURY

Better government
for a better world.

In the politically developed nations today
there is a growing desire for a new politics
of universality and collaboration, administered by
a lean, efficient and disciplined government.

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DEFINITIONS

Defining Politics - Political Conflict - Conflict and Solutions

Defining Politics

There are three major areas of challenge in our lives.

First is the provision of our physical needs such as food, clothing and shelter; second is the pursuit of our spiritual evolution; and third is the regulation of our contacts with one another. These three Areas of science and endeavor can be called Physical, Spiritual, and Political, three clearly definable categories each with its own specific problems and solutions.

Before anything else we need bodily sustenance: we need food, clothing, shelter, and all the other products and services necessary or desirable for physical maintenance. This is the Physical Area of science and technology, where we are concerned with meeting the challenges of research, invention and production in order to provide our many and varied physical needs as efficiently as possible.

In the Spiritual Area we are in the individual's private space of mind, intellect and spirit. Here we are concerned with mental, intellectual and spiritual growth, self-understanding, and a view of the individual's place in evolution and the wider universe.

It is possible for a hermit or an island castaway to pursue his or her Physical and Spiritual ventures entirely alone, producing physical needs through self-sufficiency and meditating in solitude. Politics would have no relevance in such circumstances.

But where there is contact between people there is the possibility of conflict, which leads to a further dimension: politics.

The Political Area is concerned with resolving potential or actual differences between people: matters of personal liberty, of trade and commerce, wages and prices, the apportionment and use of natural resources.

Physical, Spiritual, and Political. These three Areas, while clearly definable as separate entities, inter-relate in a number of ways.

For example, Spiritual development is dependent on the prior condition of physical bodily health. A story is told of the Buddha meditating in the forest. His meditation was not going well and he found difficulty in concentrating. A woman passed by carrying some food, and seeing the holy man in meditation, placed an offering of food before him and continued on her way. After he had eaten, the Buddha found that he was much better able to concentrate on his meditation.

We can most certainly do exercises which discipline the body and the demands it makes upon us; the Japanese branch of Zen Buddhism particularly stresses this aspect of training. But the fact remains that we are in physical bodies which require sustenance, an amenable temperature, and shelter from the extremes of the elements. If the body is not properly protected and maintained it will not function, physically, mentally or spiritually.

It is also necessary to have time and opportunity for the pursuit of spiritual matters, in surroundings of relative tranquility conducive to spiritual thought. This too may be difficult when work and commuting leave little time for other pursuits, or when the home is located in a noisy city street. Spiritual Evolution is dependent on a prior condition of Physical Wellbeing.

An inter-relationship can also be seen between Politics and the Physical Sciences.

The most obvious inter-action between technology and politics exists in employment and trade. Technology invents the products and processes, the "new and improved" washing powder, the computers and the laser discs, the scanners at the supermarket checkouts. These are the products of science and scientists working in the field of the Physical Sciences. But then we move into the area of production and distribution in a complex division of labour. Employment and trade, wages and prices, safety and quality standards: these now become political matters, relationships between people.

Technology is constantly striving to bring us new products and services. But good politics can also help. A just and fair political system will encourage industrial collaboration rather than confrontation, thus tending to produce greater prosperity. This is especially true in today's working conditions where intelligent and positive collaboration in industry can so greatly enhance productive efficiency. In this case, Good Politics can help to improve our productivity and thus Physical prosperity.

Historically there is also a relationship between Physical plenty and Politics in terms of social conduct. It has generally been the threat of starvation or insufficiency which promoted wars throughout history. Societies in which everyone is prosperous do not tend to make wars, and their citizens do not steal. Physical Sufficiency makes for better national and international Political relations.

Spiritual Evolution can be affected by Political conditions, particularly if one's personal choice of religion, or if religion in general, is suppressed by Political decree and enforcement.

Good Politics can also be seen as having certain features in common with the broad principles of Religion, and here too there is an inter-relationship. Most religions, while dealing mainly with personal conduct, self-awareness and evolution, will also advise on proper conduct towards others, as for example in counseling that we should respect others as we would have others respect us. Mutual Respect, a feature of most leading religions, can also be seen as a basis of Good Politics.

The basing of law upon religious principles was common throughout the Middle Ages, and though the connection was lost when politics became increasingly "technical" following the industrial revolution, it may nonetheless be said that a strong sense of morality in the religious or spiritual area can provide some guidance for correct social and political conduct.

Politics too, at least in its ideal state, has its own form of morality in defining principles of justice, fair and honest trade, respect for one another and for the environment. So it might also be said that a political system which is based on high social principles of mutual respect and honesty towards others provides a good basis for individual spiritual evolution.

The recognition of these three Areas and the ability to distinguish between them (despite the often complex inter-relationships) is important in that religious, technological and political problems have different solutions.

When a man is starving because he is voluntarily undertaking a religious fast in the belief that it will purify his soul, that is a purely religious matter. Its harm or its benefits may be argued on purely religious grounds.

When people are starving because their crops fail as a result of cumulative mis-use of the land, the problem is technological and its solution lies in developing techniques of improved land husbandry.

But if those same people are starving because they have no land to cultivate, all the best land having been taken by a few influential families for the mass cultivation of export crops, that is a political matter. These people's need is not for technological advice on land use, but for a political solution in the form of fairer distribution of the nation's natural resources. This is a problem which can be seen in many developing countries today causing unrest, instability and frequently revolution.

Physical problems require technological solutions.

Spiritual problems require meditation or spiritual guidance.

Politics is concerned with relationships between people; political problems are caused to people by the actions of other people, and are addressed through political policies, laws and their enforcement.

Physical, Spiritual, Political: three Areas of science and endeavour in human development. Closely inter-relating in many complex ways yet clearly identifiable as separate entities, each Area having its own specific problems and its own specific solutions.

Where do we stand in each of these three Areas today?

The provision of Physical needs has always been mankind's major preoccupation here on Earth. Our earliest ancestors began with minimal technology, living primitively in caves, eating whatever was available from day to day. Throughout the greater part of human history insufficiency has generally been the rule.

This very insufficiency provided the impetus for Physical and Technological development. It also had a major influence on Politics: the insufficiency of Physical wealth has long provided an incentive to seek personal gain at the expense of others, leading to enslavement and war.

But history moves on, and today we have in our present world a level of technology potentially capable of giving us all a relatively high standard of living and leisure.

Our productive and distributive institutions do not always take advantage of the latest technology, but there is no doubt that technologically speaking we currently have in our world the knowledge and capability to provide for ourselves a comfortably high standard of living, and we can see a growing prosperity in the leading industrialized nations. Technology itself has already succeeded in giving us potential prosperity.

If this prosperity has not spread throughout the world it is more likely the fault, not of technology, but of politics in the form of inappropriate political systems, mis-use of resources, ineptitude and corruption in government.

In many of the politically less developed countries the quality of government varies from arrogant ineptitude to corruption and brutality.

Our western democracies give us stability and a veneer of prosperity. But while governments take an ever-increasing share of citizens' incomes, they remain incapable of ensuring for their citizens the basic necessities of employment, an affordable home, environmental protection, industrial and monetary stability, and a general social climate in which everyone can give of their best for a fair reward.

As we review the condition of our world today, there can be little doubt that political research and reform is the area in which we should focus our attention.

Political Conflict

Politics is broadly concerned with contacts and relationships between people; more specifically it is concerned with conflicts between people.

If we begin by considering a situation in which one person is living in near-isolation without any contacts or relationships with others (there are a few areas of our crowded planet in which this is still possible!), we can then observe the introduction of a second person "in slow motion" in order to examine the issues and conflicts which might arise.

In a remote area of wilderness, high among the hills and green trees of America's Rocky Mountains, a hermit is living a quiet life in his log cabin, practicing the arts of self-sufficiency.

The provision of his Physical needs such as food, clothing and shelter will doubtless occupy the major part of his time and energy. In surroundings of peace and natural beauty he may also take time to reflect upon Spiritual matters: his own evolution, his relationship with nature, his origins and purpose.

Politics and social relationships need not concern him. He will have little need to consider the effects of his actions on others, since in his world there are no others... until one day he finds he has a new neighbour not so far away who is also, it appears, seeking solitude and self-sufficiency.

At first they both try to ignore one another, concentrating on the provision of their own individual needs, the enhancement of their own lives and wellbeing. But contact and conflict appear inevitable. The quiet meditation-time of one is disturbed by the other chopping wood. The boundary lines, unofficial demarcation of what is otherwise public land, cause friction as one of them attempts what the other considers to be unreasonable territorial expansion. An exchange of fruit causes further enmity when it transpires that good plums have been traded for rotten apples.

What began as a peaceful corner of the woods, in which one or two individuals chose to live out their lives quietly providing for their physical and spiritual needs without affecting one another, is now threatened by social conflict.

When we live together, share the environment with one another, interact with and relate to one another as neighbours, in commerce or industry, it is likely that some of our actions may be injurious, harmful, or simply a nuisance to others.

Sometimes we cause harm or pain to others without even knowing it. Sometimes we know it but we go on doing it anyway.

And frequently we do it on purpose for the benefit we gain from it; we steal other people's goods, we injure those whom we dislike, or we deceive customers in trade because there's a good profit in it.

The potential differences and conflicts which can arise between people in a complex society may appear limitless as indeed they are. But we can be quite precise as to the fundamental cause of political or social conflict: it is that one person is doing something which is to his or her advantage, but which is to the disadvantage of another or others.

If an action by one person has no effect on others there will be no conflict; indeed it would not be a political act at all.

If one person's action affects others but is to the advantage of all concerned, there will be no conflict, and everyone is happy for it to continue.

Similarly if one person's action is disadvantageous for everybody, the person committing the action included, there will be no incentive to continue, so peace can quickly be restored and once again there is no conflict.

Political conflict arises when an action by one person is to their own advantage or profit, but is harmful, detrimental or injurious to another or others. This results in gain to one at the expense of loss to others.

Conflict exists because the person committing the action and benefiting from it naturally wishes it to continue; while those suffering injury or disadvantage from it would like it to stop.

Actions or activities which improve the wellbeing of some at the expense of others, actions which give advantage to some by causing disadvantage to others: these are the fundamental causes of social conflict and lie at the very heart of politics.

There have been many names for such actions through the ages.

Slavery and *feudalism* were institutionalized forms of work- or wealth-transfer. Following the industrial revolution, socialists used the term *exploitation* to imply that the owners of mines and factories were profiting at the expense of their workers' poverty.

Yet another term for harm or injury caused to others while seeking one's own benefit is *infringement of liberty*, which is caused when expansion of one person's liberty is brought about through the invasion or infringement of the liberty of others.

We may also use the simple term *imposition* in the sense that one person is imposing his or her will upon another or others. Simpler yet is *injury* when the actions of one are injurious to another or others.

Whatever we may call it, the essential, distinguishing element in political conflict is *advantage/disadvantage*. Political conflict arises when an action by one person or party is to

their own advantage or profit, but is harmful, detrimental or injurious to another or others, resulting in gain to one at the expense of loss to others.

Conflict and Solutions

Social relationships, political policies and the machinations of government may appear infinitely complex; yet the fundamental cause of political conflict is simple and there are only two possible solutions.

Social or political conflict between people is caused by acts of *injury* which are initiated when an action which is advantageous or beneficial to one, is harmful or detrimental to others.

The resolution of political conflict presents two alternatives: acts of *injury* or exploitation can either be continued, or they can be avoided.

The first alternative is for the individual to continue with the action, enjoying the benefit derived from another's loss, but risking the other's anger and retaliation.

The second alternative is to avoid such actions. This requires the practice of self-discipline and self-restraint; but benefit is gained by everyone when we all respect one another and avoid harming one another.

The path we take is a matter for individual choice at each moment. Societies and nations also make group choices which are reflected in the laws and governments they establish or tolerate.

Individuals in a position to do so may pursue the path of *injury* in a society and under laws which permit it.

Where society and its laws identify and prevent those actions which are harmful or detrimental to others, then such actions must of necessity be avoided.

Injury versus *non-injury*. The implications, advantages and disadvantages on both sides are complex.

The path of *injury* is immediately and clearly attractive.

Because the action is beneficial to the person committing it, it is clearly in his own interests for the *injury* to continue. And throughout history mankind has sought to exploit and impose upon fellow man.

But those who are wronged will not tolerate injustice indefinitely, and retaliation will surely come. It may be instantaneous, or it may be a long, slow process of class revolution. But revenge will come. And in the meantime social and economic progress will be retarded; injury and counter-injury, theft and counter-theft, confrontation, civil strife and war... no civilization was ever built or flourished on foundations such as these.

The path of *non-injury* is not immediately attractive. It requires the practice of considerable self-restraint and self-discipline. It requires that we monitor our actions in order to consider whether

or not they are harmful or detrimental or simply a nuisance to others – our family and friends, our neighbours, our co-workers, our customers, those with whom we share the environment.

And having monitored our actions and identified those which are harmful to others, we must then avoid such actions, and forgo the pleasures or advantages or convenience or financial profit they might bring us.

But if we were all to observe the path of *non-injury*, we would all enjoy a condition of liberty and social stability, secure in the peace and prosperity that comes from life in a society where people respect the lives and liberty of one another. We would make rules which guide us towards personal conduct which is not detrimental to others; we would allocate resources fairly; in business we would collaborate rather than confront, we would give our best to our customers.

And in so doing we would not only live in peace, we would also create a greater prosperity, for prosperity grows through cooperation. Indeed the flowering of civilization in all its aspects is dependent on a foundation of liberty deriving from mutual respect.

The path of *non-injury* is not immediately attractive; but it is the path of long-term peace, stability, liberty, justice, prosperity, and the upward progress of civilization.

For the two mountain wilderness residents considering their condition of political discord, the solution of *non-injury* would require the two parties to devise a set of fair rules whereby both can enhance their own wellbeing either individually or in productive collaboration, but without diminishing the wellbeing of one another.

Both can use the natural resources, but they must share them equitably. The trading of surplus produce can help both to improve their wellbeing, but trades have to be fair. Life for each must go on, but each must be aware of and respect the property, privacy and peace of the other.

With rules such as these agreed and in place both could then live as neighbours in relative harmony, which would be an obvious advantage. The disadvantage is that this new lifestyle requires limitations and disciplines. If they are to live peaceably as neighbours they cannot live and act totally freely as they would if both were isolated.

Many are unable or unwilling to accept this principle of social conduct. It requires a degree of personal restraint and self-discipline; and those who consider that they have the strength or the cunning to get the better of their fellow beings may be unwilling to renounce this opportunity and the potential wealth it might bring them.

But it is a lesson which, in a civilized society, we all have to learn eventually; in our relationships with one another our freedom cannot be absolute and unlimited. Rather, it must be tempered by rules of conduct which ensure that each of us respects the freedom of others.

So political conflict presents us with a choice.

Do we take the *non-injury* solution, opting for fair rules and a general peace, accepting a degree of social discipline, relinquishing the opportunity to gain at the expense of one another and thus living together in positive and productive collaboration?

Or do we take the *injury* solution, relying on personal power and taking our chances in an unregulated world, perhaps becoming extremely wealthy at the expense of others, or perhaps being robbed some dark night and losing everything in a world of near rule-less conflict?

The solution of *non-injury* is motivated by reason and ideals; its reward is the maximization of the general liberty.

The solution of *injury* is motivated by the desire for self-aggrandizement untempered by concern or respect for others; its result is the continuing conflict and instability of gain and revenge, social and industrial strife, and wars between nations.

Injury versus non-injury. This is the fundamental choice in politics.

It is a choice we must continually make in our daily personal relationships with one another. Do we respect the lives and choices of others, or do we attempt to impose our own decisions upon them? Do we deal honestly in business, or do we attempt to get the best we can out of customers or co-workers, whether honestly or dishonestly? These are individual choices which each can make for him- or herself.

Individual choices are also reflected collectively in the form of government which people either tolerate or purposely create. Do we seek a government guided by policies which maximize liberty for all by identifying and preventing those actions which are harmful to others? Or do we support a government which furthers the interests of our own group or class at the expense of others?

Politics has long been understood by idealists and political thinkers as the science whereby differences between people are resolved according to principles of universal justice, creating and maintaining a social environment in which all can enjoy the maximum liberty to pursue personal goals in collaboration with, but not to the detriment of, one another.

Such at least is an ideal view of law and government, and it may well be that we are now approaching the time when principles of universal justice and the maximization of the general liberty might gain increasing acceptance.

But this has not been the historical course of our political development. Mankind long ago rejected the ideals of universal liberty, choosing in what might be called the *original sin* of social and political conduct, the path of *injury*, as each individual attempts to enhance his or her own wellbeing at the expense of others by the use of personal power or through manipulation of the legislative process.

It was a course chosen at the dawn of political history; and though in the politically developed world at least we now conduct our affairs more elegantly, the fundamental direction of intent has not yet been reversed.

Politics today is the art of getting what you want.

2

IMPOSITION

A Predatory Society - Slaves and Serfs - Industrial Poverty

A Predatory Society

As the sun sets in a blaze of orange giving way to the cool of evening, a mosquito appears from beneath some dark green leaves where she has been resting during the heat of the day. She flits around in her three-dimensional waltz movement, humming a high-pitched tune to herself. She wants some blood to assist her reproductive functions.

She finds some humans sitting in a group on the lawn in front of the house. Fortunately they are all engaged in lively conversation so no one notices her. She makes her choice and at once inserts her needle-sharp, needle-strong proboscis deep into a tender patch of skin behind the ear. In a moment she is gone, her benefactor raising a hand unconsciously to scratch the irritation she has left behind.

The mosquito is a predator. She is not alone. We live in a predatory society.

The mosquito's lust for blood is reflected in man's age-old propensity to grow rich by drawing upon the work and wealth of fellow men. Look at the history of social and political institutions and what do we find? We find slavery, feudalism, and industrial low-wage exploitation.

We have consistently ordered society in ways which permit those enjoying superior wealth, background and the political influence that goes with it, to live comfortably from the proceeds of other people's toil. This transfer of work and wealth from the poor to the powerful took place through three major phases: slavery, feudalism, and low-wage industrial employment.

In early Greek and Roman times, a gentleman owned slaves; in the Middle Ages he owned land which was worked for him by peasants who were bound to him; in Victorian times he owned factories, paying workers barely enough to buy food and shelter.

Then Karl Marx and friends invited the "poor masses" to throw off the yoke of oppression, turn the tables and plunder the riches of their old masters. And this, encouraged by the newly invented doctrines of Socialism and Communism, they did.

Society became divided politically into two classes, Rich and Poor, Right and Left. Democracy or more accurately, Majority Rule, gives each side an opportunity to express and apply its own sectarian interests. The Right seeks to perpetuate its own advantages, while the Left enlists the power of Government to provide subsidies or welfare which someone else – anybody or everybody, this generation or the next or the next – will have to pay for. We all have our personal wish-lists of very worthy and highly justifiable needs; and if we can get others to pay for them, all the better.

Whether autocratic monarchy or dictatorship, constitutional or democratic, government was not and is still not instituted by idealists to protect the general liberty.

The history of politics and social relationships is a history of continuous imposition exercised by people over one another, with government "turning a blind eye", or with government's active

participation – a fact of political life which still holds true today, to a much greater extent than most of us realize or would care to admit.

Slaves and Serfs

There is no parallel in history to the achievement which Greek civilization attained in Athens.

This single city produced great statesmen, poets, sculptors, historians, teachers. Here the very concept of philosophy was invented and expounded. Here were created the first popular governments, in which ordinary citizens were to practice another Greek “invention”: Democracy.

Yet in this enlightened city over a third of the population were slaves, many obtained as prisoners of war or as criminals purchased from non-Greek lands around the Mediterranean. In neighbouring Thrace the people sold their children for export. As the demand for slaves increased traders roamed further afield, gathering in Persians, Egyptians and Libyans.

Slaves were used by households, landholders on large agricultural estates, in industry, and especially in the mines and quarries. At one time there were some 30,000 slaves in the silver mines and processing mills. In the large Laurion mine near Athens conditions were appalling. The underground galleries were dug only two feet square, and the miners had to crawl through them dragging their iron shackles. They worked a ten-hour day, and the mortality rate was extremely high.

Most Greek households had several slaves. Greeks spoke of the necessities of life as “cattle and slaves”. Records show that when the philosopher Plato died he left five domestic slaves in his will. His pupil Aristotle left fourteen. The very rich would have as many as fifty slaves in their households. Many household slaves would have been treated relatively well; but as slaves they were the property of their masters who “owned” them and had the right to demand their work and its products. The wellbeing of the master was built in part upon the work and consequent diminishing of his slaves.

Slavery was also to become big business. Following the successful Punic Wars with Carthage, Rome rapidly grew to a position of pre-eminence in the Mediterranean and became the centre of its trade. Chief among the commodities traded was the human slave arriving on the market in enormous quantities, bringing profit and prosperity to Rome's merchants and bankers.

Rome came to depend on large numbers of slaves to maintain its industries and agriculture. But its wealth and power rested upon untold suffering. Diodorus wrote of the conditions in Rome's gold and silver mines in Egypt: “There they throng, all in chains, all kept at work continuously day and night. There is no relaxation, no means of escape. No one could look upon the squalor of these wretches, having not even a rag to cover their loins, without feeling compassion for their plight. They may be sick, or maimed, or aged, or weakly women, but there is no indulgence, no respite. All alike are kept at their labour by the lash until, overcome by hardships, they die in their torments. Their misery is so great, the punishments are so severe, that death is welcomed as a thing more desirable than life.”

Large agricultural estates became common throughout the Roman lands, dependent upon the availability of slaves to work them. On many plantations the slaves worked in a chain-gang system. They laboured under overseers in the fields and were locked in the prison house at night.

The Roman tradition of large estates and villas continued into the Middle Ages, evolving as the feudal system. As time passed, the slaves became feudal peasants regulated by the customs of the manorial system, and no longer lived in the complete state of submission that typified true slavery.

The peasants in the Middle Ages were called serfs, from the Roman word *servus* or slave. The serf was a “bound” tiller, who was compelled by the conditions of his existence as well as by law and custom to remain on the land, and to “donate” a major proportion of his time and labour to the cultivation of the owner’s fields. This is still practiced today, as can be seen for example in the share-cropping system in India.

Later many peasants gained some independence, becoming responsible for supplying their own needs, they paid rent and could now control more of their own time. However, peasants remaining under the feudal system might even have counted themselves fortunate; as the manorial estates grew ever larger during the Middle Ages, and independent holdings dwindled, so rural poverty among those outside the feudal system became widespread.

But other influences were also at work, and as the 1700s drew to a close agriculture would now give way to industry as the engine of production and trade, and land would be replaced by machinery as the source of wealth.

Industrial Poverty

The new industrial era in Britain began in one of the oldest of all industries, the spinning and weaving of cloth. This had traditionally been a small-scale cottage industry. 1785 saw the invention of the power loom, which could weave automatically and much more cheaply. The hand weavers could no longer compete, and were forced by threat of starvation to move from their village homes to the crowded tenements of factory towns, where the over-supply of labour gave the factory owner the opportunity to employ them at minimal wages for long hours.

As the factories increased their output, so their capital costs per unit fell; and with the ability to pay low wages, factory owners found their overall production costs steadily falling. They were also able to maintain high prices; thus the profits and the wealth of the factory owners could only increase. The wealthy became wealthier, the poor remained poor.

The political doctrine of *laissez-faire* prevalent in the 1700s and early 1800s, happily espoused by factory-owning members of Parliament, opposed any government intervention in industry. “*Laissez-faire*” literally means “leave things alone” which, translated into government policy, meant that no attempt should be made to regulate the price or quality of goods, nor should government fix the hours of work, or try to remedy the often dangerous and unhealthy conditions in factories.

The working classes were thus driven to embark upon a process of direct confrontation with their employers. This was facilitated by the repeal of the Combination Acts in 1824, which passed almost unnoticed through Parliament, legalizing the formation of and participation in Trade Unions.

As a result there was a sudden growth in Trade Unions, not only at local level, but also several “Grand General Trades Unions”. One of the largest of these was founded in 1833 by the great

social pioneer, Robert Owen, called the Grand National Consolidated Trades Union, which claimed at its peak up to a million members.

Another “self-help” development of this period in Britain was the creation of Co-operative Societies to avoid the ruthless profiteering by shopkeepers whose low-wage customers were eternally bound to them in credit. To assist the many newly created co-operative societies Robert Owen promoted the idea of a Labour Exchange in which products were exchanged for Labour Notes representing so many hours’ labour, and which were the only form of currency accepted.

The poor were not without their Liberal humanitarian advocates in Parliament, working throughout the 1800s to help alleviate the sufferings of the working classes.

In 1833 Britain was the first country to pass an Act of Parliament abolishing slavery. In the same year, the Factory Act was passed to prevent the employment of children under the age of nine as well as limiting the excessively long working hours of older children. This was to be the first of several subsequent Acts attempting to improve working conditions and safety.

But such efforts provided small relief against the growing tide of migration from countryside to industrial cities throughout the second half of the 1800s; urban populations increased and living conditions for the poor deteriorated. The competition for work in the factories made it possible for employers to continue paying minimal wages for long hours of work in abysmal and often dangerous working conditions, with corresponding increases in profits and dividends.

While London’s developers built ever more fine terraces of fashionable homes for the wealthy, the working people spent twelve hours a day in the factories, earning barely enough for minimal food and shelter, living in the expanding areas of urban squalor which the poor accepted as their lot, and which the wealthy knew little or nothing about.

On the morning of September 24th, 1849 wealthy Londoners sat comfortably at their breakfast tables, with bacon and eggs, kippers and fish kedgeree awaiting their pleasure in heated chafing dishes, oven-fresh buns kept warm in covered baskets, freshly brewed tea or coffee steaming in delicate china cups. Passing the Seville orange marmalade and exchanging light conversation, many would also be scanning London’s *Morning Chronicle*.

Among the social tidbits, the Military Appointments, the Court Circular and who was wearing what and seen with whom, readers were to find an article contributed by one Henry Mayhew who had just returned with tales of horror from a land, not distant, but only a few miles away in their very own city of London.

This was to be the first in a year-long series which became one of the most thorough surveys of labour and conditions in working-class London during the mid 1800s and was to be influential in formulating the new ideas of Socialism.

The first article described Jacob’s Island, a section of south London already made notorious as the setting for *Oliver Twist*.

“The striking peculiarity of Jacob’s Island consists in the wooden galleries and sleeping rooms at the back of the houses which overhang the dark ditch that stagnates beside them. The houses are built upon piles flanking a sewer; little rickety bridges span the huge gutters and connect court with court. The water of the huge ditch in front of the houses is covered with a scum almost like a cobweb, and prismatic with grease. In it float large masses of green rotting weed, and against

the posts of the bridges are swollen carcasses of dead animals, almost bursting with the gases of putrefaction. As I gazed in horror at it, a bucket of night soil was poured down from the next gallery.

“In a place called Joiner’s Court, with four wooden houses in it, there had been as many as five cases of cholera. Here, I was taken up to a room so dark, that it was several minutes before I could perceive anything within it, and there was a smell of must and dry rot that told of damp and imperfect ventilation, while the unnatural size of the pupils of the wretched woman’s eyes showed how much too long she had dwelt in this gloomy place.”

In an issue of *Punch* the following March the distinguished author of *Vanity Fair*, William Makepiece Thackeray, remarked about these articles on *Labour and the Poor* written by Mayhew for the Morning Chronicle:

“Of such misery as this, do you confess you had no idea? How should you? You and I, we are of the upper classes; we have had hitherto no contact with the poor... until... some clear sighted energetic man like the writer of the Chronicle travels into the poor man’s country for us, and comes back with this tale of terror.”

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While the consciences of reformers both in and out of Parliament were stirred into further acts of charity and legislation, the concept of politics as a science for regulating contacts between people to establish a climate of social justice clearly did not yet exist. Parliament was still controlled by the rich and the powerful, and laws were supported or opposed which furthered their interests.

The evolution of politics and political institutions has been a slow and often painful process, and the politically developed countries and societies today can look back on several centuries, indeed a full millennium plus, of political development.

3

POLITICS

Centralized Rule - The Great Charter of 1215 - Parliamentary Supremacy

Centralized Rule

When mankind chose the path of self-interest wherein people continuously attempt to impose their will on one another, rather than the universal ideal of maximized liberty for all, the initial natural development was a condition of anarchy in which differences are settled between individuals and power groups through a trial of physical strength without the formal intervention of society, law or government.

The word *anarchy* is defined in the Oxford Dictionary as "absence of government; disorder; confusion". It is derived from the Greek *an arkhos* meaning *without leader*. Left entirely to their own devices people can, and will, injure, steal from and cheat one another. Then follows revenge, and counter-revenge. And so it continues. Civilization cannot develop without reasonable safety of person and property, without the stability of some agreed and enforced rules of conduct. Life is at best difficult, at worst intolerable.

The condition of anarchy still persists in many parts of the world. In the younger, less developed nations we learn frequently of a breakdown in law and order, either as a semi-permanent condition resulting from the impotence or non-existence or corruption of a central government, or in times of revolution or tribal conflict.

The first, fundamental step in political development is the movement from total lawlessness, or anarchy, to some kind of centralized law and order. The politically developed nations have long accepted the concept of a central authority or government, and the Rule of Law which sets restraints upon the scope of people's actions.

When power, that is the ability to physically influence the behaviour of others, is centralized, the Rule of Law is thus imposed. Instead of individuals arguing and settling their differences in a continuing series of battles based on personal power, the authority to establish decisions on social conduct together with the power necessary to enforce them is vested in a centralized institution – a Monarch, Dictator, or Parliament.

Society can benefit from the stability afforded by centralized Rule of Law. And if Government can formulate and enforce fair, just and universal rules of social conduct, citizens will be able to live at peace with one another in positive and productive collaboration.

But the temptation to gain at the direct expense of others remains, and throughout history – up to and including the present day – centralized power has been used by the rulers themselves, or by those influential in the exercise of power, to further enhance their own wealth at the expense of others by permitting and indeed institutionalizing social systems such as slavery and feudalism.

Nonetheless, the ideals of universal justice in law have been kept alive and actively pursued by reformers throughout history, though their progress has necessarily been long and often painful.

As Centralized Power takes over from Anarchy it generally takes the form of an autocratic, dictatorial rule by one strong man and his supporters. In Britain's case the earliest form of central political rule was an Absolute Monarchy. Clearly the first step for reformers must be to try and impose some degree of discipline over the Monarch in order to render his rule less "absolute".

Three major objectives of discipline over the Monarch were to be developed by reformers and pursued consistently over several centuries: the obligation to rule responsibly, to rule in consultation with his peers, and to conduct himself within the bounds of established law and custom.

These three guiding principles would come to form the very essence of the Anglo tradition of Constitutional Rule.

The Great Charter of 1215

A thousand years ago, in late Anglo-Saxon times, England was united into one Kingdom ruled by a King and his Council, and the institution of Kingship was already established as having limited powers.

The King was bound by his Coronation Oath to defend the Church, to punish crime and violence, and to rule with clemency and mercy. He was also bound by customary rules of law, and to some extent his power was restricted by his Council. He was viewed as a religious and moral leader, a protector of the people in war and in peace.

Following earlier tradition, the English King was not generally regarded as a source of law, although occasionally he might declare a law with the consent of his Council or issue written laws called "Dooms". The great body of Anglo-Saxon law was the unwritten folk law, handed down from one generation to the next, giving the common people rights and duties of what we would today call citizenship, and setting out procedures for determining fault or guilt and methods of punishing wrongdoers. While change was not impossible, arbitrary alteration of the rules was considered improper, and indeed, bordered on impiety.

This tradition did not of course preclude the frequent occurrence of abuse by Monarchs keen to enhance their own powers, or simply reluctant to recognize any form of constraint over their conduct. In such cases it would be the powerful Barons and Clergy who would bring the King to order in the name of Constitutional custom, reinforced by a growing body of written Constitutional documents agreed by the Kings either freely or under pressure.

When Henry I acceded to the English throne in 1100 his first aim was to secure his claim more firmly by pacifying the people's and particularly the Barons' anger, which had been roused by the irresponsible and expensive conduct of his predecessor William Rufus.

Henry therefore issued a Coronation Charter, also known as the Charter of Liberties, in which he promised to observe the Feudal Code and to correct the abuses of his predecessors against the Barons and the Church. He further commanded the Barons, his tenants-in-chief, to behave in like manner to their own tenants. Most significantly, he made the benefits of the Charter applicable to all his subjects: "I henceforth remove all bad customs through which the Kingdom of England has been unjustly oppressed."

While the Charter was no more than a proclamation of intentions and promises binding only insofar as Henry saw fit to observe them, its form – a written Royal Grant – gave it legality and lasting significance. Its chief importance was its admission by the King that even his royal powers were limited under the feudal contract. It also helped to strengthen the principle of defined and disciplined Constitutional Rule, and as such it was to be influential in the formulation of a later and much more famous constitutional document: *Magna Carta*, the Great Charter sealed in 1215 by King John.

The youngest child of Henry II and Eleanor of Aquitaine, John was born in Beaumont Palace, Oxford on December 24th, 1167. When his elder brother King Richard the Lionheart died, John succeeded to the throne on April 6th, 1199. He was crowned in Westminster Abbey on the 27th of May in that same year.

Richard the Lionheart had been totally preoccupied with foreign wars, holy crusades and French conquests, and had given very little time or energy to the affairs of his own country. As a result the Barons, Knights and Free Men had to a large extent become the true governors of England, governing in Council – though all was still done in the King's name.

At first John neither diminished those powers nor undermined the authority of the Council, and for a while England enjoyed the twin advantages of both the old form of government and the new: a strong and active King, and a powerful Council within which the voice of the subjects could be heard and from which power was to pass to the Knights of the shires and to all free men.

Shortly after John's accession however, the King of France had invaded Normandy, of which John was Duke, then furthering his conquest throughout all the other provinces of the English Kings. John fought expensively but unsuccessfully to defend his lands and by 1204, five years after his accession, Normandy, Anjou and Maine were lost. All that remained were the Channel Islands and the province of Gascony. The Barons, now deprived of all but their English possessions, were angered by the King's defeat. They, as well as humbler men, were shocked and humiliated by the nation's losses. In derision they nicknamed the King "John Lackland". More seriously, the Nation now had to pay for his unsuccessful wars.

In 1205 John rejected the Pope's nomination of Stephen Langton as Archbishop of Canterbury. A Papal Interdict was laid over the whole country in 1208 and John was excommunicated. John was forced to submit at last by resigning his kingdom to the Pope and receiving it back as a fief of the Papacy before the Interdict and Excommunication were ended in May 1213, another humiliating experience for the nation.

In 1214 John conducted a further campaign in France and suffered a catastrophic defeat at Bouvines. During his absence the Barons banded together under the leadership of Stephen Langton to protest against the longstanding misgovernment of the realm.

Gathered at Bury St. Edmunds in November 1214, the Barons agreed to petition the King to grant the liberties and laws set forth in the Coronation Charter of Henry I, swearing that if he refused they would renounce their allegiance to him and go to war.

In January of 1215 a deputation of Barons placed a list of their demands before the King. Dressed in full armour they would have left the King in no doubt as to their mood. King John asked for and was granted three months to consider "these weighty matters". But his ultimate

response was clear: “Why, among these unjust demands, did the Barons not ask for my Kingdom as well? Their demands are vain, foolish, and utterly unreasonable.”

This was taken as a declaration of war. On May 17 the Barons’ army marched on London; the city opened its gates to them and they were joined by many others who had hitherto stayed out of the conflict. The King took refuge in Windsor castle where he became a virtual prisoner. John sent emissaries to the Barons, this time with the message that he was willing to grant the Charter of Liberties they demanded.

On June 10th the two parties met on neutral ground in a green meadow by the River Thames at Runnymede, midway between the King’s castle at Windsor, and London which was now the Barons’ stronghold. The name *Runnymede* suggests that this was not the first time councils had been held there; the first part is an old English word *Runieg*, meaning *Council Island*.

After considerable negotiation a preliminary document was formulated, briefly listing forty-nine points upon which the King was willing to yield. To it King John attached his seal and upon the basis of that initial document a formal Charter was to be drawn up for signature by the King at a further meeting a few days later.

The title of this preliminary document is significant. It read: *These are the Articles which the Barons require and which the King concedes*.

King John had been compelled by force of arms to comply with the demands of the Barons who had risen in armed and successful rebellion against him, and the preliminary heads of agreement recorded that the King *conceded* the demands which the Barons *required*.

Yet the final, formal version of the Great Charter which John sealed a few days later on June 15, the Charter we know today, begins with a greeting from the King to his *Loyal Subjects*, and records that he has acted with their *advice*. This change in wording clearly shows that the stability afforded by recognition of the Monarchy was considered as important as its reformation, and nothing was done to diminish the apparent authority of the King even in the hour of his humiliation and defeat.

With the formal signing of the Charter, the Monarch had confirmed the essential principles of Constitutional discipline: the obligation to rule responsibly, to rule in consultation with his peers, and to conduct himself within the bounds of established law and custom. And this had been achieved without a reversion to anarchy.

The Magna Carta was now dependent for its observance largely on the Monarch’s goodwill, which was not always forthcoming. But in one respect at least, the King’s subjects had a degree of leverage; it was upon them that the King depended for money to carry on his government and foreign wars, not to mention maintaining his lavish royal lifestyle.

Clause 12 of Magna Carta had already made the raising of taxes (*aid or scutage*) dependent on the *general consent* of the Kingdom, and Clause 14 laid down the method whereby the general consent of the Realm was to be obtained. “ *For the assessment of an aid or scutage we will cause the Archbishops, Bishops, Abbots, Earls, and Greater Barons to be summoned individually by letter... to come together on a fixed day and at a fixed place*”.

The periodic convening of his influential men by the King continued during the 14th, 15th and 16th Centuries, developing gradually into an early form of Parliament which would later challenge and claim precedence over the power of the King.

Parliamentary Supremacy

By 1600 England had a recognizable Parliament; but its decisions, indeed its very existence, were subject to the King's will or whim. The focus of political and constitutional reform was now centered on the battle for supremacy between King and Parliament, in which the 1600s would prove to be a critical century. Beginning with Absolute Monarchy and ending with Parliamentary Supremacy, it was punctuated almost midway, in 1649, by Parliament's highly symbolic trial, sentencing and execution of King Charles I.

King Charles I was the central player in what was to mark the turning point in Parliament's fight for supremacy. By claiming Divine Right to autocratic rule, by scorning Parliament and frequently dismissing it he brought matters to a head, and when in 1625 he attempted to suppress Parliament by force, entering the House of Commons in person with a large body of armed men, a state of civil war might already be said to exist.

For a time however both sides attempted reconciliation – or at least the pretence of it. Yet the old tensions remained, and in December 1641 the House of Commons felt once again moved to summarize its frustrations and its aspirations in the “Grand Remonstrance”.

The Remonstrance was introduced with the words: “*We, your most humble and obedient subjects, do with all faithfulness and humility beseech your Majesty...*”. But the demands themselves were uncompromising.

The King was to deprive the Bishops of their votes in Parliament; to remove from his Council those men to whom Parliament objected, and “*to employ such counsellors, ambassadors and other ministers, in managing his business at home and abroad, as the Parliament may have cause to confide in.*”

There followed the lightly veiled threat that unless the King complied “*we cannot give His Majesty supplies for support of his own estate...*”

The Remonstrance was passed by the House of Commons; but the majority of only eleven votes and a number of strongly pro-Monarchy speeches encouraged Charles to believe that all was not lost. In 1642 he felt sufficiently strong to attempt the arrest of five members of the House of Commons for treason. He personally entered the House leading a posse of armed men to effect the arrest, but the five members had already gone by boat down the Thames to the City of London which supported reform.

Though now a matter of history in Britain, the attempted extinction of Democracy by Kings, Colonels and Presidents continues today.

“For a short while Charles tried a policy of conciliation. He abolished the rights of Bishops to sit in the House of Lords, a right which went back over a thousand years, and appointed as Councillors two men pleasing to the Commons.

“But this was in vain; and in 1642 the House of Commons went beyond the mere defence of ancient rights and sought new powers, setting their authority above the King’s. They demanded not only that Parliament was to approve the appointment of all privy councillors, ministers and judges, but that it should also control the education and marriages of the King’s children. War was inevitable.”

[*Documents of Liberty* by Henry Marsh, David & Charles 1971]

Charles raised his standard at Nottingham and the long struggle between Royalists and Reformers began in earnest.

Facing him were the Parliamentary forces which had been organized into the “New Model Army” under one Commander-in-Chief, Sir Thomas Fairfax. In overall command was Oliver Cromwell who had become increasingly important, both as a leading member of the Independent Party, and as one of Parliament’s most successful commanders playing an active role in the organization and training of troops.

The Royalist troops were finally overwhelmed by the New Model Army at Naseby in 1645. Charles surrendered to the Scots in 1646 and was promptly handed over to the English.

After an imprisonment in Carisbrooke Castle on the Isle of Wight, he was brought to trial in Westminster Hall before a specially constituted tribunal of judges with as much pomp and ceremony as the King’s opponents could muster.

The contradictions which existed and became clear during the course of the King’s trial were wholly predictable, reflecting as they did the contradictions inherent in the very concept of Constitution.

The ideal that power should be used wisely and within defined limits need not be questioned; yet this can hardly be achieved by subjecting the Monarch to another Monarch, or to any form of personified superior power. The only superior power to which an autocrat can be subjected is the power of principles and ideals, given tangible form as a written document, or in England’s case, the sum total, both written and unwritten, of ancient custom.

But if the Autocrat fails to obey this code of ideals, who can try him, and by what authority?

These contradictions were fully exploited by the King; they were also reflected in the differences and doubts within Parliament, and in the attempt by Parliament to stage a “special proceeding” resembling the not-yet-invented Supreme Court of the United States.

The trial was fully recorded in contemporary accounts, and is reconstructed by the Rt. Hon Lord Denning, Master of the Rolls, in his book *What next in the Law* [Butterworths, 1982]:

“When Charles I was on trial for his life, the Lord President of the specially constituted High Court of Justice was John Bradshaw. With him were 150 Commissioners. He was a Serjeant-at-Law of some eminence. He was treated with all the forms of judicial state, decorated with a scarlet robe, a sword and mace were borne before him. If you should read the report in the State Trials you will see that John Bradshaw repeatedly quoted Bracton: ‘The King is under no man, but under God and the Law’.”

Both Bracton, writing in the early 1200s, and Bradshaw four hundred years later were stressing the second part of this phrase, namely that the King was responsible to God (which placed upon

him a duty to rule wisely) and the Law (requiring that he conduct himself within the laws and customs of the land).

The King on the other hand, stressed the first part of the phrase. Claiming that he was “under no man” the King refused to plead, denying that the Court was competent to try him.

“Refusing to recognize the legality of a Court which could try a King, Charles declined to plead and was found guilty by 68 votes to 67, a majority of only one. A sentence of death was passed and on January 30th, 1649, Charles walked from St James’s Palace, where he was last confined, to Whitehall, where a scaffold had been erected outside Inigo Jones’s elegantly proportioned Banqueting House.

“Charles wore two shirts, for it was a cold day and he said if he were to tremble from cold people might mistake it for fear. He entered the Banqueting House and stepped onto the scaffold from a first floor window. He was attended by Bishop Juxon, to whom he spoke his last word, ‘Remember’. When his head was severed from his body a great groan went up from the assembled crowd and people pressed forward to soak their handkerchiefs in the Royal blood. The cult of the Martyr King had begun.”

[*Kings & Queens of Britain* by David Williamson]

The execution of Charles I in 1649 was a dramatically symbolic turning point. It represented a final denial of the Divine Right of autocratic Monarchs and the assertion of Parliamentary supremacy.

But at the same time, the act of inherent violence both to the King and to all that he represented was a stark representation of that very constitutional disarray which the English had always tried to avoid.

Had they been asked, the ordinary people would undoubtedly have voted overwhelmingly for some kind of compromise between King and Parliament. Given the personalities involved this would probably not have worked; but neither did the alternative, for the Republic which followed was not destined to be a success.

Serious tensions soon began to develop between the Army and what was left of Parliament; and Cromwell, who had with the support of the Army set himself up as “Lord Protector”, gave every impression of becoming himself an autocratic ruler.

Reacting to mounting opposition and renewed Royalist plots, Cromwell put the country under the regional military control of eleven Major-Generals. Soon becoming equally unpopular, the reign of the Major-Generals was replaced after two years by a new Parliament, though it was subject to continuing disputes with the Army over access to power.

For ten years England suffered the uncertainties, instability and indignity of a Military Republic and near-dictatorship under Oliver Cromwell, and later under his ineffectual son Richard when Cromwell died in 1658.

The country seemed to be sliding inevitably towards anarchy through a succession of military despotisms. Loss of confidence in the Republic became widespread. The achievement of ten years earlier, when Parliament had won supremacy over Absolute Monarchy, was now forgotten,

buried in the debris of constitutional chaos. “Reform, but without disorder” would have summarized the sentiments of a now politically weary and disillusioned nation.

Something had to be done to restore stability; in the words of contemporary diarist Samuel Pepys “either the fanatics must now be undone or the gentry and citizens throughout England will fall.”

In 1660 George Monck, who had been Cromwell’s Commander in Chief in Scotland, restored Parliament and recalled from exile King Charles’ son who now became Charles II.

Though King Charles II had the sense to acknowledge the new position of the Monarchy and acquiesce to the wishes of Parliament, he died in 1685 and his brother James II who succeeded him once again opposed Parliament.

In 1688 Parliament invited James’ daughter Mary and her Dutch husband William of Orange to land in England and save the country’s liberties. This they did accompanied by a large army, immediately drawing wide popular support in England.

James fled the country, and William and Mary were invited to accept a specially drawn up Declaration of Rights which stipulated in precise detail the new relationship between King and Parliament and the limitations on Royal power.

The King could no longer suspend or dispense with laws by regal authority; the King could no longer levy taxes or maintain an army without the consent of Parliament; and the regular assembly of Parliament, without royal interference, was guaranteed.

Similar conditions had indeed been heard before; but the difference on this occasion was that England and its Parliament were offering a Crown, and these were the conditions upon which they would accept the new Monarchs. William and Mary accepted Parliament’s conditions, as the text of the 1689 Bill of Rights relates.

“Their said Majesties did accept the crown and royal dignity of the Kingdoms of England, France and Ireland and the dominions thereunto belonging, according to the resolution and desire of the said Lords and Commons, contained in the said declaration. And thereupon Their Majesties were pleased, that the said Lords Spiritual and Temporal and Commons being the two Houses of Parliament should continue to sit, and with Their Majesties’ Royal concurrence make effectual provision for the settlement of the religion, laws and liberties of this Kingdom, so that the same for the future might not be in danger again of being subverted.”

As William III and Mary became joint Sovereigns, the old partnership between Crown and Parliament was resumed. But whereas Parliament had previously given assent to the wishes of the Monarch, now it was the Monarch who formalized the decisions of Parliament with the Royal Assent.

The battle for consultation had been won by the fact of Parliamentary supremacy. But it was consultation with a minority of rich and powerful who would rule the country in their own best interests. Subsequent development would focus on widening representation.

4

DEMOCRACY

Parliamentary Representation - The Socialist Revolution - The Demise of Extremism

Parliamentary Representation

With the signing by William and Mary of the 1689 Bill of Rights Britain's autocratic monarchy had finally been brought under constitutional discipline and Parliament had won its position of supremacy. But Parliament at that time represented only a small proportion of the population. Many there were, of course, who would be quite happy to keep it that way. The reformers however, both in and out of government, would now press for continuing expansion of the voting franchise.

Conservatism, preservation of the *status quo*, versus *Reform*; this theme was to dominate Parliamentary proceedings for some two hundred years.

Following a tradition of earlier times when the King's advisers sat on his right, likewise the Conservatives in Parliament loyal to the Crown and the maintenance of the status quo now sat on the Speaker's right, while the Radicals and Reformists sat on the left.

So Britain's Parliament assumed the confrontational shape still maintained today, of Right and Left, Conservatism and Reform facing one another across an aisle, and the terms *Right* and *Left* assumed the significance now familiar throughout the world.

When the Right-Left polarization first took shape, the Conservatives seated on the right supported the Monarchy and a degree of Royal prerogative provided the Nobility could share in it. They accepted the established order of Church and State, and furthered the interests of landowners, and later the big industrialists.

At first known as Royalists, they have subsequently become known by an early nickname: the word *Tory* is derived from an Irish word meaning *robber*, doubtless reflecting their appearance in the eyes of many common people.

On the other side were the Liberals, or "Whigs". Formerly Republicans, they now supported the Monarchy provided it was kept under constitutional constraints. They also supported reform generally, including a gradual widening of the franchise. The party of the Left later became more widely known simply as Liberals, until the 1900s when the Left position was taken by the Socialists.

Thus the battle lines were drawn, as Parliament struggled with and within itself for 200-odd years, from 1700 to 1900, culminating in the condition of broad participatory government popularly known today as Democracy.

Though now a matter of history in Britain, development of a broad and honest electoral system is a story which is still being enacted in many countries today.

Two areas particularly would be subject to continuing reform: Parliamentary Representation with its inequalities and corruption, and the physical process of casting votes.

The rapid growth of industry and the accompanying flight from the countryside during the late 1700s had unbalanced the traditional representation patterns. Some country “boroughs” (the so-called “rotten boroughs”) still sent members to Parliament though they were now totally uninhabited, while huge new industrial cities were without any form of Parliamentary Representation.

Reform of Parliamentary Representation was very much a lively topic of debate; frequent meetings were held, and well attended, in coffee houses, public houses, and in the meeting rooms of Political Reform Societies, with proceedings carefully documented for posterity by the Society's “Hon. Sec.” In May, 1809 a meeting of dedicated Reformers was held at the Crown and Anchor in the Strand; among the many items debated were calculations made by Grey in 1793, to the effect that 307 English Members of Parliament were appointed, through money and influence, by just 154 individuals.

Throughout the 1800s the demand for electoral reform grew steadily, though not without opposition from vested interests. As early as 1819 cotton workers from all around the cotton mill areas gathered in Manchester to demonstrate for male suffrage; they were ruthlessly suppressed by mounted Yeomanry Cavalry in what was to be known as the “Peterloo Massacre”.

Yet the sheer pressure for electoral reform slowly gained momentum, and by 1830 the Liberal Party was able to defeat the Tories in a general election on this very issue. A Liberal committee was set up to compose a Reform Bill; this Bill was passed in the House of Commons and, after a protracted struggle in the House of Lords, became law in 1832.

It established male suffrage for all those with property worth more than £10 in annual rent, and reformed the various Constituency anomalies, abolishing the “Rotten Boroughs” and enfranchising the new industrial cities.

But even after this great Reform Act of 1832 the vast majority of the working classes were still unable to vote.

As to the process of election, “having the vote” certainly did not mean, as it does today, that one could in secret and without pressure vote for the Representative or the Party of one's choice.

Voting at this time was conducted not through secret ballot, but by a public show of hands; this allowed landlords and employers to “supervise” the voting of their servants and employees. The Tories as landlords, and many Liberals as wealthy merchants and industrialists, influenced voting in a way that made a mockery of the concept of free elections.

With the help of the new popular working-class newspapers, a major electoral reform movement developed, whose members were known as the Chartists. The movement centered around a “People's Charter”, presented to Parliament with over a million signatures as a Petition of Right in 1839. The Charter contained the following six demands:

1. Universal suffrage for all men over the age of 21;
2. Vote by secret ballot to prevent the abuses of open ballot;
3. Payment of Members of Parliament so working men could afford to stand;
4. Abolition of the property-owning qualifications for membership of Parliament;
5. Equal electoral districts so that each Member of Parliament represented the same number of people;
6. Annual elections so that Members would keep constant note of their voters' requirements.

Despite Parliament's awareness of the need for further electoral reform, the majority in Parliament felt that this Charter was going too far, and defeated the motion to consider it as a Bill of Reform.

The Chartists later presented a second Petition, this time with three million signatures – a figure representing a quarter of the working population. But again it was rejected by the upper-class-dominated House of Commons. As a result there were riots and uprisings throughout the country; further reform was inevitable.

In 1867 the second Reform Act gave voting enfranchisement to all male rate-payers. This was followed in 1872 by the Ballot Act which brought in voting by secret ballot, thus at last giving the lowest classes real freedom to make their own choice of Parliamentary Representatives without pressure or influence.

The working classes were now enfranchised; but their interests were not accurately represented in either the Tory or the Liberal ideologies. They needed a Party in Parliament which would represent their own interests and views, a Party which would fight against the intolerably long working hours, poor pay, overcrowded housing conditions, and all the other perceived manifestations of injustice and exploitation.

Socialism had its origins in the writings of Karl Marx and Engels, but Marx's "Communist" theories were considered too radical and revolutionary for the taste of the British. The British Labour Party began as an alliance of Trade Unions and Co-operative Societies, its philosophy influenced by the Fabian Society, an intellectual group of Socialists founded in 1884, inspired by the playwright Bernard Shaw and husband-wife team Beatrice and Sidney Webb.

The last few years of the Century saw the gradual formalization of the Socialist programme featuring a shorter working day, improved housing, higher wages, social security, and a minimum standard of education for all. The Labour Party would now become the Party of the Left, with Socialism as the "alternative" political doctrine.

The Socialist Revolution

Thus far in political history there had really been only one political dogma, known as Capitalism, Laisser-faire, Free Enterprise. Whatever it may be called, it is based on the principle of minimal Government intervention. And that made sense, at least to the ruling classes. They were doing very nicely in industry, commerce and social organization, and they had naturally instituted a form of government which would leave them quite free to get on with it.

And of course, leaving people free to get on with it is quite literally what *laissez-faire* means.

For many, everything looked rosy. But the Humanist visionaries were concerned that the lax political climate permitted too much opportunity for some to exploit others, for some to accumulate huge fortunes through the impoverishment of others. Idealists saw this as a form of enslavement, enslavement being defined in simple terms as the involuntary transfer of work or wealth from one person or class to another.

They resolved, as the new Twentieth Century dawned, that there would be no more enslavement of man by fellow man.

A worthy aim indeed. And how was it to be achieved?

It could have been achieved by requiring Government to do more than just leaving people free to get on with it. Freedom is fine, but perhaps people should not be so free that they are permitted so grossly, so blatantly, even so brutally to plunder the freedom of others.

The solution would have been more Government involvement: specifically, sufficient to prevent people from exploiting one another. That would have been the ideal solution; with it the development of political ideals and institutions could have made a quantum leap from enslavement to liberty, from self-interest to universal-interest.

But human nature does not work in such exalted ways. We do not see injustice and replace it with justice; we see injustice and react to the other extreme, replacing one kind of injustice with another.

And the new political creed of Socialism was just such a reaction. Hailed by so many as the dawning of social justice, it was regrettably no such thing. Socialism did not abolish injustice but perpetuated it, merely reversing the roles.

Instead of the Strong and powerful exploiting the Weak, now it would be the Weak, the poor, the working classes who would, with Government help, exact vengeance from their previous masters.

Traditionally Governments had always served the interests of the powerful people who controlled them by doing as little as possible, thus allowing those with power to exploit those without it.

Now taking the side of the previously impoverished majority, Socialism would adopt the opposite approach.

Instead of doing nothing, or the very minimum, a Socialist Government would throw itself wholeheartedly into the fray on the side of the working people.

But it would be halfway through this century before Britain was to have its first real taste of Socialism.

In 1900 the first joint meeting of the various representatives of the Labour Movement was held in London to found the Labour Representation Committee, which later became the Labour Party.

The Committee adopted a resolution put forward by Keir Hardie, who would later become the first Labour MP in the House of Commons, to establish, not a Political Party in the first instance, but a Labour Group in Parliament which would co-operate with any existing Party promoting legislation in the direct interests of the Labour Movement.

Support for the new Labour Movement increased rapidly, and when the election came in 1906, to the horror of the press and the governing class, Labour captured twenty-nine seats in Parliament, swelled subsequently to over forty seats when the Miners' Federation instructed its MPs to join the Labour Party.

During the First World War of 1914-1918, many people lost confidence in the abilities of the Ruling Classes whose generals and politicians were perceived as being responsible for the War's immense and useless slaughter. By the end of the War much of the population had become politically cynical, even semi-revolutionary.

The election of 1924 gave Labour, through an Alliance with the Liberal Party, a majority over the Conservatives of 91 seats in the House of Commons. The Alliance with the Liberals, however, precluded a full Socialist programme of legislation, and after only a year in office, through an ineptly conducted attempt to restrict publication of a Pacifist article in a Communist paper, the first Labour Government was forced to resign.

In 1925, the Conservative Government supported the Coal Owners' bid to reduce miners' wages, demanding that "all workers in this country have got to take reductions in wages". A general strike was threatened and the government backed down, conceding temporary victory to the Left. When the subsidy which the government had given to the coal industry ran out in May 1926, the Government informed Labour leaders that wage cuts for the miners would be enforced.

This precipitated the great National Strike of 1926. For nine days the country was paralyzed. However, through economic hardship the workers were unable to outlast the Employers and Government and were forced to capitulate. The Employers subsequently took advantage of this by reducing wages generally, and the Government then brought in a Trades Disputes Act, which impeded subscriptions by Trade Unionists to the Labour Party, made picketing more difficult and forbade the Civil Service Unions from membership of the Trades Union Council.

The Government also withheld social benefits from large numbers of unemployed on the pretext that they were "not genuinely seeking work" - an accusation not entirely sustainable within a context of large-scale unemployment.

This last action was mainly responsible for the Labour Party victory in the election of 1929, when they won a margin of seats greater than in their previous term of office; yet they were still dependent on Liberal support. This second Labour Government in power was, however, overtaken by the great financial collapse of 1929, which started in the USA and later spread to Britain. The Labour leader Ramsay MacDonald was forced to form a new coalition "National Government" which was itself soon dominated by the Conservatives.

Unemployment reached nearly three million in 1931 and had not fallen below a million-and-a-half in 1937. By the start of the Second World War in 1939, there were still up to a million unemployed, even though by then a degree of prosperity had returned to Britain.

At the conclusion of World War II in 1945 there was once again a reaction to the Left and the third Labour Government was voted in, this time with a large overall majority. For the first time Labour was able to introduce some sweeping Socialist changes.

Labour's main objectives were to extend public ownership in the economy, and to introduce a comprehensive "Welfare State".

By the second post-war election in 1950, when Labour was returned to power with a reduced majority, they had nationalized the Bank of England, Cable & Wireless, the major British airlines, coal, electricity, the railways, gas, and the iron and steel industries.

Developing the “Welfare State”, they had introduced a National Health Service and a National Insurance Scheme.

In 1951 the Labour Government was split when the more radical members resigned over a budget reduction in social expenditure. An election was called, and the Conservatives returned to power for the next thirteen years. Labour’s “finest hour” had come and gone.

With the benefit of hindsight we can see the idealism which motivated the principles of Socialism in its formative years. But we can also see that the Socialist Reformers in their attempts to eliminate enslavement overshot the mark and ended up with excessive and heavy-handed government.

This development was paralleled to an even greater extent in the USSR, where the Socialist/Communist regime created both heavy-handed government and considerable oppression.

Claiming that land ownership was unfair the Soviet State took it all. No longer would a small minority of powerful landlords control 90% of the cultivable land, leaving millions with no means of livelihood or sustenance.

But in practice of course, no one either rich or poor would have any direct or personal discretion in the use of land and other natural resources which would now be fully collectivized and centrally directed. Thus the State curtailed a substantial area of individual and economic liberty, depriving itself of the initiative, commonsense and pride of ownership of its agricultural workers.

Many of them left for the New World, where their imported seeds and hard work would lay the foundations for the great American and Canadian grain belts which continue to feed a large part of the world's population today.

Throughout production and industry the story was the same.

Claiming that the country’s men of enterprise were not to be trusted, the Soviet State took over the total planning and operation of all industry and commerce. No longer would employer exploit employee by paying low wages and maintaining dangerous and unhealthy factory conditions: thus at least in theory.

But in practice the substitution of centralized planning and direction with the consequent elimination of individual enterprise and initiative would lead to a steady decline in productive efficiency. This in turn meant that real wages in terms of purchasing power remained low, and that the economy could not afford to invest in new technological development or to effect improvements in environmental and factory working conditions.

Wages and prices were fixed by the State on social grounds which bore no relationship to costs; this would ensure social justice of a kind, as well as monetary stability. But without the essential discipline of accounting to clarify income and expenditure, to control costs and measure efficiency, productive resources were mis-used and mis-allocated, contributing further to low productivity and low prosperity.

Resources-use and industry had been brought under full State control; and personal liberty went the same way.

To ensure that the people got what was best for them in their personal lives the State took upon itself to regulate the daily detail of personal, family and community life. Housing, health, education, transport, holidays, news, culture, entertainment... everything was government controlled.

Certainly every Soviet citizen would now have free healthcare and education and cheap transport and subsidized ballet... all those dreams which neither the poor nor the reformers in London could ever have thought possible in the late 1800s.

But the citizens of the Soviet Union would pay a price in terms of liberty; for they would no longer be able to choose how to spend the fruits of their labours nor exercise that discipline of choice upon producers so vital to maintain and continually raise standards of service and productivity.

Thus the Socialist revolution would gradually reveal itself. People with ideas and enterprise were suppressed and even persecuted. Hard work no longer had its own rewards. Freedom of speech, of the press, and access to information and knowledge of the outside world were denied to all ordinary people.

The new elite would be the Party members, the government functionaries and the police. For the rest of the population class equality, of a kind, had been achieved. As they used to say in Poland: "Under capitalism there's rich and poor; under socialism, we're all poor."

The old injustices of Capitalism were replaced with the new injustices of Socialism; and the world, having long experienced enslavement, had now experienced a new political phenomenon: oppression.

Enslavement occurs when man is permitted to infringe the liberties of fellow man. Oppression is created when the State itself invades the liberties of those it governs.

Have we learned the lesson? It might appear so.

Few are the Westerners who speak Russian; but we are all familiar with the Russian word *perestroika*. Literally it means *reorganization*; in practice it has come to mean the discrediting and the collapse of Socialism/Communism.

And yet as people in the West watched with an undeniable sense of superiority the disintegration of the former Soviet Communist system, they were perhaps unaware that a part of every human soul yearns for the security of the Socialist regime.

Under Socialism, the Great State Machine takes care of us all from cradle to grave, educating, entertaining, employing, feeding and housing us, doing what's best for us. We know that without the vital spark of human initiative a nation cannot grow economically; yet we cling to our Socialistic dreams of "free" healthcare and education, and subsidies for everything we can possibly imagine without even wanting to know where the money is to come from.

But the same rules which have caused the downfall of Socialism in the former Soviet Union operate in the West too.

All the European health systems are now coming under increasing pressure from waste and abuse; the State school systems allow for little or no initiative, either in the introduction of new

ideas or ways of increasing productivity; and the expansion of subsidies for anything and everything combined with a marked reluctance to pay for them has resulted in ever-increasing Government debt.

Government continues to grow in size and in cost, in Britain and Europe, and more so in that bastion of free enterprise, the United States of America.

Do we blame Government, or do we blame ourselves? It is said that in a democracy people get the government they deserve; could it be that irresponsible government is the result and the wish of an irresponsible electorate?

President Kennedy once suggested that America's citizens should ask not what America can do for them, but what they can do for America. It might be suggested that voters today should ask not what they can get out of Government, but who on earth is going to pay for it.

Wherever it is practiced, the nature and the problems of Socialism are the same and are simply stated.

The distinctive feature of Socialism is that it takes funds and decisions from individuals and places them in the hands of Government; the services supplied by Government are costly and inefficient, choice is reduced, and liberty is eroded.

Socialism has indeed reduced the opportunity for man to exploit fellow man which existed under right-wing, laissez-faire government; but the measure of liberty has not increased, for Socialist government creates its own exploitation through over-organization and oppression, in the name of social equality.

As they used to joke in the old days behind the Iron Curtain: "Capitalism is the exploitation of man by fellow man. Under Socialism it's the other way round".

Nations and their governments create three kinds of political environment: *enslavement, oppression and liberty*.

We have experienced enslavement, and oppression.

Liberty, full and universal Liberty, continues to elude us.

The Demise of Extremism

By 1900 the franchise, the ability to vote in secret according to conscience or self-interest, was widely held. And during the first half of the 1900s the Right-Left choice provided sufficient opportunity for the individual voter's interests to be reflected in Parliament. "Democracy" had arrived.

Democracy today, especially in America, holds a place of near-sanctity in our political thinking, yet its voters are increasingly dissatisfied and disillusioned. Is Democracy at fault?

Democracy's first and perhaps main attribute is that it is clearly an improvement over Autocracy or Dictatorship.

The word *Autocracy* comes from the Greek word *kratos* meaning power, and self (*autos*), the sense being that one Leader holds power for himself solely and exclusively. This term can apply to the Absolute Monarchs of early England or to the more recent dictatorships of Africa and Latin America.

Democracy gives *power to the people*, the word being derived from the Greek words power (*kratos*), and *demos* meaning people.

In order to ascertain the Will of the People, the Democratic system provides for periodic elections. Democracy is essentially a process whereby the People, rather than an Autocratic Monarch or Dictator, can peaceably present and review options, then select the policy of their choice.

The importance and stability of orderly electoral procedure should not be underrated. The alternative is a bullet in the President's head or a full-scale civil war. We should not forget that many countries, far too many, still change their Presidents and their Governments in this way.

But Democracy has its imperfections, and its limitations.

Democracy means power to the people. But this remains an ideal, and does not reflect the way Democracy works in practical reality. It is a matter of simple definition that we cannot have real and genuine *power to the people* unless all of the people are of one mind. And in practice, they never are.

Democracy, or power to the people, we do not have. What we practice today is *Majocracy*, or power to the majority of the people. In this sense we still give power to the Powerful; but now “the Powerful” are those in the numerical majority, or increasingly in the United States, those with the greatest financial support.

And what of the laws and social conditions which result?

The presumption of a Democratic system is that the Majority is “right”. The rightness of a law exists precisely because it is a majority decision; it requires no other justification.

This presumption is not, nor ever has been, convincing.

The Law is not right simply because a majority of the citizenry supports it. Majorities can be financially irresponsible, oppressive of minorities, or simply wrong by the instinct of political morality which exists in every one of us – when we choose to consider “right” as opposed to self-interest.

America is justly considered the world’s major latter-day exponent of Democracy; yet their Founding Fathers recognized that the unrestricted exercise of Majority Rule could result in irresponsible Government, or worse still, tyranny of the Majority. It was for this reason that they added to their Constitution a Bill of Rights which set boundaries of individual rights and freedoms beyond which the Law was not permitted to exercise any control.

But even when the powers of Law are thus limited, Government in a Democracy can only be as good as the policies which voters are offered, and the choice which voters make. Democracy is simply a system for making choices; as such it is not responsible for the range of options available, nor for the voters' choices, nor for the resultant social conditions.

It is the Party Policy presented and publicly supported within the framework of Democracy which creates Laws and forms the social environment in which we live and work.

If we are dissatisfied with our Government in a Democracy then we must look at Government policy, define and analyze our dissatisfaction, produce a new policy backed by a supporting Political Party, then vote it into office.

And there is every indication that the time for such a re-thinking of Government and Political Policy is now upon us.

The demise of Right-Left extremism and the apparent vacuum it has left in British politics today is paralleled in the politically developed countries across the world.

This situation may be viewed with dismay by the traditional political parties, and with disillusionment by the voting public.

But when we take the broad theoretical and historical view it becomes clear that our present condition of becalmed neutrality may be the signal for a change, a very fundamental change in the way we view and conduct our political and social relationships.

Where there is contact between people it is possible for one to profit by causing loss to others.

Since the dawn of political history it has always been possible for man to injure, impose upon and otherwise infringe the liberty of fellow man; this has been permitted by Laisser-faire Government of the Right, or perpetrated by Socialism and Communism on the Left.

The result is our present Democratic forum in which Right and Left battle out their perceived sectional interests, though now with ever-decreasing conviction.

Conservatives want high prices, high profits, low wages, and free unregulated markets.

Socialists want high wages with low prices and low profits, and a full compliment of Government-operated welfare facilities paid for by taxing the wealthy and if necessary through deficit spending.

Both policies are self-interest oriented, each attempting to further the welfare of its own group at the expense of the other. Neither Party has a universality of approach, a policy guiding its actions for the benefit of the whole nation.

But the people should not be too quick to criticize governments or political parties; for the people as voters have always expressed that same basic motivation of self-interest. We support the Party which reflects our sectional interests, which promises to fulfill our own personal or group or class desires. That there is no Party or Policy currently purporting to represent the Universal Interest is probably because no one is interested in the Universal Interest.

However there are many indications to suggest that the Right-Left options of political Parties currently offered to voters no longer reflect contemporary needs and aspirations. Increasingly public opinion polls show a greater disdain for Parties and mistrust of Party politicians than ever before, while voters seem never to have been less willing to state a Party affiliation or, having stated one, to vote consistently.

So where do we go from here?

Political conflict between people is caused when actions beneficial to one are harmful or detrimental to others. The resolution of political conflict presents two alternatives: acts of imposition or exploitation can either be continued, or avoided.

This is a matter for individual choice; it is also reflected in the form of Government which people either tolerate or purposely create.

Do we seek a Government guided by policies which maximize liberty for all by identifying and preventing those actions which are harmful to others, the path of universal liberty?

Or do we support a Government which furthers the interests of our own group or class at the expense of others, the path of self-interest?

Mankind long ago rejected the ideals of Universal Liberty, choosing instead the path of self-interest, through which each individual attempts to enhance his or her own wellbeing at the expense of others by the use of personal power or through manipulation of the legislative process.

After two thousand years of conflict and confrontation, culminating in a Democracy which can only offer us a choice between class-oriented ideologies, perhaps the time has come to face this Fundamental Political Choice once again, this time adopting a different solution, a solution in which our political institutions identify, and our laws forbid, any and all of those actions which are harmful or injurious to others.

This would indeed give us a new direction in politics.

But it would be “new” only in its adoption.

The ideals of “Right Law” and non-injury to others are not new. They are as old as human conscience, ideals which have been expressed since the earliest records of political thought.

But “ideals” are not to be found among kings and dictators, nor in parliaments and popular assemblies. Here, self-interest still rules.

Ideals and idealism belong in a higher stratum of politics: constitution and constitutionalism.

5

CONSTITUTION

Ideals of Constitutionalism - Constitution in the New World - Constitutional Government

Ideals of Constitutionalism

Though *Constitutionalism*, the spirit of Constitution, had already been alive and practised for many years, the Magna Carta, by general consent of history, is now widely accepted as the world's first major constitutional document. Indeed it is interesting to read the constitutions of the USA, both the Federal Constitution and those of individual States, as well as the constitutions of many Commonwealth countries, and to note how many passages from Magna Carta have simply been copied word for word.

Magna Carta provided Britain's reformers with a firm foundation, a cornerstone upon which subsequent constitutional documents could be added to form the assemblage which, combined with unwritten custom, is commonly referred to as Britain's "Constitution" today.

Constitution limits absolute power. This it achieves by placing conditions on the use of that power, by requiring the sharing of power with those subject to it through a process of debate, by laying down obligations, and by establishing boundaries beyond which the Law may not intrude.

In its early days the Constitution may be weak, it may have little of practical value to say. But once the principle has been established that the Central Power, whatever form it may take, is itself subject to some superior framework of rules and procedures which define the use of that power to any extent whatsoever, the nation is on the right path, and it is only a matter of time before the rules defining the use of Centralized Power are strengthened.

No Government, President or Monarch, no institution of Law or Enforcement, should be created or be allowed to exist and to function without a Constitution. No one should have power over others, unless and until that power and the conditions of its use have been strictly defined. In the words of Thomas Paine: "Government without a Constitution is power without right".

Today we understand clearly and accept fully the idea that Constitution limits absolute power. Yet for early reformers of autocratic Monarchies it was a contradiction in terms to talk of limiting absolute power. If the power is absolute, then how can it be limited except through a greater power, and what is the nature of that greater power?

The "greater power" which sets limits on Autocrats and Parliaments is the power of reason and custom.

Relying for support on the strength of public opinion, from the most influential to the broad mass of the people, the spirit of Constitutionalism was originated and developed by theorists and idealists, and based on a universally recognized, instinctive awareness of what is right and wrong in law and social conduct.

"The idea of Constitutionalism is older than the existence of written Constitutions. Constitutionalism places limits upon Government, proscribing the means by which official

power may be exercised. Constitutionalism establishes boundaries between the State and the individual, forbidding the State to trespass into certain areas reserved for private action.

“Constitutionalism also has a deeper and older connotation, demanding adherence by Government to recognized customary procedures. The idea of a Constitution in this procedural sense can be traced all the way back to Aristotle, who in his *Politics* and the *Constitution of Athens* described all the known political arrangements of ancient Greece.”

[*Constitutions that have made History* Edited by Albert Blaustein and Jay Sigler, Paragon House Publishers, New York, 1988.]

The fundamental desire for disciplined and responsible use of Centralized Power was the catalyst which set in motion, then relentlessly pursued the gradual erosion of absolute power, subjecting it to the ideals of good governance expressed in the essence of Constitutionalism, in successive specific constitutional documents, and in the writings of constitutional reformers.

One of the first major writers on the subject of English constitutional law and custom following Magna Carta was Henry Bracton.

Bracton was born, lived and worked in Devon during the early 1200s (his birth date unknown, he died in Exeter, in 1268). He was both a Cleric and a Justice – as indeed was common at that time, for few but the Clergy could read. From 1245 he was an Itinerant Justice for King Henry III, and from 1247 to 1257 was a Judge of the *Coram Rege* which later became the King’s or Queen’s Bench.

His (Latin language) document *On the Laws and Customs of England* is one of the oldest systematic treatises on English Common Law. It also deals in depth with the obligations of, and disciplines upon Royal power, concentrating on three major themes: that the King should himself be subject to and act within the Law, that he should rule wisely and justly, and that he should rule in consultation with his peers, the “eminent men” of the land.

The King must first of all be subject to, and act within the Law.

In stressing the King’s relationship with the law, Bracton identifies two aspects of law and the apparent contradiction between them. One aspect of law consists of orders and regulations, and in this sense the King is the source of law. The other aspect of law is the body of custom we would now call the Constitutional Framework; here the King must himself be subject to law, for the King and the very institution of Monarchy owe their existence to law in this Constitutional sense.

So Bracton insists that “the King must be under God and under the Law, because the King’s position owes its very existence to the wider framework of law.

“Let him therefore in his Laws, observe the due process of law through which he himself exists. For the King is not fulfilling his legal obligations when he rules by personal will, rather than by due process of law under the ultimate will of God.”

Bracton also expects the King to obey his own laws, for the King, though the source of Law, is not outside the Law:

“What the King is bound by virtue of his office to forbid to others, he ought not to do himself. Let him, therefore, temper his power by the due process of law, which is the discipline upon power, that he may live according to the Laws, for the Law of mankind has decreed that the lawgiver should be bound by his own Laws.

“Nothing is more fitting for a Sovereign than to live by and within the laws, nor is there any greater sovereignty than to govern according to the due process of Law, and the Sovereign ought properly to yield to the tradition and process of Law that makes him King.”

Bracton strengthens his argument with this forceful reference to Christian example:

“That the King must bow to the process and formality of law is paralleled in the example of Jesus Christ. Though many ways were open to Him to fulfill His destiny in the redemption of the Human race, He chose to destroy the devil’s work, not through the arbitrary use of His great powers, but by subjecting Himself to the existing laws of justice. In this way He willed Himself to be under the law that He might redeem all those who must live under it. He chose to use not force, but judgment.”

Monarchs of England and Europe have often claimed to rule by Divine Right. The Kings themselves interpreted the concept of Divine Right as placing them above and beyond the reach – or reproach – of the law, and of those they ruled.

Bracton however voices an earlier understanding of Rule by Divine Right, namely that the King is God’s Minister, and as such is under obligation to rule wisely and responsibly:

“The King is Vicar and Minister of God on Earth, and from God comes the power of justice. Therefore the King’s power is that of justice, not injustice. The power of injustice is from the Devil, not from God.

“The King will be the Minister of him whose work he performs. Therefore as long as he does justice he is the Vicar of the Eternal King, but he is the Devil’s Minister when he deviates into injustice or injury.

“The King is called King, not from reigning, but from ruling well, since he is a King as long as he rules well, but a tyrant when he oppresses by violent domination the people entrusted to his care.”

Bracton also stresses the requirement of participation in the formulation of laws:

“The King should not propose or enact laws rashly by his own will or whim; the law should be properly decided with the counsel of his peers, the King giving it formal authority only after full joint deliberation and consultation.”

Bracton thus set out the three major ideals of Constitutional Monarchy: that the King should himself be subject to and act within the Law, that he should rule wisely and justly, and that he should rule in consultation with his peers.

The battle for consultation was won when Parliament gained supremacy over the Monarch, and Britain became a Constitutional Monarchy.

But now a new constitutional challenge would appear: the challenge of subjecting Parliament to constitutional discipline. Subsequent political development would attempt to ensure that, while Parliament would remain and grow as the institution of legislation and of popular representation, the power of Parliament itself should not become absolute, and Parliament should be subject to the same rules of underlying constitutional precedent which had previously been formulated to discipline Monarchs.

This was the background from which America's Founding Fathers drew both fear and inspiration: fear of re-creating a new autocratic monarchy or presidency, and inspiration for the creation of a new kind of government, a government *representing* its people, not dominating or oppressing them.

Constitution in the New World

Just as two thousand years ago the rulers of the Roman Empire dreamed of a world where all nations should share in citizenship of the Eternal City, and should have in their own lands assemblies and senates which typified Roman methods of government, likewise the British people during the 1700s felt their hard-won liberties and rights to participate in government could be transplanted. As British people over a period of three or four centuries crossed the oceans of the world, establishing new communities in every continent, their form of government has been planted and has blossomed in many lands.

When the thirteen British colonies in North America declared their independence in 1776, they laid down that Governments are instituted among Men, deriving their just powers from the consent of the governed. In so doing they were consciously echoing the words of the Great Charter which King John had sealed 561 years before, and wherein he had undertaken that no tax *may be levied in our kingdom without its general consent*.

Similarly, the Federal Constitution which the newly independent States drew up in 1787 was to a large extent the formal statement of rights and liberties already won in Britain.

“From the unwritten British Constitution came many ideas and principles”. Such notions are common currency in American thinking; these words appear in *The United States of America*, a booklet published by the US Information Service.

However, while England had for centuries been intent on limiting the power of the Absolute Monarchy, American constitution-writers now focused on limiting the power and potential danger of the new “absolute ruler” – Congress, and the power of Federal Government institutions generally. This they sought to achieve not only through constitutional provisions and the Bill of Rights, but also through the celebrated “checks and balances” whereby two Houses, and the President as Executive, exercised discipline and restraint over one another.

The Judiciary was also placed to act as a restrictive force; indeed the US Supreme Court has traditionally seen itself as the ultimate discipline upon Government power, and champion of the citizen against Government excesses.

The supremacy of the Constitution over any and all branches of Government was seen by America's Founders as the essential assurance of orderly and disciplined Government.

The disciplines set out by America's Founding Fathers are clearly described by Mr Hugo LaFayette Black, Associate Justice of the US Supreme Court, 1937-1971 in his book "*One Man's Stand For Freedom*" - *Mr. Justice Black and the Bill of Rights* – [1963 Alfred A. Knopf, Inc.].

“The form of government which was ordained and established in 1789 contains certain unique features which reflected the Framers’ fear of arbitrary government and which clearly indicate an intention absolutely to limit what Congress could do.

“The first of these features is that our Constitution is written in a single document. Such constitutions are familiar today and it is not always remembered that our country was the first to have one. Certainly one purpose of a written constitution is to define and therefore more specifically limit government powers. An all-powerful government that can act as it pleases wants no such constitution – unless to fool the people. England had no written constitution and this once proved a source of tyranny, as our ancestors well knew. Jefferson said about this departure from the English type of Government: ‘Our peculiar security is in the possession of a written Constitution. Let us not make it a blank paper by construction’.

“A second unique feature of our Government is a Constitution supreme over the Legislature. In England, statutes, Magna Carta, and later declarations of rights had for centuries limited the power of the King, but they did not limit the power of Parliament. Although commonly referred to as a Constitution, they were never the supreme law of the land in the way in which our Constitution is, much to the regret of statesmen like Pitt the elder. Parliament could change this English constitution; Congress cannot change ours. Ours can only be changed by amendments ratified by three fourths of the States.

“A third feature of our Government, expressly designed to limit its powers, was the division of authority into three co-ordinate branches, none of which was to have supremacy over the others. This separation of powers with the checks and balances which each branch was given over the others was designed to prevent any branch, including the Legislative, from infringing individual liberties safeguarded by the Constitution.

“All of the unique features of our Constitution show an underlying purpose: to create a new kind of limited government.

“Central to all of the Framers of the Bill of Rights was the idea that since government, particularly the National Government newly created, is a powerful institution, its officials – all of them – must be compelled to exercise their powers within strictly defined boundaries. As Madison told Congress, the Bill of Rights’ limitations point sometimes against the abuse of the Executive power, sometimes against the Legislative, and in some cases against the community itself; or, in other words, against the majority in favor of the minority.

“Madison also explained that his proposed amendments were intended to limit and qualify the powers of government, by excepting out of the grant of power those cases in which the government ought not to act, or to act only in a particular mode. Mr. Madison made a clear explanation to Congress that it was the purpose of the First Amendment to grant greater protection than England afforded its citizens. He said: ‘In the Declaration of Rights which [England] has established, the truth is, they have gone no farther than to raise a barrier against the power of the Crown; the power of the Legislature is left altogether indefinite. Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, came in question in that body, invasion of them is resisted by able advocates, yet their Magna

Carta does not contain any one provision for the security of those Rights, respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution’.

“It was the desire to give the people of America greater protection against the powerful Federal Government than the English had had against their Government that caused the Framers to put these freedoms of expression, again in the words of Madison, ‘beyond the reach of this Government’.”

Most of the original founder-States of the USA produced Constitutions, and as Territories were granted Statehood, they too felt the need to set forth the essential procedures, obligations and limitations controlling the function and laws of their governments. Right from her very birth, America would espouse the principles of Constitutional Supremacy and popular participation for which England had fought so hard and so long.

Constitutional tradition, as it developed in Britain and spread later to America and much of the Commonwealth, was indeed a slow and occasionally violent process. It is a thousand-year-old story, which may be said to begin in the year 1215 when the Great Charter sought to limit the powers of an Absolute Monarch. Yet despite the persistence of reformers and the progress made at the birth of the United States, the development of true constitutional security from autocratic rule is by no means complete today.

In the name of ‘defence against terrorism’ the United States Presidency has assumed powers of arbitrary rule which would have horrified the Founding Fathers. And using similar justification, essential provisions of Constitution have been swept aside, as for example, the rule prohibiting “cruel and unusual punishments”. Americans today do not debate the existence of torture – simply the permissible extent of it.

Indeed, when one compares the modern Western Government, with its unlimited rights of taxation, its total lack of financial discipline, and the tenuous relationship between elected Members and their voters, one may reasonably wonder how far real and effective constitutional discipline over those wielding political power has progressed since the Great Charter of 1215.

In 1215 Britain had an autocratic, costly and largely ineffectual Monarchy. Today throughout the developed world we have autocratic, costly and largely ineffectual Government.

The need for constitutional discipline over Government today is every bit as great as was the need for constitutional discipline over the Monarchy in 1215. It is therefore worth exploring the theory of Constitutional Government in more detail.

Constitutional Government

The Constitution in its basic form is a framework of rules telling Government in all its departments and all its functions what it must do, what it must not do, and how it should and should not do it.

The detail of Constitutional provisions falls into three categories: the obligations which citizens may expect Government to fulfill; the limitations on the scope of Law; and the rules of procedure within which Government is required to operate.

We turn first to those provisions which define the obligations of Government to meet certain reasonable needs of its citizens.

One fundamental obligation of Government, that of “keeping the peace”, is defined in many constitutions, as for example in the original 18th century manuscript of the Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts:

- “Government is instituted for the Common good, for the protection, safety, prosperity and happiness of the people....”
- “Each individual of the society has a right to be protected by it in the enjoyment of his life, Liberty and prosperity according to standing Laws...”
- “Every subject of the Commonwealth ought to find a certain remedy by having recourse to the Laws, for all injuries or wrongs which he may receive in his person, property, or character.”

As with much of American constitution writing, this concept has its origins in English legal and constitutional tradition.

Clause 12 of the Coronation Charter which King Henry signed in 1101 states: *A firm peace in my whole Kingdom I establish and require to be kept from henceforth.*

“Clause 12 formally called into being the *King’s Peace*, a conception that had been steadily growing during the Anglo-Saxon period. A disturbance of the peace was not only an offence against the persons aggrieved thereby but an affront to the King himself, and the Royal power would be deployed against the wrongdoer. The Crown was responsible for the maintenance of a peaceful environment within which men could go about their business undisturbed by violence. This conception remains to this day the basis of law and order within the Realm.”

[Henry Marsh: *Documents of Liberty*, David & Charles, 1971].

If the *obligations* of Government are set out clearly in the Constitution the citizen may have recourse to the Constitution in any cases where these obligations are not fulfilled.

But to tell Government what it should do for us is not enough. We must also, perhaps more importantly, tell Government what it may *not* do by setting clearly defined *limitations* on the scope of Law.

Popular and regularly recurring examples of Constitutional restrictions which protect citizens’ liberties from encroachment by Government are provisions which protect freedom of religion, assembly and speech. Examples may be found in Article 2 of the Constitution of the State of Montana, as revised June 6, 1972.

- “Section 5. Freedom of Religion. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.
- “Section 6. Freedom of Assembly. The People shall have the right peaceably to assemble, petition for redress or peaceably protest governmental action.
- “Section 7. Freedom of Speech, Expression, and Press. No law shall be passed impairing the freedom of speech or expression.”

These are rights which Government may not take away, areas which are effectively “off limits”. If the Government over-steps the line, citizens may again seek remedy in the Constitution.

From time to time there are those who exclaim in horror that such constitutional provisions “overturn democracy”. That is precisely the function of constitution: to define and elevate certain fundamental principles which must stand above the will of the majority.

We turn now to those provisions of the Constitution which define the *procedures* of Legislative debate: facilities for participation and representation, the method of selecting incumbents for various offices, and their length of tenure. Through such established procedures details may be decided, representatives and officers can come and go, all in an orderly manner following agreed and accepted rules. Rules guiding the conduct of Enforcement Agents in their dealings with citizens may also be laid down in the Constitution.

Other rules of procedure may apply to the conduct of Government Administration, as for example in the auditing of its finances and productivity.

One of the most basic ideals of Constitutional principle is that Government should not be permitted to conduct its affairs in any way which would be unacceptable in the private citizen or business.

That the Law-makers, either Monarch or Government, should be subject to their own laws is one of the fundamental principles of Constitutionalism. And yet if we apply this principle in the area of finance we can at once see the glaring disparity between the legally permitted conduct of private sector business and that of Government.

Government can go into debt on its current account, then simply continue to go ever deeper into debt without any hindrance whatsoever. Conduct which the Law would never tolerate in private citizens or business is, apparently, quite acceptable in government. This is a sure sign of a lack of Constitutional discipline.

Many of the world’s governments today are deeply in debt, with an increasingly burdensome proportion of the National Budget now required simply to service the interest on that debt. Few show any signs of bringing their debts down. Many observers, and to their credit many legislators, openly express regret that their constitutions do not prohibit prolonged government deficits.

Though the Federal Constitution of the United States has no such provision, some individual States of the USA do preclude deficit financing in their State Constitutions.

Section 9, Article VIII of Montana’s State Constitution, for example, is very explicit: “*Balanced budget. Appropriations by the Legislature shall not exceed anticipated revenue.*”

Many economists argue that government deficits should be allowed during economic downturns in order to fuel recovery. However the same result can be achieved through the policy adopted by the State of Oklahoma, where the Constitution requires that expenditure be limited to only 95% of revenue, the balance being set aside as a credit against times of economic downturn.

The Constitutional approach to government operational and financial discipline is essential; the motivation to improve government efficiency and standards of business conduct is unlikely to

come from inside government itself, and even if it does, the disciplines thus created are likely to be more cosmetic than real. Governments frequently pay lip-service to improving productivity and financial discipline, but seldom make any real changes. Self discipline is a noble ideal, but discipline is always more effective when it is imposed from outside, or more importantly, from above. This leads to a consideration of the status of Constitution in the totality of Government, Law and Enforcement.

Since it sets the rules for government, the Constitution must by its nature and definition stand above Government as the supreme authority in the land. This position of supremacy can be assured in a Constitutional system by placing the Constitution at a critical point in the governmental process.

There are two basic elements inherent in the process of governing. The first is *decision*, the second is *force*. Government decides what laws are necessary for the proper conduct of society, then sees that they are enforced. Decision, and Force. The process of governing depends on fulfilling these two functions individually, then uniting them so that they are mutually supportive.

This process of union is vital. There is no point in Government making laws if it cannot enforce them. Likewise there is no point in having Police, Judiciary, and Correctional institutions if they are given no orders, no laws to enforce.

The process of Government involves two elements: making laws, and enforcing them. And since neither of these two elements works without the other, they must have continuing contact.

Constitution can exert its supreme power in a Constitutional system by placing itself *above and between* the two processes of law-making and law-enforcement and thus controlling that vital link without which each process in itself is useless.

The essence of Constitutional Government is the separation of *decision* and *enforcement*, so that each can empower the other only through the Constitution, and only on condition that both comply with constitutional requirements.

We can thus visualize a theoretical Constitutional system of Government as three points of a triangle. At the top point of the triangle we have the Constitution. At lower left, we have the Legislative Process; at lower right the Enforcement Agencies.

Legislation, at “bottom left”, is formulated according to the appointed processes, but as yet has no “force of law”. In the form of a proposal, each newly formulated Law is then passed up the left side of the triangle to the Constitution, where it is verified to ensure that its content and the procedures of its formulation are fully in accordance with the provisions of the Constitution.

If it passes this test, the Legislative proposal is then given “force of law” through formal enactment and is passed down the right side of the triangle to the Enforcement Agencies. But once again there is Constitutional Verification. For the Enforcement Agencies are also subject to Constitutional provisions and are constantly monitored to ensure that they so comply. If they do not, they will not be empowered to enforce laws until such time as they do comply.

The two points at the base of the triangle, representing the Legislature on the left, and the Enforcement Agencies on the right, are not directly joined. This is the very essence of Constitutional government. Decision and Force are allowed no direct contact; Legislative

proposals cannot be passed directly to Enforcement. Only by moving upwards and passing successfully through Constitutional Verification can Legislative proposals gain the formal force of Law. And similarly, only through continuous compliance with the Constitutional provisions can the Enforcement Agencies qualify to receive Legislative instructions.

Decision and Force. Each powerless without the other. Each empowered, and the two joined, only by and through the Constitution, only on condition that each and both fulfill the provisions of the Constitution.

This represents an idealized, theoretical concept of Constitutional Government; in few if any cases today do Constitutions play such a key role.

In Britain the Constitution (unwritten, but largely based on Common Law and Precedent) exercises little practical control over the process and content of Law formulated in Parliament, and is quoted more often in academic debate than in the practical operation of government.

Many of the institutions of government, from tax collection to the armed forces, as well as government itself, are preceded by the familiar initials “HM” for “His” or “Her Majesty” as Constitutional Head. But effective control remains in the hands of government under the Prime Minister.

In the USA Congress makes the Laws which the President as Executive signs more or less automatically into formal legislation. He may send them back on the grounds of disagreement, but Constitutional Verification as such is not a part of the process. Increasingly today, we find the President initiating laws and legislative programs which are then sent to Congress in a reversal of procedure visualized by the Founding Fathers.

Nor does the US Supreme Court verify Laws prior to execution; it only does so when requested by individuals or Lower Courts. In this sense, the US Supreme Court acts as a Court of Appeal (or last resort) at the apex of the Judicial process, rather than a Constitutional Executive at the apex of the Legislative process.

The importance of Constitution, both in its content and its status, is little appreciated by the general public and is denigrated as being “undemocratic” by politicians who dislike its limitations on their power and that of elected assemblies. Yet few are the voters in any country today who can claim that the political power to which they are subject is at all times exercised responsibly.

There is no form of Government yet devised, or yet devisable, which can be trusted to function successfully and honestly without the discipline of clear Constitutional rules laying down the essential principles to which government can be held accountable.

In the florid prose of the Constitution of the State of Vermont, adopted July 9, 1793:

“That frequent recurrence to fundamental principles, and a firm adherence to justice, moderation, temperance, industry and frugality, are absolutely necessary to preserve the blessings of liberty, and keep government free; the people ought, therefore, to pay particular attention to these points, in the choice of Officers and Representatives, and have a right, in a legal way, to exact due and constant regard to them, from their Legislators and Magistrates, in making and executing such Laws as are necessary for the good State.”

6

LIBERTY AND LAW

The Ideal of Right Law - The Principle of Non-Injury - Liberty and Government Intervention

The Ideal of Right Law

Despite the preponderance of self-interest throughout the history of politics to date, the pursuit of “Right Law” and the ideal of some ultimate universality has claimed the attention of political thinkers and writers since early Greek and Roman times.

“I find that it has been the opinion of the wisest men that Law is not a product of Human thought, nor is it any enactment of peoples, but something eternal which rules the whole Universe by its wisdom. Reason has always existed, derived from the Nature of the Universe, urging men to right conduct and diverting them from wrong-doing; and this Reason did not first become Law when it was written down, but when it first came into existence; and it came into existence simultaneously with the Divine Mind.”

These principles were expressed by the Roman philosopher Cicero in *The Republic*. While such ideals can be traced yet further back to the early Greek political philosophers, it was the Romans and Cicero in particular who gave to the Greek doctrine of *Natural Law* a statement in which it was to become universally known throughout Western Europe down to the Nineteenth Century.

Cicero continues: “There is in fact a true Law – namely, right reason – which is in accordance with nature, applies to all men, and is unchangeable and eternal. By its commands it summons men to the performance of their duties; by its prohibitions it restrains them from doing wrong. To invalidate this Law by Human legislation is never morally right, nor is it permissible ever to restrict its operation; and to annul it wholly is impossible.”

Particularly important here is the assumed distinction between the fundamental laws of nature which are a product of the Divine Mind, and man-made laws. Man-made laws should ideally reflect Natural Law; if they do not, they are in Cicero’s view, worthless.

George H. Sabine (*A History Of Political Theory*) comments:

“None of the great Roman jurists doubted that there is a higher law than the enactments of any particular State. Like Cicero they conceived of the law as ultimately rational, universal, unchangeable, and divine, at least in respect to the main principles of right and justice. The Roman Law, like the English Common Law, was only in small part a product of legislation. Hence the presumption was never made that law expresses nothing but the will of a competent legislative body, which is an idea of quite recent origin. It was assumed that ‘nature’ sets certain norms which [government’s] law must live up to as best it can and that, as Cicero had believed, an ‘unlawful’ statute simply is not law.”

The essence of *Natural Law* is that the Ruler, the State or the Legislator is always subject to the Law of God, or the Moral or Natural Law, the Higher Rule of Right which transcends Human interests and Human institutions. Thus the Ruler or Legislator becomes an *interpreter* of a Higher Law, rather than an instigator or originator of law reflecting perhaps the interests and profit of himself or the group he represents.

This general principle of government – that authority is justified only on moral grounds – may appear somewhat alien today. But it achieved almost universal acceptance within a comparatively short time after Cicero and remained a commonplace of political philosophy throughout the Middle Ages, becoming a part of the common heritage of political ideas.

The concept of Natural Law was fundamental to the political philosophy of Henry Bracton whose written comments after the Magna Carta have already been quoted. Bracton particularly stressed that the King must “be under God and the Law”, by which may be understood the “Natural Law” or Right Reason.

Following this same tradition Sir Edward Coke attempted to impose the discipline of “Right Law” upon the Acts of Parliament in the early 1600s.

Coke became Attorney General in 1594 and retained this Elizabethan appointment until 1606, when King James made him Chief Justice of Common Pleas and later, Chief Justice of the King’s Bench, a post he retained until 1616.

Before beginning a new career as a Member of the House of Commons in 1620, Coke devoted himself to writing his *Reports* and *Institutes* which became the basis of legal education in England and America throughout the 1700s.

As a student, Coke began to trace the medieval origins of Common Law, collecting ancient precedents that later filled the volumes appearing under the title *The Institutes of the Laws of England and the Reports of Sir Edward Coke Kt. in English in Thirteen Parts Compleat*. While preserving the Common Law’s continuity he reinterpreted it in his own way, reaffirming the “Natural Law” element and defending it against all encroachments.

In his opinion given in *Dr. Bonhams Case* (1610), Coke declared: “when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the Common Law will control it, and adjudge such an Act to be void.”

The ideal of subjecting law-makers to procedures of conduct and to basic concepts of “common right or reason” persisted after Coke’s death in the turbulent years of revolution. A political reform group active during the Civil War years of the 1640s later known as the Levellers, held that Parliament itself should be bound by certain “fundamental laws” assuring for example religious liberty and forbidding military conscription.

This attempted triumph of “right” over Electoral or Parliamentary “might” was not destined to become a permanent feature of English legislative discipline or procedure. Perhaps this was because the “Common Right or Reason” had not been, and indeed still has not been clearly defined. But such concepts would later inspire in the new United States of America the idea of codifying the essential procedures, safeguards and liberties gradually assembled over the centuries into one single written Constitution.

The first written Constitutions were motivated by two then-current political theories: Social Contract and Natural Law.

The “Social Contract” element reflected the principle that government is established as a result of a compact in which individuals promise to accept the judgments of a common arbiter. An important implication is that, having put their trust and political destiny in the hands of a Central

Government, the People are thereby entitled to expect from that Government justice, honesty and competence.

And since it is all of the people who are subject to law, not only those who have financed or voted for the specific Party for the time being in office, it follows that there is a presumed obligation upon any Party in power to act in the overall national interest, avoiding solutions favouring specific sectional interests.

Though this ideal may be difficult to define, it has nonetheless been possible to limit Government from practicing the grosser extremes of natural in-justice; this is achieved through the Constitution, the function of which is to set out the specific terms of this “social contract” including the procedures, obligations and limitations to which Government should be subject.

This “Natural Law” element in Constitutions gave them the sanctity of a Higher Law.

“The modern Constitutional State at the time of its origins was justified and to a large extent legitimized in terms of Natural Law theory. While the ancient idea of a divinely inspired, immutable, eternal Natural Law had been secularized by the Seventeenth Century it still provided a source of permanence in an ever unstable world.

“John Locke used Natural Law to support the natural rights of the individual, thus limiting the powers of Government. The written Constitutions which followed Locke’s philosophy embodied such traditional natural rights in detailed provisions.”

[*Constitutions That Have Made History*: Blaustein and Sigler, Paragon House, New York, 1988].

Despite their growing commitment to “rule by the people” – or more accurately, the majority of the people – the Framers of the United States Constitution were under no delusions that Democracy of itself could be relied upon to guarantee good laws.

In an attempt to preserve discipline and integrity in government the Framers provided a clear and concise Constitution creating a system in which several branches of Government share power, yet limit that power through a series of checks and balances.

But even this was not enough. Many of the Framers felt that Liberty should be more specifically defined and protected. Among them was Richard Henry Lee of Virginia, who argued that the Constitution as it stood directly after its adoption would “*put Civil Liberty and happiness of the people at the mercy of Rulers who may possess the great unguarded powers given.*”;

He demanded such amendments “*as will give security to the just rights of Human nature, and better secure from injury the discordant interests of the different parts of this Union.*”; The result was the first ten Amendments, collectively known as the Bill of Rights which set specific bounds on the range and extent of Law.

The significance of the Bill of Rights, as with similar Constitutional limitations on Government activity, lies in the recognition of a Higher Law endowing mankind with certain fundamental rights and liberties to which even elected Parliaments must defer.

Acceptance of a higher, Natural Law requires that “...the Legislator who formulates laws is a Priest of Justice, the practitioner of a true philosophy, not a pretender to an imitation. Natural

Law meant interpretation in the light of such conceptions as equality before the Law, faithfulness to engagements, fair dealing or equity.”

[George H. Sabine: *A History Of Political Theory*].

A latter-day exponent of “Just Law,” Rudolf Stammler [*The Theory of Justice, 1925*], regarded this belief in Natural Law as the crowning glory of Roman jurisprudence:

“This, in my opinion, is the universal significance of the classical Roman jurists; this, their permanent worth. They had the courage to raise their glance from the ordinary questions of the day to the whole. And in reflecting on the narrow status of the particular case, they directed their thoughts to the guiding star of all law, namely the realization of justice in life.”

Following the Industrial Revolution and the growing complexity of regulatory detail, legislators and political philosophers gradually abandoned any attempt to focus on “the guiding star of all Law”, concentrating instead on “the ordinary questions of the day”.

But it was not, nor ever has been simply a matter of concentrating on detail at the expense of overall strategy; in fact the “opponent” of Natural Law was not and is not detail, but self-interest.

The concept of Natural Law is essentially a reflection of that *universal-interest* which seeks benefit, peace and stability for all. This can be achieved when the Law identifies and prevents injury in all its manifestations, rather than perpetuating it.

Throughout our history we have pursued the alternative path, that of *self-interest*, where individuals seek to improve their own lives at the expense of others, supporting Governments and Laws which promote that objective. This resulted in slavery and feudalism, revolution and civil war, the riches and poverty of the industrial revolution, and the revenge of Socialism, the whole continuing saga symbolized in the polarization of Right and Left, each side representing a particular class or sectional self-interest.

But there are now clear signs that in the pursuance of *self-interest* we have reached the end of the road.

The marked difference between Right and Left, and with it the whole concept of self-interest-motivated, confrontatory politics, was not destined to last, and its demise is already apparent. Both Party policies, of the Right and of the Left, were class-oriented, designed to further the interests of one class, if necessary at the expense of the other.

The attraction of such policies was bound to fade as class differences disappeared, and as people have gradually come to the more civilized view that the Laws directing our social conduct should promote the liberty and wellbeing of all the people, not some at the expense of others.

Perhaps the time has come when we should once again take up the search for the fundamental principles of “Natural Law” expounded by early Greeks and Romans, the “Common Right or Reason” of Coke, that “Higher Rule of Right which transcends Human choice and Human institution” still sought by our latter-day exponents of Natural Law.

The Principle of Non-Injury

The traditional concept of a universal guiding principle, a “Right Law” to which Legislators and Legislation are subservient, is many centuries old. That we have not formally identified the essence of “Right” or Universal Law is most probably due to the fact that “we” both in and out of Government and Parliament have been more interested in seeking personal rather than universal benefit. Is it now time to reconsider this fundamental issue?

In our everyday lives, in personal relationships, in our use of natural resources, in our business and commercial affairs, it is possible for some to gain benefit at the expense of others. This is the essential feature of political conflict.

Our response to potential conflict is reflected in personal conduct, and in the Governments we choose or accept. We have two clear choices. Either we choose, and our Laws permit us, to continue injuring, exploiting and imposing on one another so that some may gain wealth through the impoverishment of others. Or we attempt to avoid, and our Laws identify and prevent, those actions which are harmful or injurious to others so that we can all live in peace, harmony and maximum liberty.

One is the path of *imposition or injury*; the other is the path of *non-injury, non-imposition and cooperation*.

For two thousand years we have taken the path of *imposition*, during which time that path has been explored through the full range of slavery, feudalism, exploitation, civil wars, and the confrontation of sectional interests. Today with the demise of extremism we have been brought once again to the point of decision, but now with a more enlightened outlook born of hard and often cruel experience.

As we confront this fundamental choice again, perhaps we may now choose a different path, that of *non-imposition*, of cooperation and the maximization of the general liberty.

When we begin to seek fair rules by which we can live together and collaborate productively without exploiting one another, we will find that the true nature of “Right Law”, of universal liberty, is and always has been clear and straightforward, awaiting only Human recognition and acceptance.

It exists inside every one of us, for we all know what is right and wrong in social conduct – if we ever bother to ask ourselves. It exists as the fundamental basis of English Common Law; and it has been expressed by political thinkers, writers and philosophers for thousands of years.

This is the Eternal Law of Right Social Conduct: *that each should pursue his or her own advancement, but in ways which respect the right of others to do likewise; that each should seek his or her own growth, but in ways which do not diminish others.*

If we then seek to apply this principle of *universal-interest* in Government, we will find that the guiding policy is clear and simple: the purpose of Government and Law is the identification and prevention of exploitation, harm or injury between people.

This guiding Principle has been expressed in many forms through the centuries; it is expressed clearly and concisely in the words of Thomas Jefferson: *the purpose of Government is to prevent men from injuring one another.*

It is worth considering this proposition in detail, for it has implications far beyond its apparent simplicity.

Clearly, Jefferson was not confining *injury* to grievous bodily harm, any more than he was confining the term *men* to the male gender. The purpose of Government in this view is to prevent people from injuring one another, and *injury* can take many forms which grow in number and complexity as the world develops.

One can harm one's fellow citizens by making and selling a machine which is unsafe in use; or through incorrect labelling of a food product which results in a user consuming an additive to which he or she is strongly allergic.

There are many ways in which we can injure one another, in our personal activities, in commerce and industry, in our use (or misuse) of natural resources. In Jefferson's view it is Government's job to identify and define those actions leading to the injury of others, then to prevent them through appropriate Laws and Enforcement.

Thomas Jefferson was not inventing a new idea.

He was taking his place in a long line of political theorists and idealists from early Greeks, through Cicero, Bracton and Coke; he shared the same principles with his colleagues as Framers of the United States Constitution and Bill of Rights, and he was handing on a continuing tradition of fundamental rightness with which we are all, in our consciences, familiar.

Most people of the Anglo legal tradition (Britain, the United States and many Commonwealth countries) object in principle to any excess of regulation. We dislike meddlesome government; we find unnecessary regulation tiresome and annoying; we abhor oppressive government. Yet few would object to being told they may not do something, if it can be clearly shown that their action is in some way harmful or detrimental to others. And when a person is suffering injury at the hands of another, we would all accept that person's right to remedy and protection in law.

The idea is well summarized by one of the 20th century's leading figures in British justice, Lord Denning, in his book *The Family Story*: "*Each man should be free to develop his own personality to the full; the only restrictions upon this freedom should be those which are necessary to enable everyone else to do the same.*"

This view of Law as the prevention of injury between people reflects the fundamental limitation of social freedom. We cannot all have absolute freedom in our social relationships with one another. If one person is totally free to do whatever he likes, he is by definition free to limit or indeed eliminate the freedom of another, thereby reducing that second freedom possibly to zero.

The best we can do is to maximize freedom, and this we achieve when we all accept certain limitations on our individual freedoms so that we do not infringe the freedom of others.

To describe this concept of shared, limited freedom we use the word of Latin-Roman origin: *Liberty*.

A Land of Liberty is not a land in which we all have absolute freedom to do exactly as we please. That would be a land of anarchy, since everyone would be free to limit, or eliminate the freedom of anyone else.

A Land of Liberty is a land in which we are all subject to some restraint in those actions which are harmful or detrimental to others, so that we can all enjoy not absolute, but a measure of Liberty. In this way, the general Liberty can be maximized.

Without the Rule of Law people would be free to injure one another in the widest possible sense, each attempting to enhance his or her own personal wealth and possessions through the dispossession of others. This is Anarchy.

The remedy is the kind of Government visualized by Jefferson and Lord Denning, Government which exists specifically to prevent people from doing those things which are injurious, harmful or detrimental to one another.

When Government as referee identifies those actions which are harmful or detrimental to others, then prevents such actions by Law and its Enforcement, Government is limiting individual freedom; but in so doing it creates the conditions in which the general overall Liberty is maximized.

The Principle of “*freedom up to, but not beyond the point where freedom infringes another freedom*” is the Eternal Law of social conduct, the fundamental *Principle of Non-Injury* instinctively familiar to us all.

If this Principle were to be observed by citizens and applied by laws, Liberty would be maximized, and laws would enjoy the guidance of a Principle which fully reflects the age-old ideals of Natural Law, of non-injury, of respect, justice and fair dealings between people.

The Principle of Non-Injury requires in our personal relationships, in business and commerce, and in our use of natural resources, that we respect others as if they were ourselves, that we respect others as we would have others respect us. It will be recognized at once by anyone familiar with the Sermon on the Mount.

The Principle of Non-Injury may also be seen as an accurate reflection of the age-old ideal of “Natural Law”, the “Common Right or Reason”. It is universal rather than sectional in its approach and objectives; when accurately, honestly and consistently applied it seeks to maximize the general liberty for all rather than enhancing the wellbeing of some at the expense of others.

Only in Liberty will the flower of Civilization unfold. And Liberty, true and full liberty, will be achieved only when all of the people understand, accept, and support with full knowledge and conviction the Principle that in the enjoyment of Liberty each must respect, never infringe the liberty of others.

But individuals need not wait for “all the people”.

The respect for others inherent in this Principle is something which all those wishing to do so can begin to adopt now or at any time in their daily personal lives and conduct.

We can become more sensitive and appreciative of the feelings of others; we can become ever more aware of how our actions affect others; we can impose upon ourselves ever higher standards of fairness and honesty in our personal conduct, and insofar as we are able, in our commercial dealings with co-workers and customers. We can develop our growing respect for

the environment as a living entity, and we can expand our attitude of mutual respect from the Human to the Animal Kingdom.

We can also teach Non-Aggression in our schools, by remaining alert against, and eliminating all forms of aggressive behaviour, physical or verbal, in children from the very earliest age. Aggressive behaviour not only hurts the victim, often causing long-term damage; it is also important that potentially aggressive behaviour in the perpetrator should be discouraged in early youth, for if it persists into adulthood it can only create disharmony in future years among family, friends and work colleagues.

One of the most fervent wishes expressed by our human race is for peace. We pray for it, as if it were a gift from God. But in truth, the gift of peace can only come from ourselves. Peace is the absence of aggression, and it is we ourselves who cause aggression. Only when we learn to respect one another, to treat one another, our environment, and all lifeforms with respect, only when we rigorously avoid any form of aggression, injury, or exploitation, only then will we have peace.

Respecting, not infringing the liberties of others in our own personal lives requires constant awareness, thought, and analysis simply to observe what we are doing and to consider how it affects others. It requires the exercise of self discipline to put this knowledge to effect; and it demands self sacrifice if we are voluntarily to set aside the convenience and the profit which we can gain at others' expense.

The reward lies in the knowledge of ultimate rightness, that what we are doing is right not only in personal conduct, but that it is the path which society must ultimately take as it advances in civilization.

As awareness and appreciation of Liberty grow, and as we become increasingly disillusioned with traditional class-oriented confrontational policies, the time will inevitably come when we begin seriously to seek adoption of the *Principle of Non-Injury* as the political philosophy guiding our Laws.

Practice Non-Aggression.

Preach Non-Aggression.

Adopt and accept Non-Aggression as the Guiding Policy of Constitutional Governance.

The Principle of Non-Injury may indeed be a high and noble ideal. But can a Principle such as this be defined with sufficient precision to act as a guide for our everyday laws? Is it capable of useful and practical application to the needs of a complex society? The answer in both cases is positive.

Liberty and Government Intervention

The *Principle of Non-Injury* is an ideal. It is an expression of Human social conscience, of our fundamental sense of right and wrong in our dealings with others. It reflects the ancient concepts of Natural Law and English Common Law. It is the path of *universal-interest*.

But the *Principle of Non-Injury* can also be defined with considerable accuracy.

We have observed that throughout most of our political history Government has pursued a policy of *laissez-faire* or minimal intervention in the affairs of society, thus permitting those with superior forces of personality, intelligence and wealth to increase their wellbeing by diminishing that of others.

Insufficient Government intervention permits citizens to harm and exploit one another. That is the essence of Right Wing Conservatism. Under this Regime freedom is increased for some but decreased for others; hence the overall Liberty is not maximized.

The Socialist reaction gave Government, or the State, considerably greater powers of intervention designed to help the poor by preventing exploitation and readjusting the balance of wealth.

But *excessive* Government initiates exploitation and oppression by the State. That is the essence of Left Wing Socialism. Under this regime Liberty is increased by Government protection, but it is then decreased as Government goes further and creates oppression. Again, Liberty is not maximized.

Liberty is maximized when Government offers full protection, but without moving into oppression.

It thus becomes clear that the significant factor in Government policy, and the Liberty it produces, is the *Degree of Government Intervention*.

The Degree of Government Intervention can be shown as a simple straight-line scale, calibrated from Zero to One Hundred Percent.

Let us first establish the two “extremes” at each end of the scale.

At one end of the Scale we have Zero Percent Government Intervention, which means that Government quite simply does nothing at all. Government is to all intents and purposes non-existent. The result is anarchy in its pure sense of being without leader. In this condition everyone is free to do whatever they like; but this also includes the freedom to limit or eliminate the freedom of others. Freedom can be absolute, or it can be nothing, depending on your strength, skill, cunning, or luck! Liberty, in the sense of a disciplined freedom resulting in a safe and ordered society, could not be said to exist under this regime.

At the other end of the Scale we have One Hundred Percent Government Intervention. Here we find total Government control over every aspect of life. This is the kind of environment visualized by authors such as Aldous Huxley and George Orwell, who attempted to highlight the dangers of allowing Government to become oppressive. Here we find ourselves in the sinister world of Total Control, of citizens directed in their every move and every thought by an ever-watchful Big Brother.

Fortunately most of us experience neither anarchy in the sense of zero Government, nor the total oppression of one hundred percent Government. But these two positions provide clear end-points as reference positions.

While there is little current example of zero Government, many of the ex-Socialist-bloc countries now have a degree of Government which in the confusion following *perestroika* may be considered seriously deficient, resulting in black markets, widespread corruption, and the control

of production and commerce in the cities moving from the State into the hands of mafia-style gangs. It might well appear to the citizens of Russia's major cities that Government Intervention is almost at Zero.

More familiar to Western countries is the Low Degree of, say, a nominal 25% Government Intervention. This is represented by the term *Laissez-faire*, meaning literally “let people get on with it”.

The first exponent of *Laissez-faire* was Francis Quesnay, Physician to Louis XV, who came to the conclusion that government was a necessary evil which should interfere as little as possible with individual freedom.

The pioneering thought of Quesnay was developed into one of the most powerful doctrines in the history of ideas by Adam Smith, Professor of Moral Philosophy at the University of Glasgow, whose work *The Wealth of Nations* (published in 1776) became the gospel of the “System of National Liberty” for the next century in European and American thought.

Familiar with the works of Quesnay, Smith built a more solid basis for his attack on government, updated now to reflect the shift of emphasis from land to industry which was concurrently unfolding.

Smith held that the source of a nation’s wealth is labour. The increase in a nation's wealth therefore depends on making labour more efficient, which is achieved by enhancing the investment of capital, developing specialization and mass production, and promoting the free flow of goods and materials in international trade.

To give full play to this complicated but natural and vital operation, the whole process must remain free from artificial restrictions of government.

This thesis was undoubtedly proposed as a constructive scientific-economic blueprint for the general growth, welfare and benefit of society as a whole, and in theory at least it is difficult to argue against it.

But in production and commerce, as in all aspects of inter-human relationships, there is always opportunity for infringement of liberty, for injury, for some to gain through others’ loss.

And as the Industrial Revolution unfolded it would become clear that infringement of liberty in industry could be taken to, and indeed well beyond, levels which were unacceptable to anyone with knowledge and a modicum of social conscience.

Though Adam Smith saw benefit for all, in practice it would be the owners of capital, production equipment and factory premises who would benefit, to the detriment and impoverishment of those in the weaker position: their employees, the ex-hand-weavers now displaced by machines and clamoring for work at any price to ward off starvation. Women and children were paid a meager wage for long hours of concentrated work tending the machines which were dangerous, unguarded, and caused frequent accidents for which there was neither care nor compensation.

And the Law was predictably slow to act in their defence. The bankers, investors and industrialists, being either in power or influential in the formulation of Government policy, naturally supported a system which gave them a free rein to take advantage of their superior position. *Laissez-faire* for them was every bit as rewarding as Adam Smith had promised.

But at the same time it was becoming clear to reformers both in and out of Parliament that while accepting the basic doctrine of Liberty, an increase in Government Intervention was necessary to protect workers and improve their lot.

The movement for reform by legislation in England began with the Factory Acts which between 1833 and 1845 succeeded in limiting the work of children under eleven years of age to nine hours a day and of women to twelve hours. These Acts prohibited the employment of children in mines, and for the first time provided general rules for the health and safety of all workers.

So it was that Government Intervention began steadily to increase, with the justifiable aim of eliminating some of the more blatant opportunities for citizen to infringe the liberties of fellow citizen.

But the pace of reform was too slow for the newly awakening, increasingly organized and educated working classes. And the pendulum of Government Intervention was to swing over to the other extreme: to Socialism and Communism which represented a much higher degree of Intervention than most reformers would ever have visualized.

Under Socialism and Communism we enter the higher realms of Government Intervention, say a nominal 75%, where an increase in the power of Government and the State is actively pursued.

“Place everything in the hands of the State”, the Socialists urged, “and the State will take good care of us all”.

Set against the Victorian backdrop of widespread poverty, ignorance, ill-health and malnutrition, coupled with a concurrently growing sense of conscience and the need for reform, Socialism appeared to offer the answer. Only a few there were who could foresee the implications of high and ever-increasing State Control.

One such visionary was Herbert Spencer, who in 1884 wrote:

“There is an increasing tendency for administrative compulsion and restraints. The increasing power of the State is accompanied by a de-creasing power of the rest of society to resist its further growth and control. The multiplication of careers opened by a developing bureaucracy tempts members of the classes who regulate it to favour its extension, as adding to the chances of safe and respectable employment for their relatives. The people at large, led to look on benefits received through public agencies as gratis benefits, have their hopes continually excited by the prospects of more.

“Thus influences of various kinds conspire to increase State action and decrease individual action. The numerous Socialistic changes already made by Act of Parliament, joined with the numerous others about to be made, will soon be all merged in State-socialism, swallowed in the vast wave which they have little by little raised.”

Spencer’s words have proved prophetically correct in the light, not only of State oppression in the Soviet Union, but also of attitudes, demands, high taxes and budget deficits in the West.

Nations and their Governments create three kinds of political environment: *enslavement, oppression and liberty.*

Enslavement, exploitation and imposition result from a Low Degree of Government Intervention, or Laisser-faire, which *permits* infringement of liberty by citizens.

Oppression, Government intrusion and State takeover of business results from a High Degree of Government Intervention, or Socialism-Communism, which creates infringement of liberty by Government.

And where can we find Liberty?

Certainly not at Zero Percent Government Intervention. At Zero Percent Intervention there is no protection of Liberty whatsoever.

So we move away from this condition of lawlessness, proceeding up the Intervention Scale. As we do so a gradual increase in Government Intervention provides basic law, order and personal safety, followed as we progress further up the scale by more sophisticated forms of protection such as consumer, employee and environmental protection.

How far should we continue to increase intervention?

The Right-wing definition of Liberty as “minimum Government Intervention” has always been a powerful argument, enhanced today in the light of both the experience and the demise of Soviet Socialism. Just as innocence until proved guilty is a cornerstone of the English judicial tradition, so too does the Anglo-American concept of Law recognize what may be called *Presumption of Liberty*, the concept that we should all be free unless there is a very good reason for the law to limit that freedom.

And what constitutes a “very good reason” for the law to limit freedom? Another very old-established precept of English Common Law provides an answer: it is entirely reasonable for the law to limit or to forbid an action if that action is harmful or injurious to others.

So we continue to increase intervention gradually until we reach the point at which there is sufficient Government Intervention to ensure full protection of each and every individual's liberty from infringement by others in any way. This point is the halfway mark on the Scale, represented by 50% Government Intervention. Under a regime of 50% Government Intervention there would be no opportunity whatsoever for one individual or class or group to harm or enslave or to infringe the liberty of any others.

At this point we have achieved one “side” of liberty. As we make the final move from 49% to the 50% mark, we have succeeded in eliminating all infringement of liberty by defending the citizen against any and all forms of injury or imposition by other citizens.

But now we must guard against going any further, which would lead us into oppression.

We have already defined the 50% mark as being the precise degree of Government Intervention necessary to prevent any and all infringements of liberty between citizens. So if we increase intervention any further Government can only begin producing laws which are not strictly in the protection of liberty, and are therefore intrusive and oppressive.

As Government Intervention increases beyond 50% a progressive reduction of liberty immediately begins; its effects are painful, and lead ultimately to total oppression. Yet it is an easy road to take.

The dream of “total care” by a benevolent Government, though impossible to attain, is nonetheless tempting. And the movement from 50% to higher and ever higher degrees of intervention in people's personal lives can begin all too easily with laws “for our own good”. But secretive Government, oppressive laws, excessive industrial regulation and dictatorial land-use planning will soon begin to develop.

Under a policy of 50% Intervention, Government prevents individuals from imposing their will and judgments upon one another, but initiates no imposition through Government excess.

50% Government Intervention neither permits nor creates Infringement of Liberty. Government intervenes promptly when, but only when the law is required to protect a clearly identifiable infringement of liberty.

If there is any opportunity for any citizen to infringe the liberty of any other citizen, if any citizen suffers infringement of liberty to any degree or in any way at the hands of any other citizen, then Government is exercising not 50%, but 49% or some lower degree of intervention. Government is *permitting* a degree of enslavement.

On the other hand, if Government issues any law, order or directive which is not clearly in defence of an identifiable liberty, then Government is exercising not 50%, but 51% or some higher degree of intervention. Government is *initiating* some degree of oppression.

The ability to define the seemingly diverse elements and options of anarchy, enslavement and oppression, of *laissez-faire* and Socialism-Communism, of Right and Left on the single common scale of Government Intervention allows us to define Liberty very precisely.

Liberty is *maximized* when the degree of Government Intervention is 50%: no less, and no more. At 50% Intervention there is no infringement of liberty either by citizen or by the State; there is neither enslavement nor oppression; the general liberty is maximized. At 50% Intervention, the Principle of Non-Injury is fully and accurately reflected.

The Degree of Government Intervention necessary to *maximize* liberty can thus be identified with a precision which any citizen can readily comprehend, and when necessary, defend.

The Principle of Non-Injury can be defined accurately and precisely; but is it capable of useful and practical application?

When the Principle is right, the laws resulting from it must also be right. Or so theory might suggest. But can the Principle of Non-Injury, consistently applied, satisfy the legislative demands of a complex modern society? Again the answer is positive.

Legislative interpretation of the Principle of Non-Injury may provide some unusual solutions to our problems, but they are solutions which are visibly fair, and fundamentally effective.

The formulation of Legislation is the process through which a clear and simple guiding Principle is applied to the complex and ever-changing parade of conditions and activities.

In this profusion of events and activities we may identify three basic categories of conditions, three areas of social activity to which a political policy or principle may be applied:

- Person and Property
- Use of Natural Resources, and
- Economics, Production and Commerce.

It can clearly be shown that Legislation based accurately and consistently on the Principle of Non-Injury will be fair and just, promoting the Universal Interest and maximizing both the general Liberty and overall prosperity.

7

PERSON AND PROPERTY

Mind, Body and Property - Extending the Protection of Law - Liberty and Enforcement Services

Mind, Body and Property

There is a naturally definable *Personal Area* which inherently “belongs” to each individual: the mind, body and products of the individual’s labour, that which is directly associated with, or attributable to the individual.

Legislation applicable in this Personal Area deals with what is already by creation and by definition the individual’s property. The Principle of Non-Injury requires protection without intrusion.

This would be reflected first and foremost in the simple requirement that Government should “*prevent men from injuring one another*”. Many may feel that Government should do much more; but few would dispute the proposition that personal protection must form the essential basis of Law. If a nation’s good citizens cannot walk peacefully in the streets without fear of physical violence, or if they are not safe in their homes, then surely their Government is failing in its most fundamental duty and purpose, whether that failure be an insufficiency in Law or in the enforcement of it.

Security of body and mind from intrusion by others naturally includes legislation and protection against murder or physical injury. We must also include the more subtle forms of intrusion such as excessive noise, light trespass, and air pollution (which also affects the environment as a separate issue). Protection from excessive or unreasonable noise is now recognized as an important area of Personal Liberty, and light trespass already enjoys legal recognition, although this latter fact is not widely known.

While smoking in private is a matter for personal discretion and is no concern of government, it is now widely recognized that smoking in shared and public places creates a form of air pollution which others may be allergic to or find offensive, and from which they should expect protection in law and through local bylaws.

An example of a new development in personal privacy protection can be seen in the present need for clear regulation applicable to privately operated Data Bases containing information of a personal nature, an issue causing mounting concern. Companies must be required to state their privacy policy clearly and concisely in a readily accessible and readable manner. Government may require that particularly intrusive measures, which go beyond essential statistical information, be officially approved, and again, publicly stated.

The laws of Personal Liberty must also protect property: the direct manifestation of the individual’s labour, such as ideas and services, or the equivalent in goods, services or money which the individual has obtained in legal and fair exchange for his products or labour.

While the protection of person and property is currently recognized and thus a non-contentious issue, complications in the Personal Area are nonetheless potentially numerous. Freedom of speech, for example, is highly respected in the politically developed countries; its importance lies

particularly in the protection of citizens from Government attempts to stifle opposition, and in the benefits of ensuring the free flow and development of ideas. But should the Law permit the open publication of lies and defamation of character? Clearly not, as there is injury here.

Newspaper readers have a right to expect the truth insofar as it is reasonably obtainable; and individual citizens have a right to privacy, and to protection from publication of lies and character defamation. Freedom of speech, like freedom of action in general, cannot be absolute.

What is important, as in all cases of interpretation of the Principle of Non-Injury, is that each and every actual, potential or suspected injury be fully explored, then minimized or eliminated. The existence of injury places a clear obligation upon Legislators to identify and prevent it. But the absolute need to show the existence of injury also exercises restraint over Legislators, who cannot act except in the protection of liberty from clear, definable and explicit injury.

The Principle of Non-Injury is fully and accurately reflected, and liberty is maximized, when the citizen is fully protected from personal harm or injury or interference, theft or deprivation of property. This is represented by a degree of Intervention of 50%, no less, and no more. If this protective force is exerted by Law and Enforcement in all cases of infringement of Personal Liberty then the Law is applying a precise degree of 50% Intervention.

The theoretical degree of 50% Intervention marks a significant point in legislative activity, a high point in effect, since up to 50% government intervention has been on the increase as it strives to minimize or eliminate any and all forms of identifiable injury. From this point on however, it is not government that needs to be on the lookout for injury caused to citizen by another or other citizens. Rather it is watchful citizens and those in charge of enforcing the constitution who must be ever on the lookout against government interference into citizens' private lives.

If the Law now increases its degree of Intervention beyond 50%, to a nominal 51% or further, it is exerting not a protective or defensive force, but an aggressive, intrusive force. At this point we start to lose connection with the Principle of Non-Injury, as the Law itself begins to *create* infringement of citizens' Liberties.

One very simple test of Government force or intervention, by which we can define whether a particular Law is defensive or intrusive, is to ask whether or not the Law concerned is in defence of a specifically identifiable Liberty against a clearly definable infringement by another. If it is, then it is protective. If it is not, then that Law is intrusive and exceeds 50% Intervention. Under a Policy of 50% Intervention there can be no Law and no crime without an Injury, without a clear infringement of the Liberty of one citizen by another.

If Government issues any Law, order or directive which is not clearly in defence of an identifiable Liberty, then Government is exercising not 50%, but some higher degree of Intervention.

It might easily be assumed that Government, especially in a "free" and democratic country, rarely if ever strays into oppression. The assumption would regrettably be quite erroneous. A high degree of Intervention in the Personal Area is quite common, and increasing. Governments slip into the beginnings of oppression in several ways: by legislating "for the citizen's own good", by engaging in telephone-tapping, snooping, spying and other intrusive activities in the name of national security, and by claiming through the process of taxation-as-of-right an ever-

increasing proportion of the citizen's earnings which are then disbursed at Government's absolute discretion.

Laws which intrude into personal, private lives "for our own good" represent the first step into 51% Intervention and beyond. The first step is the most significant; once that is taken by Government, and citizens have accepted with their compliance, the safe confines of the Principle of Non-Injury have been breached, and further steps will inevitably follow.

Consider, for example, the Law requiring minimum-wear standards on the tyres of motor vehicles, and laws requiring seatbelt use.

Worn tyres can cause an accident at speed which may result in the injury of others; legislation laying down minimum specifications for tyre treads would therefore be in accordance with 50% Government Intervention. But a Law requiring the use of seat-belts is for the individual's personal safety only; failure to use a seat-belt can in no way infringe the Liberty of others. Such legislation thus represents an excess of 50% Intervention.

It is often argued in countries with State-operated Health Services that accidents caused by lack of seatbelt use are an imposition on the National Health Service and thus on the community; this argument overlooks the fact that enforced contribution to a monopoly State-run Health Service is itself a gross infringement of individual Liberty.

Another motive behind this type of "personal welfare" legislation is the presumption that Government has the right, or even the obligation, to impose directives on conduct relating exclusively to the individual's private welfare; this assumes, dangerously, Government superiority. "We think it's good for you, we know best, therefore you must be required to do it by law".

Should we accept that others know better? Most certainly one should always be open to professional advice, and most certainly it is wise always to consider and practice prudent personal behaviour.

But should we accept compulsory direction by Government of private lives and conduct, direction which has no bearing upon political liberty? If we do so, then we are humoring Government dangerously; we are acquiescing to the myth of Government superiority; and we are encouraging other similar intrusions into private life and conduct.

Today it is seatbelts and mass-medication through the water supply (fluoridation); tomorrow no doubt, as a simple logical extension of the same principle, it will be mass cold baths and early morning exercises under the auspices of the Ministry of Public Wellbeing. People might be healthier in body, but the health of political Liberty would take a severe turn for the worst.

No persons either individually or through Government, should impose their will, their way of life, their judgments or their brand of wisdom on the private life of others no matter how correct they might think their own way of life to be and how wrong they think that of others. The Principle of Non-Injury and the Laws which reflect it respect the individual's right to do things which might be considered foolish or unwise, provided they do not harm others.

It is important that we should remain ever watchful in regard to the expansionary activities and influences of Government in order to ensure that Intervention never exceeds the precise degree of 50%. When citizens infringe the Liberties of one another they fortunately have limited scope

to do so, and those harmed can find remedy in law. But when the law slides into the path of oppression, remedy is more difficult to find, the effects are much more far-reaching, and the trend is difficult to halt or reverse.

Just as Government under the Principle of Non-Injury may not intrude into the individual's personal life except to legislate for the protection of others, so also would Government no longer be permitted access to the individual's earnings, helping itself without limit to however much it chooses.

Government infringement of Personal Liberty in the demands which it makes upon our earnings is an issue increasingly claiming our attention; it is not just a matter of quantity, but fundamentally more important is the assumption on which such claims are based.

Government takes taxes as of right, with no obligation to offer anything in return or to justify specific expenditures, and without any operational disciplines on the productive use of such taxes.

Heavy tax burdens, in many cases up to and beyond 50% of gross national earnings, place undue strain on families since both adults are compelled to go out to work leaving children to fend for themselves. Government is an enforced monopoly with neither incentive nor discipline to maximize its productive efficiency. This subject will be examined further, both under economic and commercial, as well as constitutional issues.

Citizens traditionally expect any of three duties from Government: law, rich-to-poor income transfer, and the operation of essential and infrastructure services. Each of these three functions must be considered separately, for each has a different bearing on taxation.

As to provision of Law, this is the essential "core function" of Government. Under the Principle of Non-Injury, Government confines itself to the provision of law and its enforcement, or more specifically, those Legislative, Protective and Constitutional Services essential to and directly related to the protection of Liberty. In the execution of these duties Government under the Principle of Non-Injury would be required to maximize its own productivity, offering the best possible service at the lowest possible cost. This aspect of Government will be further explored in a later Chapter.

Essential and Infrastructure Services should be separate from Government, financially and managerially autonomous though subject to strict Government coordination and supervision. This issue is also examined in a later Chapter.

The matter of rich-to-poor income-transfer is more complex.

Income-transfer between individuals, more specifically between rich and poor, is justified by the accepted fact that income does not fairly reflect *labour* or work contributed.

This "guilt of wealth" has long been recognized by the wealthy themselves, as evidenced by the many fine buildings and foundations established and funded for public welfare by the great industrialists and traders of the 18th and 19th Centuries.

It has also been used by Socialists as justification for the Welfare State, which is really a programme of income-transfer since it is paid for by taxing the rich at a higher rate than the poor.

When we accept that work and reward are not related, and that there are indeed gross discrepancies between the work people do and the rewards they obtain, we accept the principle of income-transfer. But in so doing we are simply attempting to rectify one injustice by adding another. It will be noted in a later Chapter dealing with Economics and Commerce that through a system of Pay, Profit and Price Evaluation the Principle of Non-Injury would ensure a fair relationship between work and reward, thus removing both the need and the justification for income-transfer.

A further implication of Pay, Profit and Price Evaluation is that it creates the basic conditions enabling expansion of the economy to full employment and full productive capacity. Much of the welfare and social services expenditure required at present is necessary simply to compensate citizens for the unemployment, homelessness and poverty directly attributable to present Government policies.

Income-transfer may also be advocated to subsidize services considered appropriate to a civilized society, such as Sport and the Arts. But we should be quite clear as to what is involved in subsidy.

Subsidy occurs when those who claim to want or need a service are not willing to pay its viable cost. In this case, if the project or service is to continue, the cost must clearly be met by those who do not want, or use the service.

Consider for example, Government subsidies for the "Arts". This demand results from the fact that those who claim to enjoy the Arts, in whatever form is under discussion, are not prepared, or do not rate the services sufficiently highly, to pay the full, viable cost. They therefore demand that others with no interest in the Arts, those who may prefer the delights of nature or devote their leisure budget to a creative hobby or travel, must be required to make a contribution to a service which is of no use to them.

This is a form of enslavement, since one person is providing a service to another under compulsion and without reward.

"Democracy" is often used to justify subsidy: a majority votes for a service, therefore a minority of non-users must pay for it. But there is a better, truer form of Democracy we can employ here. The freedom to spend your money as you wish is a clear expression of Democracy: those who want a product or service "vote" for it by freely using it and by paying its viable cost; those who don't are left in peace to spend their money elsewhere.

Another aspect of income-transfer takes place between Regions, as Governments use taxes to bolster the economies of Regions in difficulty or those which are on the Nation's economic periphery. Governments also make extensive use of taxes to subsidize favourite industries or "investment" projects in new industries or research projects. Ultimately however, industries must stand or fall on their intrinsic merits and investment must be judged on similar grounds.

It will be observed in a later Chapter that the Principle applied in the area of Economics and Commerce provides for a degree of priority planning in the investment of the National Credit Base, allocating necessary investment to under-developed Regions, to productivity-enhancing projects and industries, as well as to essential and infra-structure services. In this case, however, investment is provided from the banking sector as loans, not from taxation as grants.

Income-transfer by Governments is a dangerous practice; it distorts markets and encourages inefficient industries. More unfortunate is its effect on political conduct and morals, as evidenced in the USA where vast amounts of money are spent by Political Action Committees to influence the course of law and the flow of funds.

And citizens tend increasingly to look upon Government as a source of unlimited wealth just waiting to be milked; they overlook the fact that Government can “give away” nothing it has not already taken – minus a substantial “handling fee”!

More importantly under the Principle of Non-Injury, Government would simply not be empowered to tax citizens for any purposes except for those Legislative, Protective and Constitutional Services essential to and directly related to the protection of Liberty – with the operation of every aspect of government strictly controlled in order to maximize productivity and thus value to citizen-customers.

A further issue in the protection of individual liberty from government-initiated interference concerns the increasing need for caution in the enforcement sectors, where governments are taking ever-greater presumption in their “right” to access personal records, to monitor emails and telephone conversations and perpetrate other forms of intrusion. While such actions may be justified on the ground of fighting crime, the correct judicial procedures necessary to protect individual liberty must always be scrupulously observed – and like all forms of justice, be seen to be observed.

Indeed “secret government” has no place under the Principle of Non-Injury. The duties, responsibilities and limitations of governance are clearly set out, and must at all times be conducted openly and publicly.

In today’s complex world many factors are interlinked. Under the Principle of Non-Injury, where the one law: “do no harm”, is clear to government and citizen, governance becomes in reality much more democratic in the sense that government and citizens can participate and share on a more equal footing in the consistent interpretation and execution of the central policy. There is indeed much truth in the saying “where the people lead, the leaders follow” and public commonsense can be relied upon to come up with commonsense solutions to address not only “grassroots” problems, but also wider, global issues.

Most citizens would, if asked, reject acts of war and armed interference in other countries’ affairs unless their own nation is directly threatened, though in extreme cases of mass genocide, intervention on humanitarian grounds might be popularly supported. This issue has some considerable significance since it is largely interference by nations such as USA and Britain in other countries’ internal affairs which is the cause of terrorism. Citizens’ good sense would, if consulted, keep our defensive forces to the minimum and use them only to counter a direct threat. And since it is the citizen-taxpayer who foots the bill for government-sponsored international adventurism, the citizen should rightly have a stake in decision-making.

Extending the Protection of Law

That the individual’s mind, body and property should remain free from injury and interference by other individuals or by Government is hardly a contentious proposition.

But who are the beneficiaries of the law's protection? When we come to consider extending the benefits of law beyond the Human race there is a wide gap between present actuality and reformers' ideals – leading to debate, friction and sometimes violence.

At present we place a high priority on Personal Liberty; everyone has the right to protection, and equal protection, under the law. We find quite abhorrent any form of slavery, or of unequal rights for different classes of citizens.

Yet there are still areas to which we do not consider it appropriate at present to extend our respect, and the protection of law. Thus while we may believe that Humans should respect one another, many accept that they may freely abuse animals, birds, and fishes, in addition to the unborn human foetus.

If we examine our historical course of political progress, we can see that the rights of others, to live without pain or molestation and to follow their own paths of evolution, are continuously being expanded. Thus the time will doubtless come when we find it entirely natural to regard all forms of life as worthy of, and entitled to the same respect we show to one another. We will not kill animals for "pleasure", for sport, or through simple disregard.

Reformers will, as they have done consistently in the past, seek to push forward the frontiers of legal protection. Just as slavery was abolished and the vote was extended, so the time will come when the protection of law will extend not only to all Humans both born and as yet only conceived, but to all lifeforms. At such time we will no doubt look back upon our current slaughter of other forms of life for food and fun with the same abhorrence with which today we view the slavery practised by our forefathers.

It is a matter of general principle that if the law is too far in advance of current thinking and the morals of society, it will not be respected. But the law should nonetheless give the lead in reducing any and all infringements of liberty. Indeed the law today often lags considerably behind the popular views of right and wrong, particularly with respect to animals and the environment.

The Principle of Non-Injury would require legislation to remain in the forefront in offering protection to the Animal Kingdom, reflected for example in stronger protection from cruelty, banning laboratory testing on animals, and the rapid phasing-out of "factory" farming so that animals are kept in conditions as closely resembling the natural as possible. This is not only a matter of animal rights and welfare; much of the "factory-produced" meat currently consumed contains numerous chemicals and antibiotics, with highly dubious effects on the Human body.

The Principle of Non-Injury is fully and accurately reflected, and Liberty is maximized, when not only every citizen, but every lifeform is fully protected from personal harm or injury.

Liberty and Enforcement Services

If any citizen suffers infringement of Liberty to any degree or in any way at the hands of any other citizen, Government is obligated to provide the necessary Legislative protection.

The administrative or physical force needed to empower this Protective Legislation is supplied by the Enforcement Services.

The Enforcement Agencies collectively are responsible for enforcing the law in various ways, from administrative checks of weights and measures to the physical force of the Police; in cases of suspected lawbreaking the guilty party must be identified through the Judicial process; and where guilt is established, there must be restoration to the injured party.

It is largely through these Enforcement Services that Government and the Law “interfaces” with the public, their customers.

It is therefore important that conduct of the Enforcement Services should be clearly defined.

The Enforcement Services must not be permitted to initiate infringement of Personal Liberty. Any interception of a citizen going about his or her lawful business is an Infringement of Liberty and can only be justified on specific grounds of suspicion of illegality which must be clearly stated at the time, and in cases of major interception (search of home or private property) justified before, and authorized by, a representative of the Judiciary.

The Judicial process of Identification attempts to establish the three components of an Infringement of Liberty: the injured party, the nature and extent of the act of infringement itself, and the perpetrator of the injury.

The existence of an Injured Party is central to the Judicial process under the Principle of Non-Injury. Without an Injured Party specifically identified, either the Law must be in error, or the Law is not applicable in the particular circumstances in question. In such cases Judges could either dismiss the case, or request a Legislative Review, a process which will be examined in more detail in a later Chapter.

Once an illegality has been established in a Court of Law, the Principle of Non-Injury allows the Court only to require that the Liberty infringed and the costs involved be *restored*; it allows no further intrusion into the lawbreaker’s personal freedom. The concept of *restoration* is central to justice under the Principle of Non-Injury; vengeance and deterrence have no place.

Law Enforcement and Justice are generally well conducted in the politically mature countries; this tradition must be preserved and enhanced, and every care must be taken to ensure that no Agent or Agency of the Enforcement Services is permitted conduct outside the bounds of Law and Constitutional Regulation.

To this end, Constitutional supervision and enforcement should be provided, in the form of periodic and random visitation and inspection of detention and correction institutions.

8

NATURAL RESOURCES

National Resources Plan - Urban Development and Transport - Landpricing

National Resources Plan

While a person may be considered to have an inherent right of ownership over him- or herself and the products of his or her own creation, the Natural Resources pose a different problem.

The Natural Resources are *natural*. By their very definition they are not man-made, and are therefore not automatically associated with or attributable to any individual. But people need to use natural resources for food, raw materials, habitation, commerce and recreation and must therefore make claims upon resources which are not inherently theirs. Thus it is clear that rights to the use of Natural Resources must be *created* or *apportioned*.

Various solutions have been found and practised through the ages. The law may leave individuals to fight out claims amongst themselves, perhaps with a resulting tenure by a few influential families; the law may attempt a fair and productive apportionment; or the State (or dictator or monarch) may take total resources ownership into its own hands.

In medieval Britain monarchs handed out land as rewards to their supporters, creating the great manorial estates. In the 1800s land-use patterns changed as agriculture became less important, giving way to industry and the great urban industrial centres. Thereafter it was largely the free market that determined land use, and many might believe that this continues to be the case.

In reality land-use in most developed countries today is determined by local and national planning decisions based on complex land-use rules and local planning constraints which have grown up haphazardly over the centuries, decisions often made arbitrarily and secretly, largely as reactions to events of the moment without the benefit of long-range planning or of truly open consultation.

The existing pressures on land-use can only increase, as the traditional claims we make upon land – for housing, industry and commerce, transport routes and harbours, agriculture and mining – are now being extended by increased demands for greater leisure access to countryside, preservation of areas of outstanding natural beauty, and a greater respect for the environment.

How would the Principle of Non-Injury apply to the apportionment and guidance of resources use?

We begin with the Principle of Non-Injury itself, the essence of which is: liberty, until that liberty infringes the liberty of others. On a basis of presumed liberty, the duty of government is to identify and prevent through legislation those actions which are harmful or injurious to others.

Applied to land-use, we begin with the individual's freedom to use, according to his wishes and benefit, land to which he holds or may legally obtain title. The duty of government is to review individual uses of resources in order to identify and prevent those which are disproportionate or detrimental to other users or to the environment.

In order to establish a basis for fair, equitable and responsible resources use, the Principle of Non-Injury would require three steps:

First, as a working foundation, the formulation of an overall National Landplan based on a full inventory of natural resources; second, estimates of current and future demands; and third the institution of a Resources-use Forum in which availability can to the best extent possible be reconciled with actual and anticipated demands.

Land has its own inherent potentialities. Certain areas may offer excellent agricultural soil while others conceal significant mineral deposits. Some areas are outstanding in natural beauty, while certain forest or river systems make their own demands for special treatment on ecological grounds. Clearly Government cannot fulfill its role as adjudicator unless and until it is fully informed as to the detailed nature of the nation's total natural resources.

The inventory of availability would take the form of a national map on which every kind of resource is clearly indicated.

The duty of those concerned with the provision of availability data must be to provide a detailed, continuously updated – and publicly accessible – inventory showing the location, extent and nature of all resources.

The Inventory would show, for example: mineral deposits, water supplies, agricultural land graded as to quality and suitability for different crops, areas of outstanding natural beauty, areas suitable for urban settlement, as well as those areas or resources which should be handled with especial sensitivity as being appropriate for wildlife preserves or necessary for environmental wellbeing.

The second stage requires the preparation of an ongoing assessment of demands upon the resources both current and anticipated, based on a thorough and fundamental analysis.

As a basis the analysis begins objectively by looking at populations and their broad, predictable needs for urban living, trade and cultural facilities, agriculture, minerals, recreation and retreat. Individuals and special-interest groups as “consumers” will then fill out the picture with additional needs and ideas such as wilderness homes or specific recreation facilities.

The two banks of resources data: the Availability Inventory, and the assessment of actual and anticipated demands, can then be coordinated by a Natural Resources and Land-use Forum to produce an overall ongoing *National Resources Plan*.

On this basis, clear guidelines can be established for such broad national uses as major agricultural needs, recreation, mining, transport and urban development.

The Land-use Forum should have its purpose and procedures clearly set out in its own Articles of Constitution. Its members should represent every aspect of land and resources use; its deliberations, as well as the data on which they are based, must be open at all times to public scrutiny and input.

Its object is an ongoing National Landplan, representing the continuing definition of zoning and planning guidelines and restrictions at national level, from which local level plans can then be made.

But it is not only our Human requirements that we must consider.

We need to use the Natural Resources, certainly. But we must do so within the limitations of environmental responsibility, and we must give back the equivalent of what we take through our stewardship and enhancement of our environment.

This necessary approach to our relationship with our environment can be formalized and brought into the overall resources-use planning process by the simple expedient of according to the Environment the status of a *legal entity* having its own rights, defined in law, to respectful and responsible treatment and to good stewardship, rights which must stand as equals in law to our own competing Human claims. Just as minors are represented by Counsel in courts of law, so the environment should be permanently represented by an *Environmental Protection Council* operating under Constitutional authority.

Some environmental objectives might be listed as follows: zero land/water/air pollution; zero garbage, requiring a determined effort to eliminate garbage at source, for example through recycling and increased use of reusable containers; phase-out of factory farming and pesticides, identification and protection of all significant natural ecosystems and major wildlife habitats.

Under the Principle of Non-Injury broad planning guidelines would be based on objective data providing accurate information on availability and informed estimates of present and future needs, formulated with the widest possible input. It is our human challenge, particularly as population pressures increase, to use our resources wisely and responsibly, minimizing waste, providing for as many needs as possible, and reaching decisions in the common interest with the minimum of misinformation and acrimony.

Interestingly, a similar policy of land-use is applied in the United States to the administration of that country's surprisingly vast area of Public Lands. It is little known outside the United States that some 270 million acres, about one-eighth of the USA, is managed by the Bureau of Land Management (BLM) - in addition to land already set aside for National and State forests, parks, and wildlife refuges.

The BLM has been mandated by Congress to manage Public Lands on a continuing basis for multiple use and sustained yield, taking into consideration the reconciliation of the varied demands made upon the land, as well as concepts of stewardship and husbandry.

As the American public becomes more interested in outdoor leisure activities and aware of environmental issues, a broad national debate is taking place regarding the uses and protection of lands in public care. Indeed awareness of environmental needs and potential damage is increasing on a global scale. We are also becoming more aware of the need for economy in the use of land; its scarcity becomes more acute as populations and their needs expand.

Urban Development and Transport

By far the most important area for conflict-resolution and forward planning in resources-use lies in our towns, cities and built-up areas.

And here there is more at stake than simple land-use issues; for the town or city is a service in itself, a machine which must be properly designed and maintained if it is to function efficiently and fulfill the demands of its residents, its customers.

Homes, jobs, shops, factories and offices, market gardening, leisure facilities, all of these and the many other needs of a civilized society are part of what may be called *community*.

An efficiently functioning community offers a wide variety of facilities and opportunities in pleasant surroundings, with easy and convenient movement between them. Needless to say, a sprawling city served by traffic-clogged streets would not be described as functioning efficiently!

If high standards are to be developed and maintained and if productive use is to be made of scarce land, the science of community design and management must be developed beyond the random reaction and counter-reaction on which we have relied in the past.

An important aspect of National Resources-use planning is the identification of the major urban centres with their dependent surrounding regions, and the transport routes joining them.

In Britain and Europe, the old market towns developed as centres for trade and culture serving their surrounding villages, farms and countryside. Movement was on a radial pattern linking the surroundings with the centre. Though movement patterns have now become confused by random development, the basic nature and purpose of the town or city centre remains: it exists to serve as a focal point for the surrounding communities, providing opportunities for work, trade, and culture, the centre linked like a web to its outlying, dependent area.

Villages, each with its convenience store, church, kindergarten and recreational green, are linked to their nearest town which offers a wider choice of goods, services, employment and activities; towns and city suburbs are then linked to the central city, providing those highly specialized employment opportunities, goods, services and activities which can only be supported by the overall regional market and population.

The totality of city with dependent towns, villages and countryside is the County or Region, ideally of about three-quarters to a million people, self-sufficient in jobs, in choice of goods and services, cultural and intellectual amenities, with open land offering space for market-gardening, leisure and recreation.

The importance of re-establishing and redefining Regional Centres lies in focalizing commercial development at the centre and providing coordinated transport links. On this basis, the limits of villages, towns and cities can be defined, waste land can be developed, and new commercial and residential developments can be coordinated with transportation.

The fundamental definition of the Community, its nature and its purpose establishes that the Community or Region is not simply an assemblage of unrelated parts, but a working system in its own right which needs fundamental and coherent planning if it is to function efficiently whilst preserving character and a pleasant livable environment.

It is particularly important that transport patterns and routes be clearly established. The Regional Centre must become the focal point for a radial public transport system serving the surrounding Region/County. These radial transport spokes would serve the dependent towns, with ongoing links to the smaller surrounding villages and communities.

The question of transport *mode* is also important, and here we are faced with two choices: the private car versus shared public transport. Experience has now shown clearly that the road/car system alone is not capable of satisfying our needs for fast, safe, reliable transportation.

Building more roads simply increases urban congestion and pollution, with commuting speeds reduced in many cases to near-immobility – the result of planning decisions which favoured private almost to the exclusion of public transport. The efficient functioning of livable communities, as well as the effective use of land and the minimization of pollution clearly indicate the need for an active revival of public transport services.

Public transportation should seek to provide door-to-door service. Public transport is a chain; its links must be strong, and complete. Strong links require seamless interchange between services as far as possible – cross-platform or level and short interchange between modes i.e. train-to-bus. Waiting times must be minimized through careful scheduling which in turn requires strict time-keeping which in turn requires service reliability through adequate stock and timely maintenance. A tall order yet one which many public transport undertakings manage to achieve. Rental bicycles and small electric hire cars in towns also provide further links in the door-to-door chain. Finally, a simple one-card-covers-all payment system makes for speed and convenience of use. If we are to improve our air quality and urban environment, as well as the simple ease and convenience of just getting around, we need to treat public transport seriously, looking to an integrated, attractive and cost-effective network.

In the longer term, public transport will function at its best when it is coordinated with urban development, returning once again to the need for informed long-range planning both at National, and Regional level.

Our traditional residential planning concepts, based on wide roads for car access, combined with road widening and provision of more parking spaces in towns and cities, only perpetuate our dependence on the car, since spread and sprawl can only be served by individual vehicles. Thus the demise of public transport becomes inevitable. Only in compact residential and urban developments can public transport flourish viably.

By concentrating rather than sprawling new urban and residential developments and by linking them with the Regional transport system we can provide both transport for the Community, and customers for the transport.

In the case of existing towns and cities, planning should seek to minimize waste land, either by infilling with residential development, or by creating parks and green spaces. Where new developments are taking place, we need to seize the opportunity and the challenge to provide homes, places of work, and commercial facilities in ways which can set new standards in self-sustainability, minimal environmental impact and minimal footprint (land surface occupied).

Self-sustainability implies making zero demands on sewage and garbage disposal systems by recycling and using natural methods of sewage treatment on-site, and minimizing demands on power generation with designs which maximize the benefits of solar power and take account of local wind and other environmental factors.

Minimizing environmental impact requires additionally the minimization of footprint through compact development and the visual integration of the development with the natural surroundings.

We need to look at totally new concepts in urban development. An artificial hill, for example, with apartments sited on its sloping exterior and commercial facilities inside its core, would create a single, compact and unified residential/commercial development with a dramatic reduction in the use of land surface and the need for transportation. If the apartment terraces covering the “hill” surface are generously planted with vegetation, this artificial hilltown can blend perfectly with the surrounding countryside. Access behind the apartments gives each apartment frontal privacy and an unobstructed view, while the slope ensures that each apartment terrace is vertically open to sun and sky. Access to internal shops, offices and production facilities inside the hill requires only a few minutes walk or elevator ride.

The existence of an underlying National Plan based on a thorough analysis of available resources and Human requirements, together with improved urban planning and a policy of compact development would provide the foundation on which we can begin to rebuild an efficient, comprehensive, coordinated public transport network.

With shared transportation playing a larger role, town scale can be humanized and centres pedestrianized with improved amenities. Commercial centres can be reinvigorated through environmental enhancement, pedestrianization, and full integration with public transport facilities.

Effective use of scarce land, environmental improvement both rural and urban, as well as pollution reduction, all demand a firm and active policy commitment to the rapid improvement and expansion of public transport, and the coordination of public transport with all new residential and commercial development.

Looking to the future both immediate and longterm, recreation will clearly increase in importance and in its own demands on natural resources. Existing public rights of way must be properly maintained, with government assistance, perhaps, in the form of monitored project support for local enthusiast groups working voluntarily. Biking facilities are increasingly demanded, in the form of segregated bikeways and integration with public transport.

In the present context we are only considering Government’s role of planning and coordination of resources-use, urban and transport planning. The status, both financial and managerial, of public transport administration relative to Government will be discussed in a later Chapter, as also will be the provision of capital for infrastructure services from the National Credit base.

Landpricing

The issue of fair prices relating to goods and services will be discussed in the next Chapter dealing with Economics and Commerce. In the present context we must consider the question of land prices.

It has always been assumed that land prices should be determined by the free market. But its results are not always beneficial. The free market works at its best when there is multiple competition; when scarcity drives up prices, that is a signal to produce more. But when land is in short supply we simply cannot produce more, so prices are bound to rise.

Rising land prices tend to favour sprawl, as homes, shopping malls and businesses naturally seek to move out to areas of less value.

More seriously, rising land prices are economically regressive. Prosperity is created by productivity, by increasing value without increasing cost. Rising land prices do just the opposite: they increase the cost of land without increasing its inherent value, and this has a similarly inflationary effect on the services using land. This is particularly evident in major cities, as “value” in the sense of what buyers get for their money, decreases as land prices increase.

There is little or nothing in the way of goods and services which is not affected by the price of land; rising real estate prices affect everything from offices to retail shops, cafés, and places of entertainment. The escalation of land prices is a major contributor to the high cost of urban living. It can also cause a deterioration in urban quality of life; many of Europe’s old established city cafés which have for centuries been centres for meeting and socializing are now being forced to close as a direct result of escalating rents.

If the city or town centre is to retain or regain and develop its function as a gathering place, it will be necessary to ensure that newly developed areas in city centres, particularly areas reclaimed from public or industrial use, should be subject to price stability so that rents are economic for those low-profit uses such as markets and cafés which provide vitality and enjoyment for users. This could be accomplished, for example, by vesting tenure in the hands of a locally administered Urban Trust, which would then ensure maintenance and management of the facility either itself or by a contracted agency. In many European countries especially France, a public covered market provides trading space for fresh produce at an economical rent, as also does the open market place.

Of equal importance is affordable housing. A home is one of the very foundations of life itself. In many developed countries today house prices have already risen beyond the point where young people entering the market can hope to afford a decent home. In Britain much of the nation’s housing stock was built to minimal standards in the 19th century and is no longer worthy of a civilized society.

The provision of new affordable housing requires a determined effort to study and to implement the latest and most cost-effective building techniques from around the world, especially the USA. Building-land costs must also be minimized; this can be achieved by utilizing redundant industrial land, and by locking-in present agricultural prices when agricultural land is given over to housing development. New homes built in the “affordable” category should be rented or leased rather than sold outright so that resale prices can also be stabilized.

We should be looking not at subsidy, but at the maximization of productivity and the avoidance of inflated land costs. Whatever problems exist must be overcome: increasing cost without increasing inherent value is economically regressive, raises the cost of living, reduces prosperity, ties up increasing amounts of capital, and puts a home, that most basic of Human needs, progressively out of reach, particularly for young families seeking starter homes.

Apart from the financial burden of inflated property values, another problem with escalating house prices is the temptation for the homeowner to increase current expenditure based on second mortgages. Inflated house prices give homeowners a false sense of security; it is difficult to remind oneself constantly that the value of any home in the developed world consists of 40% “froth” or “hot air” in an over-inflated market. When the property balloon bursts, as with a stock market crash, lives can be literally ruined, with disastrous knock-on effects on the economy as a whole.

A sufficient stock of at-cost rental and leasehold accommodation provides a firm basis, helping to stabilize property values and thus avoiding, or at least reducing the risk of the pattern of over-valuation, leading to excessively burdensome mortgage payments with the ever-present risk of widespread default and resultant recession of which 2008 has witnessed a clear example.

It is the responsibility of Government, at national and local level, to ensure through informed, participatory and enlightened planning that the Nation's natural resources are used fairly, productively, and responsibly.

9

ECONOMICS AND COMMERCE

Value - Quality - Investment

Economics and Commerce

The *Principle of Non-Injury* defines the duty of Government as the formulation and enforcement of Legislation which will ensure that in the exercise of their liberties citizens do not harm, injure, or infringe the liberties of one another.

The Principle of Non-Injury thus rests on a Presumption of Liberty, the presumption that the individual is free unless harming or injuring others.

In business and industry this corresponds to a presumption of *Free Enterprise* as the basis of Government economic policy.

While it is vital to allow citizens' enterprise and initiative to realize its full potential in the creation of prosperity with minimal government interference, formalities and red-tape, it is equally important to ensure that citizens do not enhance their own prosperity at the expense of others through unfair or dishonest practices. A high standard of living and prosperity is already technologically within our grasp, and we have human talent in abundance which is constantly creating new ideas and new products; there is no need to obtain wealth through the disadvantage of others.

Government should intervene promptly when necessary to ensure that business is not carried out in ways which are detrimental to co-workers, customers, or the environment.

It is equally important to avoid over-regulation. Even in self-styled capitalist, or free-market countries, business is becoming increasingly over-burdened by government regulation, much of which is not directly concerned with ensuring fair play in the market place. Excessive regulation places a heavy financial burden on business which must eventually be borne by its customers resulting in higher prices and a correspondingly lower standard of living.

A Policy of Non-Injury would not permit Government to own or operate commercial services. The role of the Private Sector is creative and productive; the role of Government is regulatory. If Government does its essential job of making sure that business and industry conducts itself in a socially responsible manner there is no need for nationalization.

Indeed, it is important to stress that Government ownership and operation of any commercial service or business invalidates Government's ability to legislate without bias; to whom does the citizen complain about industrial pollution when the Government owns the polluting industry?

Law is brought into being to prevent those actions which are harmful or detrimental to others. But the law is limited to providing the protection of liberty from identifiable infringement, and should avoid oppressive or intrusive law which itself constitutes a prime erosion of liberty.

This gives us a policy approach, not of unregulated Free Enterprise on the one hand, nor of Socialistic takeover by the State, or burdensome over-regulation on the other, but a policy falling between the two, a policy of *Socially Responsible Free Enterprise*.

Under the guidance of this policy the role of Government in the area of the economy, business and commerce is clearly defined; its essential task is to identify those areas of potential commercial conflict in which the actions of some participants may be detrimental to others, then to prevent such actions through appropriate legislation.

Value

The major point of contact between the various participants in business and commerce – employees and employers, producers and consumers, as well as investors – is trade or exchange. And the main aspect of exchange is *value*, the value of an employee's work, the value of a product or service, as expressed in Pay, Profits and Prices.

At present, Pay, Profits and Prices are determined by disputation.

Employees dispute, often violently, with employers over pay, to the detriment of good industrial relations and productivity.

Prices are determined by “what the market will bear” and by overall economic conditions; the price, in other words, is as much as the producer can get.

There are no political rules by which we can determine a just remuneration, a reasonable profit or a fair price; disputation is the only way open to us.

Its supporters call it the “Free Market”.

Another view is that it is conflict without rules, and as such represents an aspect of anarchy. Its damaging effects on the economy and prosperity are substantial and far-reaching.

A policy of *Socially Responsible Free Enterprise* requires Government to replace anarchy, wherever it may exist, with *fair rules*.

And if Government were to be charged with providing a foundation of *fair rules* for industry and commerce, a first priority would be the provision of a system of fair rules whereby pay, profits and prices are determined by measure and consensus rather than by disputation.

There is a growing resentment in the developed world against the ever-widening discrepancy between rich and poor resulting from what is perceived as unfair remunerations for upper-echelon managers and executives. This is perceived particularly in Europe, where the Netherlands for example is already enacting legislation to limit executives' salaries and severance payments. Fair rules for pay and salary determination would remove one of the major elements of contention in our industrial relations, paving the way for increased cooperation and productivity.

A further significant effect would be on unemployment and the level of economic activity in the country as a whole. The current pay, profit and price evaluation by disputation creates an inherent instability and a strong upward pressure which if uncontrolled leads to inflation. It is

universally recognized in economic circles, though rarely spelled out, that the current economic wisdom *requires* the economy to be maintained at substantially below its productive capacity with permanent unemployment in order to control inflation.

A National Standard System setting guidelines for Pay, Profit and Price Evaluation would create the monetary stability necessary to permit economic expansion to full employment without inflation.

“Fair pay and prices” may sound like an ideal impossible to define or to attain; in fact experience and commonsense define it, we have already attained it, and practiced it on a wide scale.

Pay is fair if it is an accurate reflection of work contributed. And it must also relate to the work and the pay of others: pay for one is fair if others doing similar jobs are paid the same. Fair pay is easily defined; but is it so easily attainable?

If pay is to be related to work done, this would require a system of Job Evaluation for measuring and evaluating work. If we can measure work, then the work *amount* or work *value* of each job can be reflected in the pay received for doing that job.

In fact, Job Evaluation is already a process well established in certain large companies and government agencies for defining, evaluating and measuring the different work characteristics demanded of a job, and expended in the fulfillment of that job. Though there are different approaches of detail, the basic principle is simple. It begins with work analysis.

Work means many different things; each and every kind of work, or work component, must be identified and quantified.

The list of work types or characteristics will include such basic elements as previous training, skill, concentration, responsibility, physical exertion, working conditions, job satisfaction (or boredom!), health and safety hazards, and so on. The list need not, indeed should not at any time be conclusive. New characteristics must be added as they are identified, developed, or called into being by new techniques. Technology does not stand still; new jobs are constantly being created, with new demands made upon human skills and effort.

Once identified, each work type or characteristic is given its own scale of measurement.

The common objective in any Job Evaluation system is that all jobs within a company using the system are evaluated fairly and consistently, giving each job a meaningful value in relation both to the work involved, and to other jobs within the company, through a common scale of definition and measurement.

The job-value thus established can then be related directly to remuneration. Job Evaluation becomes Pay Evaluation.

The application of a system of Job Evaluation throughout a company ensures that each individual's pay relates to work contributed, and to the pay which others in the organization receive for their work contributions.

Job Evaluation has been widely used for many years to bring system and consistency to the pay structures of major organizations and companies in both the public and private sectors.

At this stage we already have in existence a fair and stable measurement system for defining and evaluating pay. Indeed we have several competing systems. In one sense this is counter-productive, since it creates problems of inconsistency between companies using different systems. On the other hand it provides a wealth of experience and input which could form the basis for a single National Standard System.

Indeed if the formulation of a National Standard Evaluation System were to be conducted through the widest possible debate, participation and consensus, the very process itself would clarify issues and build mutual understanding between different occupations and skills. And as we move imperceptibly but inevitably towards discussion of principles rather than personal self-interest, the process would effectively lay the foundation for a new kind of industrial unity.

Government would begin by establishing a fully representative Committee to formulate a National Standard Job Evaluation System (subject to ongoing revision by a permanent Council). The Standard Job Evaluation System would be published in popular papers as a Do-It-Yourself form together with full explanation and sample completed form. This would enable everyone to become familiar with it, and to bring out any additional comments or criticisms.

The System must be comprehensive, simple to understand, and capable of application to all types of work at all levels, from boardroom through management to shopfloor.

With a single guideline System of Job and Remuneration Evaluation agreed, tested and established as a National Standard, the ideal of a fair day's pay for a fair day's work could become a reality.

But even if we include pay at all levels, pay is only a part of the solution; for pay has value only in terms of purchasing power, or prices. *Fair pay* has full and real meaning only in terms of *fair prices*. This leads to a parallel question: what is a *fair price*?

A factory's, or a business's total costs consist of three elements: first, the cost of bought-in raw materials and components; second, the direct labour added in the factory; and third, the costs of capital write-off, overheads and finance. These are the costs of making a product, of supplying a service.

From these costs a Unit Production Cost can be calculated for each product or service supplied.

If this Unit Production Cost then becomes the Selling Price there would be a direct and fair relationship between cost and price, and therefore between pay and purchasing power.

But the Unit Production Cost is not normally equated with the Selling Price. The difference between the two is commonly referred to as the *profit* and will remain a matter of potential contention thus threatening or even invalidating any progress made in achieving pay stability.

Completion of the social and monetary stabilization process begun with a standard system of job evaluation would require some kind of consensus on the disposal of profits, for this is the only way fair and stable prices can be achieved.

There are several claims to a share in a company's profits.

Investors must be given a return on their capital; and increasingly, employees are being given a share in the profit as a form of remunerative recognition for extra effort and cost-savings.

Another major destination for the disposal of company profit is reinvestment, either in research and equipment or increased working capital, the advantage being that in-house or self-generated investment comes without future servicing cost or commitment to repay.

There is one more claimant to a share in the profits, and that is the *customer*. Indeed with the growing recognition of Pay and Price Evaluation the profit would increasingly be perceived as a “tax” on the price over and above its production content, and should therefore belong to the consumer as much as to anyone. With this view a substantial claim on profits would come from the consumer in the form of lower prices.

The objective should be the establishment of public policy for profit distribution.

This could take the practical form, first, of an overall profit ceiling. Britain’s National Health Service already assesses prices for new drugs and services before certification; the ideal of a fair price resulting from a fair profit is hardly revolutionary.

Of the profit made, broad percentage bands could be established and gradually stabilized, distributing profit according to pre-set guidelines as between co-workers at all levels, investors, and the internal needs of capital for reserves and reinvestment. The dividend paid to those investment sources not negotiated in terms of fixed interest should be clearly and openly defined with average or upper limits.

As it does today, Government would continue to require that companies prepare in timely fashion properly audited annual accounts. But instead of assessing the total profit in order simply to ‘take a cut’ for its own coffers, Government would be examining the profit in order to ensure that it is apportioned according to a consensus formula which respects the claims and contributions of consumers, investors, co-workers, and the future security of the business itself.

Under the Principle of Non-Injury, fair pay, profits and prices achieved through system and consensus is an important aim in its own right.

There are further significant implications affecting industrial relations and stability, economic growth, the level of national employment, productivity and prosperity.

Governments, and many economists, tend to speak of unemployment rather like the weather – unfortunate perhaps, though clearly unavoidable. But unemployment is not an Act of God, it is an Act of Man.

It begins with Governments which fail to provide fair rules for the evaluation of pay, profits and prices. In this situation of unspoken anarchy, people naturally look to their own interests. Employers seize any opportunity of making a gain at the expense of their employees or customers, while employees take every opportunity to squeeze more money out of their employers. The fact is that we settle pay and prices by doing battle.

This produces a basic instability and continuing upward pressure which can only be held in check by maintaining a degree of permanent recession. When the economy is booming, producers can get away with raising prices, while employees take advantage of the tight labour market to push for higher wages and salaries. Cool the economy a bit by raising interest rates and introducing an element of deflation, and both wages and prices are held in check if not reduced.

Thus full employment and a fully occupied economy remains a dream, together with the rise in overall prosperity it would have produced.

A secure foundation of Pay, Profit and Price Evaluation by measure and consensus would create a basis of fair reward for work and the real possibility of industrial peace and cooperation.

It would also establish a basis of monetary stability from which economic expansion could take place without inflation, leading steadily to sustainable full employment. And the degree of employment – or unemployment – in an economy has its own substantial effect on productivity and thus prosperity.

The socially damaging effects of unemployment, the cost to working taxpayers of unemployment benefits and the loss to the economy of potential talents can readily be seen. A less obvious result of unemployment lies in its effect on productivity.

It should be remembered, first and foremost, that *prosperity* comes from *productivity*. We do not become prosperous by working harder, for this can bring higher wages, but at the expense of free time, family or even health. We become prosperous by working not harder but more efficiently, by continuously developing improvements in design, production and management techniques which allow us to produce more and better goods and services with less work.

Productivity, making better goods and offering better services tomorrow with less work than it took yesterday, is the motive power which drives economic development, produces prosperity, and advances civilization.

But productivity, by its very nature, means less work; so where does that leave the redundant workers? In a properly organized economy operating at full capacity, workers made redundant in one department by improved productivity would normally be transferred to another within the same company, with additional training as required. Even if an entire sector of industry becomes outdated, workers can always re-train and take up employment elsewhere.

But when the economy is under-utilized and there is substantial permanent unemployment, anyone who has a job is afraid of losing it. One simple and quite understandable result is that no-one will be looking very hard for productivity improvements; and when management proposes some productivity-enhancing modernization it will probably be opposed by workers fearful of redundancy.

The moral is simple: substantial permanent unemployment causes opposition to productivity improvements. And since productivity is the source of prosperity, we are effectively opposing prosperity.

But the opposite also holds true. With the economic and industrial stability which would come with National guidelines on Pay, Profit and Price evaluation, the economy could be expanded steadily to sustainable full employment.

With full employment, productivity could also be increased without opposition, adding its own contribution to increased prosperity.

Quality

The policy of *Socially Responsible Free Enterprise* begins with free enterprise. It identifies areas in which unregulated or insufficiently regulated economic activity can be detrimental to other participants, then acts to limit or eliminate such practices.

A significant element in the concept of Fair Exchange is *Quality* and *Productivity*. The value of a product or service lies not only in the labour and materials it contains, but also in the quality and efficiency of its design, manufacture or presentation.

Is less-than-maximum quality, efficiency and productivity in business and industry detrimental to other participants, to suppliers, co-workers, investors, community and consumers? A case can be clearly be made in the affirmative.

The consumer is the ultimate recipient of the product or service; indeed, since we produce solely in order to consume, the consumer must be the most important element in the process. Good design, economical production, efficient and stable administration; all these factors have a direct bearing on the product or service as it is presented to the consumer.

And it is the consumer who suffers when a product fails to perform as it should, when its quality and service fall below the standard of which current technology is capable, or when it is over-priced as a result of wasteful production methods.

When products are poorly designed and inefficiently or wastefully manufactured, when services are careless and slipshod, when quality is poor, the consumer suffers.

But so also do the investors if the firm concerned fails to gain its potential market share. And employees suffer both from inefficient working conditions, and from the insecurity and potential job losses inevitably incurred in a poorly run company. The maintenance of high standards in any business is clearly in the interests of all its co-workers and investors, as well as the host community that depends on it for employment and prosperity.

In the wider context, businesses and industries are highly dependent on one another, for the supply of materials and components, for subcontracted work, for marketing and distribution. So the quality and reliability of one business affects, and is affected by that of several others.

This total integration and inter-dependence of co-workers at all levels and in all departments, together with investors, suppliers, distributors, host community and consumers, clearly reflects the reality that avoidable incompetence in any part of the chain affects others adversely if not disastrously.

Suppliers and distributors, as well as co-workers at all levels and in all departments should have the right to expect from one another the highest standards of professional conduct.

And consumers should have the right to expect that products and services reflect and embody the highest currently available techniques and capabilities in efficiency, quality and reliability.

A policy of *Socially Responsible Free Enterprise* recognizes this interdependence, and the obligation which it places on all participants in economic activity to strive continuously for quality and productivity maximization.

Quality and productive efficiency can never be absolute targets, for standards are always being improved. But maximization of quality and productive efficiency within currently available knowledge and techniques must become the norm if the overall objective of fair exchange and socially responsible production is to be achieved.

Socially Responsible Free Enterprise would obligate every business to designate an individual or a department with the duty to be conversant at all times with the latest Standards and techniques of design, production and management relevant to its particular field, and would further require that such Standards and practices should be applied at the earliest practicable opportunity. In case of persistent non-compliance, investors, consumers and co-workers at all levels should have ultimate recourse to law.

A start can be made by introducing universal compliance with International Quality Standard Specifications which provide official certification and monitoring of individual company or industry-group Quality Assurance Programs. Maintaining the highest possible standards in management, quality and productivity will maximize job satisfaction and job security for suppliers and co-workers, while consumers will enjoy the use of products and services which reflect a continuous improvement in quality at progressively falling prices. And as a nation becomes more efficient and more productive, so its international competitiveness is enhanced.

Investment

The money which Banks lend, or more accurately, the credit facility which Banks extend to borrowers, comes from two distinct sources.

One source is the money placed in term deposits with the Bank by its depositors. However, Banks do not confine themselves to lending out specific monies deposited with them and locked in for a guaranteed term.

The major part of Bank lending consists of what may be called *system-generated credit*, credit created by the Banking System to satisfy the demands of the economy for trade purposes and for industrial and consumer loans. This system-generated credit is a continuous flow; money is lent, repaid, and further loans are made.

The quantity of available credit flowing through the system at any given time is regulated by the Central Banking Agency in conjunction with Government economic policy.

It is important that the quantity of credit available to the economy should at all times relate to the real needs of the economy in its actual, and potential productive capacity. Too little credit, and the wheels of production, trade and consumption will turn at less than the economy's capacity; potential employment and production capacity will be under-used, and consumer demand will fall short of goods currently or potentially available. Too much credit will result in demand for goods and service in excess of actual and potential production capacity. Thus regulation of the quantity of credit flow is the first priority of the Banking System.

It is equally important that selective criteria should be applied to the flow of credit: credit is a limited resource vital to economic growth and prosperity.

At present however, the actual transfer of credit into industrial and consumer loans is left to the discretion of the Commercial Banks, and no broad selective criteria are applied. As a result, this

system-generated credit is created and channelled by the Banking sector with little reference to productivity priorities and often with insufficient financial responsibility.

Credit expansion wisely used can be channelled into productive, prosperity-creating investment. But without due care it can be quickly dissipated with no tangible benefit; indeed when used for purely speculative purposes it may even produce economically harmful results.

Speculation in land and property does not create overall prosperity; indeed it does quite the opposite. There is very little we do which does not involve land, and as land prices go up so do the costs of everything, from industry and retailing to office space and homes. Property speculation actually reduces overall prosperity since it increases costs without increasing value.

Industry needs investment for productivity and prosperity; and it needs committed, longterm investment. At present there is no mechanism for ensuring that *system-generated credit* is directed into productive industry. This is not so much the fault of the Banking Sector, but rather of a society which has never formally recognized the significance of this system-created credit as a National Resource, with the corresponding opportunity, and the need, to use it wisely.

The productive use of investment gains importance in times of economic expansion. The monetary stability resulting from Pay, Profit and Price Evaluation would remove the danger of inflation, thus providing the basis for steady and sustained economic expansion to full employment.

But economic expansion is a potential only: it is powered and facilitated by an expansion in the quantity of the National Credit Base.

If the expansionary potential of Pay, Profit and Price Evaluation is to produce usable results in the form of full employment, increased productivity and prosperity, it is necessary to ensure from the outset that the Nation's revolving credit base generated and expanded by the Banking System is productively invested in securely managed enterprises.

A policy of *Socially Responsible Free Enterprise* would require the Commercial Banks to apply more strictly defined selective criteria in their use of credit, with the specific object of channelling new credit into securely managed, prosperity-enhancing investment.

The fundamental justification for requiring the application of such selective criteria is that the flow of credit created by the Banking System is a National Resource, not a resource of any specific Bank or investment institution or individual saver.

It is a Resource having a substantial potential for the enhancement of prosperity, and it is moreover a scarce and finite resource. It is therefore appropriate that this Resource should be directed purposefully and publicly into projects which will improve employment, productivity and thus prosperity.

Government guidelines would require, for example, that investment be used to reinforce the move towards the maximization of product and management quality already discussed. This means that investment should be directed into companies complying with all appropriate Standards applicable to their specific products and services, as well as to the working environment.

In reviewing investment options, the investing Bank would take into account an independent assessment of the design of the product, as well as the management, production and quality systems, industrial relations and other aspects of the companies concerned.

The Investment Banking Sector would thus be selecting investment “partnerships” in companies reflecting the highest standards in design, management, quality and industrial relations.

A National Standard accounting and general Performance Audit format would facilitate a follow-up monitoring process through which investment-banking institutions are provided continuously with performance data from recipient companies, thus ensuring the safety both of the investment loan, and of the recipient company.

Given the finite nature of investment credit, the Investment Banking Sector would also need to formulate a broad strategy and order of priorities – both geographically in terms of local/regional needs and across different industries – which would maximize its productive benefit.

The Division of Labour, from the complexities of global production down to simple local trade in towns and villages of developing economies, requires a common trading commodity or facility which can also serve to finance investment as startup capital, expansion or productivity improvements.

Banking today, in the words of comedian Bob Hope, is “an institution for lending money to people who can prove they don’t need it”. We are still living with the memories of the past, where loans were based on depositors’ gold. And yet, while banks are reluctant to lend without security, they permit high-flying employees to speculate (gamble) the bank’s (its depositors’) assets freely in complex and obscure derivatives the details of which managers and board members know little and would probably understand even less. Banks and banking systems throughout the world seem to stagger from one crisis to the next, as banking scandals hit the developed economies and in developing economies runaway inflation frequently reaches astronomical proportions.

We need to move to a secure, closely monitored banking system which is firmly development-oriented, making loans based not on security but on the assessed viability of the project itself which is then continuously monitored. This is a world need, and examples are already to be found.

In Bangladesh the introduction of *micro-credit* has permitted thousands of poor people to find gainful employment. A similar example can be found in the Mondragon cooperative in Basque Spain. In both cases, the process involves an assessment of the viability of the project, based on which the project itself becomes the collateral for the loan. This is backed by assistance in set-up, and on-going monitoring with timely reaction as required.

Poverty, drugs, crime and prostitution are rampant throughout our world. But they all have one common basic cause: unemployment. There is a natural inclination throughout the human race to perform some kind of productive work, as a contribution to society and to support self and dependents. The inability to find productive work due to widespread unemployment is the curse of the developing world, leading to poverty, frustration, and many other far greater evils.

The establishment of securely managed, aggressively marketed, positively creative Development Banking can solve this problem, liberating creativity and eliminating poverty throughout the

world. This must become an essential of the infrastructure of every country. Only then will a sustained improvement in living standards – and public morality – become a reality.

In the developed world unemployment is still a problem, and will continue as long as pay, prices and profits are left to float freely, borne ever-upwards by simple human greed seeking greater reward for the same labour-input, and restrained only by the debilitating weight of recession.

If Pay, Prices and Profit stability can be assured, Development Banking can then provide the means whereby companies can expand and improve productivity, and individual talents can be realized.

Development Banking is essentially a grassroots-based concept, attempting to match financing with potential enterprise.

Beginning at local level, every city, town and village should be encouraged to develop channels for debate among business people, industrialists, chambers of commerce, educators, consumer groups and community development institutions, with assistance as needed from specialist professional planners, market researchers, industrial designers, and cost accountants, with a view to establishing as clearly as possible their own needs and priorities. In this way, future needs for technical education can be assessed, dying industries can be replaced, new enterprises can be explored.

The overall objective, as in other aspects of Socially Responsible Free Enterprise, is to try and ensure through debate and a modicum of intelligent forethought that the component factors of enterprise, investment, and market potentialities are drawn together to minimum mutual detriment and maximum possible advantage.

Full employment is one of the basic essentials of a civilized society, but it will not come about by chance. There is a tremendous potential for creativity in the world; most people want to do a useful job of work, and to do it well. Unemployment is not our natural or preferred condition. Once the value of money has been stabilized with Pay, Profit and Price Evaluation, investment-directed expansion of the National Credit Base can create full employment and prosperity, but only if it is channelled into efficient enterprises, and guided by overall priorities.

With proper guidance, the expansion of the National Credit Base can act as a main source of economic motive power, providing finance and subsequent ongoing supervision for industrial development.

Nor is industry the only area in which investment is vital to a Nation's total productivity and competitiveness; infrastructure and essential services must also be considered.

The totality of a Nation's infrastructure, its roads and bridges, water and sewage, its power supplies, telecommunications and railways, serves not only the convenience of its citizens, it also serves commerce and industry, and a well organized state-of-the-art infrastructure can make its own substantial contribution to productivity.

Here again, scarce investment must be carefully deployed and guided by openly established priorities.

It should be noted that the managements of individual infrastructure services, National Strategy, and the Investment Banking Sector are all working together, without the direct interference of Government.

Also significant is that full reliance on investment expansion through System-generated Credit provides a method of expanding and regulating economic activity which is totally independent of Government and Government accounts, thereby removing the temptation to resort to deficit spending as an impetus to economic recovery.

If the economy can be purposefully expanded to full capacity and full employment without risk of inflation, if expansion of the National Credit Base can be directed into safe and productive investments guided by nationally established priorities, and if standards of quality and productivity can be maximized and continuously improved throughout industry and services, the Nation's economy can become and remain among the world's most productive and rewarding, while at the same time satisfying the demands of Fair Exchange required under the Principle of Non-Injury.

- Fair exchange value for value;
- quality and honesty in goods and services;
- and social priorities in the use of the Nation's Credit Base:

these are three essential elements of *Socially Responsible Free Enterprise*.

And *Socially Responsible Free Enterprise*, the freedom of individual enterprise limited only by the requirement of fair and honest trade, is the commercial expression of the *Principle of Non-Injury*.

10

GOVERNMENT AND CONSTITUTION

Liberty in Constitution - The Legislative Process - Quality, Productivity, Service

Liberty in Constitution

When in 1689 Britain's Autocratic Monarchy was finally replaced by Autocratic Parliament, Britons heaved a sigh of relief and have tried ever since to make the best of it. Americans busy founding a new nation a hundred years later looked with some suspicion on the potential power of Government in all its branches, then tried through a system of Constitutional checks and balances, and the Bill of Rights, to impose disciplines on the possible excesses of Government – insofar as they could anticipate them at the time.

In neither country today are citizens satisfied either with their Governments, or with the degree of Constitutional discipline to which their Governments are subject.

Since it sets the rules for Government, the Constitution must itself stand above Government as the Supreme Law of the Land. In the United States it holds this position, though at the apex of the Judicial rather than the Legislative system.

In Britain the authority of the Constitution is inherently weak, and there are several reasons for this. The British "Constitution" is unwritten; it is endowed with no personification or effective power save for the Monarch whose powers the Constitution itself has rendered a pure formality; and the Constitution, such as it is, rests in the hands of Parliament which can hardly be expected to promote discipline over its own activities.

In the European Union, young and still trying to find its way through the minefield of nation-members and their conflicting interests and demands, a New Constitution for Europe was formulated, only to be rejected by voters already distrustful of institutions and bureaucracies which threatened their national identity through territorial expansion. It was subsequently passed by stealth. So much for democracy.

Constitution or no Constitution, Government in Britain, Europe and in the United States, and indeed everywhere else in the world, remains as dictatorial as ever. In particular, governments still assume that strongest and most powerful of all rights over their citizens: the power to tax and to spend at will, with no qualification as to the quantity of tax taken, the uses to which it is applied, or the efficiency with which government operations are executed.

Whatever the overall direction and the detail of individual Government policies, there are certain basic disciplines which should apply to the conduct of any government and it is just such disciplines which are laid down in Constitutions. Secrecy, the purveyance of mis-information, lack of productivity and the almost total absence of financial discipline are features of present Governments which should be remedied, and can only be remedied through the strengthening of the Constitution both in its provisions and its status within the total apparatus of Government and Enforcement.

Constitution exerts its supreme power in a Constitutional System by placing itself above and between the two processes of law-making and law-enforcement, thus controlling that vital link without which each process in itself is useless.

The essence of Constitutional Government is the separation of *Decision* and *Enforcement*, so that each can empower the other only through the Constitution, and only on condition that both comply with the Constitutional requirements.

If the Constitution is to stand in reality as the Supreme Law of the Land, it must also embody an Executive function; proposed Legislation must be channelled through a Constitutional Executive Council, becoming Law only after Constitutional Verification.

Government Legislation would be formulated according to the appointed processes, but as yet would have no Force of Law. In the form of a *proposal*, reached through the full observance of the relevant Constitutional procedures, each newly formulated Law would then be passed to the Constitutional Executive Council, where it would be *verified* to ensure that its content and the procedures of its formulation are fully in accordance with the Provisions of the Constitution.

Following Verification by the Constitutional Executive Council, Legislative Proposals would then be passed to the Enforcement Agencies, thus giving "Force" to "Law". But once again there must be Constitutional Verification, for the Enforcement Agencies must also be subject to Constitutional Provisions and must be constantly monitored to ensure that they so comply.

It is important that Enforcement Agencies should not distort the Law in any way, and that Enforcement Personnel should conduct themselves correctly. It would be the duty of the Constitutional Executive Council to monitor the Enforcement Agencies continuously in order to ensure that their conduct complies at all times with the Provisions of the Constitution.

If the Constitutional Executive Council is to be responsible for the verification of all Legislation in terms of content and procedure of formulation, as well as for the honesty and legality in all aspects of Enforcement conduct, it may reasonably be suggested that the Constitutional Executive Council is the most important body in the process of Government.

The membership of the Constitutional Executive Council is defined by its purpose: it must consist of persons having intellectual stability, legal training and a thorough understanding of the status and provisions of the Constitution which it is their duty to uphold. The US Supreme Court with its carefully selected nine Members drawn from the Judiciary provides a good basic example.

Though the Constitutional Executive would naturally be drawn mainly from the country in which it serves, a case can be made for inviting some suitable candidates from other countries having broadly the same constitutional, legal and linguistic traditions. In this way the Constitutional Executive Council would reflect a broader, more objective view, and international cooperation and understanding would be encouraged.

Also necessary to the proper function of Constitutional Government is the provision of an institution and procedure for the periodic consideration of Constitutional Revision. From time to time there will be details of the Constitution which must be amended or withdrawn. Similarly, new perceptions or conditions will arise which make it necessary for new Constitutional provisions to be added.

Without adequate provision for amendment, inconsistencies are bound to develop as the customs and expectations of civilization change.

The right of every American to “*bear arms*” was conceived in a context of 18th Century People’s Militias which today we barely comprehend; the current exercise of this Constitutional “Right” has put over 200 million guns in private ownership - one for every adult American.

The results, in terms of crime and violence, could not have been foreseen by the Founding Fathers, and would hardly be approved by them. This Constitutional Right is now a serious threat to public safety, yet it cannot be withdrawn or even seriously limited owing to the “emocratic” gridlock of conflicting pressure groups.

An example of a current need for new Constitutional discipline over Government conduct can be seen in the present absence of fiscal constraints, without which Government can plunge itself and the nation into apparently limitless debt.

All that is needed is that Government be required to conduct its finances according to the same rules of fiscal propriety which the Law demands of private citizens and corporations.

A fundamental principle of Constitution since Magna Carta is that the Law-makers should themselves be subject to their own Laws. When Government can conduct itself and its business in ways which would never be tolerated in the private citizen or corporation, that is a sure indication of a significant lack of Constitutional discipline.

The United States Supreme Court rules on points of Constitutional Interpretation. But America’s Founding Fathers left no suitable provision for amendment of the Constitution. Since the purpose of Constitution is to discipline the Legislature, it is clearly not appropriate to ask the Legislature itself to amend it! A body of similar stature to the Supreme Court must be created to fulfill this function.

The Constitution must take its true place as the Supreme Law of the Land, laying down the procedures of, and disciplines upon every branch of Government, and through its Executive Council position, subjecting every proposed Law to scrutiny.

In current constitutional practice, as seen for example in the USA, legislation as formulated by Congress is passed for formal ratification to the President who, as Executive, “executes” the proposed legislation into law without any requirement for constitutional verification. Thus “unconstitutional” laws are free to leave the system and roam the land – until some watchful citizen initiates a tedious chain court action, up through the judicial system to the Supreme Court.

If it is to fulfill its role effectively the status of the Constitution must be elevated to a higher position, at the apex, *not of the judicial*, but of the legislative process. In this way, laws are verified for constitutionality before being formally enacted.

Like the production of motor-cars or any other product, law-making is a production process, and as such should be subject to quality controls. Ideally, quality control should apply throughout the process, with final full checking on completion, before the product is released to consumers.

Regrettably today, many businesses allow substandard products to leave the factory, relying on customers with discernment and persistence to call the business to account.

Similarly, laws are currently allowed to proceed through parliaments thence to launched unchecked upon the public. Again, responsibility is upon alert citizens to identify bad laws, then to fight persistently to have them repealed or revised.

Law-making should be subject to constitutional controls throughout the progress of each law, ensuring that the intent of the law is to prevent injury, that debate procedures are observed, and the machinery of governance is executed productively. Only after final constitutional verification would the formal enactment of the law be permitted.

The Legislative Process

The application of the Principle of Non-Injury to everyday Law would be precisely defined in terms of the twin confines of *Obligation* and *Limitation*.

The Principle of Non-Injury would *obligate* Government to prevent any and all Infringement of Liberty by one citizen over another. Where there is an identifiable Infringement of the Liberty of one person by another there is an obligation for action at Law.

The Principle of Non-Injury would *limit* Government from initiating any Law or Regulation which is not clearly and demonstrably in defence of an identifiable Liberty from Infringement by another. Without an identifiable Infringement of the Liberty of one person by another there is no Injury and there can therefore be no protective Law.

The adoption of such a clearly defined Principle would affect the process of Legislation and Government, as well as the very status and function of Ministers and Legislators.

The Principle itself would then become the ultimate criterion of “Right” and “Wrong” in social conduct. Legislators would become Interpreters of the Principle, the Legislative process would be directed not to satisfying the demands of sectional interests, but to the honest and consistent interpretation of the Principle based on a clear understanding of it.

The Principle also would impose a clear discipline on the resultant Legislation itself, for the Principle of Non-Injury can be described with such a high degree of accuracy that anyone having a basic understanding or instinctive sense of liberty can comprehend it, monitor its progress, and defend it whenever necessary.

Government secrecy and prevarication would no longer be possible; indeed, accurate interpretation of the Principle of Non-Injury would require a more open Legislative Process, which might be visualized along the following lines:

The Legislative Process is initiated when a professional Legislator, a Parliamentary Representative, a single individual citizen, a group of citizens or a Special Interest Society brings to the attention of the Legislature a suspected Injury or Infringement of Liberty, either caused by citizen and permitted by insufficient Legislation, or caused by the Political Administration through excessive or intrusive Legislation.

The identification of an *injured party* either actual or potential is essential to initiate the process of Legislative Debate. The purpose of Law is to prevent injury; the need for Law is occasioned by an *injury*, either actual or immediately anticipated. The formulation of Legislation which will

prevent that injury either totally or as nearly as practicably possible is the object of the Legislative Process, and its fulfillment will conclude the Process.

In order to improve both productivity and opportunity for wider participation, greater use may be made of Specialist Committee Hearings in the early stages of initial filtration and opening debate.

The initial debate in Committee must involve everyone who has an interest in the matter. Infringement of Liberty can be simple, or a very complex issue involving several conflicting Liberties, and it is vital that every aspect be taken into consideration. Similarly any remedy proposed for the avoidance of a specific Infringement may itself cause new infringements and involve other parties. It is only through the widest possible debate and participation that the ultimate objective can be reached: the *minimization* of Infringement of Liberty.

Throughout the Middle Ages those few who could read and write and enjoyed a proficiency in basic mathematics effectively governed the country. At the time of his trial and execution in 1649, King Charles reiterated his belief that “the People are not fit to govern”. During the 1800s the country was still ruled by the gentry, who alone were deemed to have the education and the intelligence necessary to comprehend the intricacies of budgets, economics and trade, and the intrigue of international treaties.

Today ordinary people are as well informed as their Governments on those issues which affect them, their land, their businesses, their welfare and their prosperity; indeed there is much truth in the saying that “when the People lead, the Leaders will follow”, particularly in these times when Governments seem to lack any sense of direction. And yet Governments, perhaps in a vain attempt to conceal that very emptiness of purpose, still appear to believe that they “know best”, a myth perpetuated by an increasing use of secrecy, mis-information and manipulated statistics.

In Britain the Prime Minister has considerable scope for arbitrary decision; Cabinet meetings are not public, and much Legislative detail, though often of considerable significance, is committed by Administrators behind the scenes without reference to Parliament.

In the United States, the President flaunts the Constitution by authorizing torture and illicit telephone-tapping with apparent disregard both for Congress and Constitution.

Thus governments often do what is fundamentally unwise and fail to do what is necessary while contriving to obtain the uninformed support of their citizens.

Under the Principle of Non-Injury there is little or no latitude for arbitrary action. The prime object of all Legislation is to maximize Liberty by minimizing Infringement of Liberty, a discipline to which all participants are subject and one which any alert citizen can monitor. It is therefore important in the process of Legislation that all pertinent facts should be assembled and publicly set out, and that all points of view should be heard and taken into account. It may also be observed that citizens more readily respect laws when they understand the need for them and have observed or participated in their formulation.

There are three main groupings of participants who might be involved in the overall Legislative Process.

Full-time professional Legislators would be constantly scanning events and activities in order to identify possible Infringements of Liberty. They would also continuously review existing laws

on a scheduled basis to ensure that they remain relevant. It may also be necessary to reconsider or rephrase a particular Law resulting from a request by the Judiciary for Review.

Elected Parliamentary Representatives would act as a bridge between citizen and Legislature, listening to people's concerns, explaining the Law, and bringing injustice to the attention of Legislature, Courts, or the Constitutional Executive Council as appropriate. Citizens perceiving themselves injured would therefore bring the matter initially to the attention of their Parliamentary Representative.

Citizens could also contribute to the process themselves directly, either as individuals, or perhaps more advantageously as members of Special Interest Groups and Societies. There are literally hundreds of Societies representing every shade of interest, opinion and expertise from civil liberties to environment, heritage preservation and transport.

These Societies or Groups frequently represent an assemblage of considerable expertise, of informed users or consumers, retired professionals, and people devoted to their respective causes. The Societies are genuinely Democratic in that they are supported by the subscriptions of Members and are thus responsible to Members and responsive to their needs; if they fail in their purpose they simply die through lack of subscriptions and support. Conversely, as new issues and new concerns develop, new Societies are formed.

Citizens can rely upon their Societies to monitor Legislative Proposals in their specific area of interest, and to draw Members' attention to any need for action.

Recognition of such Societies and Special Interest Groups as participants in the Legislative Debating Process would improve participation and could contribute constructively by bringing information and expertise which might otherwise be excluded.

Citizens may prefer to bring a Personal Legislative Proposal or complaint to the attention of the relevant Society for consideration and further action if appropriate. Say for example, one finds that some public footpaths are being altered or eliminated in the Resources Planning process, one can contact the local Ramblers' Association, a Society which is sympathetic to and understands the issues involved. Associations can then use their expertise to present a case to the Legislature and exert the necessary influence to get something done.

A citizen could of course, as now, belong to as few or as many such Societies as he or she may wish, contributing directly to the upkeep of the Society which in turn is responsible solely to its Members. One can visualize Societies, as now, representing walkers, environmentalists, economists, employees, those interested in civil liberties and in disciplining the expenditure of the Political Administration.

It is particularly important that young people in their teens should have a much greater opportunity to participate in the Legislative Process, through parallel debates in schools, or through their own Societies participating in Legislative Debates.

It is frequently said of young people by their elders that they are irresponsible; insofar as this may in some instances be true, the simple way to make people responsible is to give them responsibility. Young people should have the right to participate in the framing of tomorrow's world: it is after all, they who will have to live in it.

One particular example of concern to younger generations is that of the growing National Debt; since this will have to be paid by future taxpayers there would seem to be a clear case of “taxation without representation”!

A wider degree of participation in the Legislative-Interpretive Process, however, should not be confused with the activities and influence of the now-infamous “Political Action Committees” in the United States.

Participation would not mean promoting self-interest at the expense of others; participation must be motivated by an honest desire to make all pertinent facts and points of view known, so that in the end a fair and just solution will be reached, a solution which will reflect the **Principle** as accurately as circumstances permit.

The Legislative Process must also allow for “Review” of any Law at any time, either by the Legislature or by the Constitutional Executive Council. This may be occasioned when the practical application of a Law is found to be difficult or ambiguous or impractical during the Judicial process.

The need for Judicial Review is stated among many others by the late Mr. Justice Black, Associate Justice of the US Supreme Court: “The United States Constitution was the first to provide a really independent Judiciary. Moreover, as the Supreme Court held in *Marbury v. Madison*, correctly, I believe, this Judiciary has the power to hold Legislative Enactments void that are repugnant to the Constitution and the Bill of Rights.

“The Judiciary [in the United States] was made independent because it has, I believe, the primary responsibility and duty of giving force and effect to Constitutional Liberties and Limitations upon the Executive and Legislative Branches.

“Judges in England were not always independent and they could not hold Parliamentary Acts void. Consequently, English Courts could not be counted on to protect the Liberties of the People against invasion by the Parliament.”

[Mr. Justice Black: *One Man's Stand for Freedom*]

In Britain Lord Denning has long been an eloquent supporter of the need for Judicial Review. When all Legislation is based on and committed to a clearly defined Principle, the Law must at all times be open to review. Its original validity may be questioned; it may have become outdated, or in some particular set of circumstances the Law may be inapplicable.

Under the Principle of Non-Injury the Procedure for Judicial Review would provide for three distinct types of case.

Should a Court find that in practice a particular Law is not well drafted, or is difficult to interpret, or should the Court suspect that the Infringement which the Law attempts to prevent has not been properly identified or addressed, then the Court proceedings would be suspended and a prompt re-consideration requested from the Legislature or if necessary the Constitutional Executive Council.

A Law may also be “returned” to the Legislature where insufficient detail leaves it unclear in relation to the case in hand. In some circumstances the Court may rule on the matter, thus effectively “filling out” the existing provisions of the Law itself. However there may be cases

where the personalities and emotive issues involved in Court make it preferable to seek guidance from the Legislature whose deliberations can be conducted in more objective conditions.

In a case where the Law remains a valid reflection of the Principle of Non-Injury for all general purposes, but in the extra-ordinary, specific circumstances under the Court's consideration there is no actual Infringement of Liberty, then the Court would note the exception and dismiss the case, there being no Infringement of Liberty to answer.

The ultimate test of the fitness of any Law under the Principle of Non-Injury would be this: if I were to disregard this Law, would I cause injury to, or the Infringement of the Liberty of, another individual?

If there is injury, the immediate and effective protection of Law is an obligation; but if there is no injured party, there can be no Law.

When the sole object of the Legislative Process is the accurate reflection of the Principle of Non-Injury, its laws must always be open to Review, by the Judiciary or by any aware and observant citizen with an instinct for the preservation of Liberty.

Under the Principle of Non-Injury, it is the Principle itself which would give authority, obligation, and limitation, to Law and to the Process of Government; the Principle becomes the source and focal point of Law, taking precedence over Government in all its aspects. This clear line of authority and responsibility extending from the Principle itself, down through all branches of Government contrasts with the current condition of near-autocratic Governmental powers.

Government would become answerable not to itself, not to any "Leader", not to its Members or supporters, not to those who try to influence it with verbal pressure or money, not specifically to majority or minority; Government in all its departments, all its aspects and all its functions is answerable *only* to the Principle of Non-Injury, nothing and no one else.

And the Principle of Non-Injury is clear and unequivocal. No person or persons, no business or corporate enterprise shall be called upon to perform, or to refrain from performing any action, unless and until it has been clearly established in open debate and in compliance with all relevant constitutional requirements and procedures, that the performance of such action or the omission thereof causes harm or injury to another or others.

The ideal of Democracy is *power to the people*. The Principle of Non-Injury would give power to the people – *the power of the Principle* by which all Government action or inaction can be called to account.

Quality, Productivity, Service

Quality, Productivity, and Service – three words not normally associated with Government today!

If these ideals are to be applied effectively, the function of Government must first be precisely defined; we cannot measure the productivity of a service without first defining its purpose.

The current activities of Government fall into three broad categories: Laws, Infrastructure, and Welfare.

The provision of Law is the essential “core function” of Government. Under the Principle of Non-Injury, Government would confine itself to the formulation of Law and its Enforcement, or more specifically, those Legislative, Protective and Constitutional Services essential to and directly related to the protection of Liberty.

If Government is to exercise its regulatory function without bias it cannot own or operate any non-political services or industries, including infrastructure and Essential Services.

Infrastructure and Essential Services must be operated outside Government, but with Government’s strict legal supervision.

In order to make government more efficient and accountable, and to satisfy the requirements of the Principle, an important first step is the separation of all non-political Services from government. Non-political Services include provision and maintenance of roads, transportation, schools, health, pension and welfare services, and any other productive or commercial services.

The non-political Services, when separated from Government, should be autonomous managerially and financially. These Services would then become responsible for their own management and finances, raising capital as required through the Investment Banking System. They would no longer be subject to the uncertainties of Government finance or to the managerial whims of politicians; but they would become subject to strict disciplines, reporting regularly and publicly through the medium of Total Performance Audits specifying details of quality and productivity.

Government, now independent from these non-political Services, would be better placed to do its proper job: that of making sure that the Private Sector including all previously Government-run business conducts itself responsibly, efficiently, and productively.

Government has the duty to ensure that business and commerce is conducted in a socially responsible manner in accordance with the Principle, and this must apply with particular relevance to the Nation’s Essential Infrastructure Services.

But such Services must remain managerially and financially autonomous, both for their own good, and to ensure that Government treats them in the same way as any Private Sector business.

The use and apportionment of land provides a special case where planning and coordination between residential and commercial developments and transportation services is essential. Nonetheless, in the case of public transportation services, National or Regional Management would operate under its own initiative, but subject to strict quality and productivity standards, as well as overall planning and coordination guidelines.

Currently a major call on Government time and finances is the cost and administration of what may broadly be referred to as Welfare. Under the Principle of Non-Injury however, the object of government should be to alleviate the conditions which make it necessary. The need for “Welfare” is universally recognized today, albeit grudgingly. One reason must be the general acceptance that widespread unemployment exists as an inevitable reality and that it is the result of the National Economic System rather than individual idleness.

If a Nation could truly claim that there is a rewarding job available for anyone who wants it, that the job pays a fair wage, and that the essentials of life, particularly decent housing, are to be

bought at a fair price... we would not be so sympathetic towards Welfare recipients. But then in those conditions, Welfare recipients would probably be few in number.

Our present confrontatory political and economic systems demand a measure of continuing unemployment to hold down inflation. Under the Principle of Non-Injury, disputation over pay, profits and prices would be replaced with fair and consistent guidelines, thus providing monetary stability and removing the threat of inflation. The Nation's Credit Flow can then be directed into productive economic expansion to sustainable full employment.

When Government confines itself to ensuring the correct and consistent application of the Principle of Non-Injury, the need for welfare will be diminished, and Essential Infrastructure Services will have the advantages of autonomy while remaining subject to strict quality and productivity criteria.

And with the purpose and function of Government clearly defined, it becomes much easier to apply strict financial and administrative disciplines to ensure that Government fulfils its own core functions as efficiently and as cost-effectively as possible with continuously rising productivity.

Once Government has been brought down to its core services, these too should be re-structured so that they are separately identifiable, and publicly accountable for their productivity and service. Many existing government departments and programs would inevitably be abandoned as being non-essential, while each of those remaining would be required to state clearly what it is doing, what it is costing, and the extent to which it is fulfilling its stated objectives productively.

The Principle of Non-Injury, applied in Economics and Commerce as a policy of *Socially Responsible Free Enterprise* would set high standards of management and customer satisfaction, quality and productivity, performance and accounting for the Private Sector.

Governments today exempt themselves from Commercial Law. If the Principle of Non-Injury were to be consistently and correctly applied there could be no exceptions, not even for Government, which would itself be subject to constitutional scrutiny in terms of its quality and productivity.

Government is a service to its consumers and as such should be subject to the strictest possible commercial disciplines; its performance should be at least as good as and preferably better than the Private Sector. Any Commercial Legislation relating to accounting, standards, productivity or quality of Private Sector business and commerce should immediately and automatically apply to any and all functions of Government.

Government is not outside the Law; Government Legislation, conduct and operations would at all times be subject to the Principle of Non-Injury and to all its resultant Legislation.

The process of auditing and applying the necessary disciplines to Government should be entrusted to a specially constituted Committee under the Constitutional Executive Council; no institution, least of all Government, can be trusted to discipline itself.

The aim of Government should be the same as that of any well-run Private Sector industry or service: to provide the best possible service at the lowest possible price.

Throughout private sector business and industry, managements are under constant underlying pressure to be ever on the alert. It is easy to let quality slip, to miss an opportunity to improve productivity, or to fill a new market need. No one accepts pressure through choice. The need arises only because competition can overtake a business, even cause its demise.

Monopolies do not suffer such pressures, thus it is easier for service standards to stagnate or fall back. Yet there is an escape route for dissatisfied customers: one can always, or almost always opt out. If your electricity supplier really annoys you, you can close the account and light your home with oil lamps. Inconvenient perhaps, but the option remains, for though a monopoly supplier, your power company does not require you to use its services. It is not an enforced monopoly. It is in this respect that Government stands alone. Government is not only a monopoly, it is the one single unique example of an enforced monopoly, there is no option to reject it, and refusal to pay its taxes is a crime.

Thus it is of the utmost importance that government honesty, productivity, accounts and service standards be rigorously monitored and enforced.

The Principle of Non-Injury: *that we should confine ourselves to those actions and activities which are not detrimental or disadvantageous to others, which do not harm or injure others, is as old as human conscience.*

We should all have the freedom to enjoy life and improve ourselves as we choose and are able. But we should not do so in ways which are harmful or detrimental to others; we should not seek gain at the expense of others' loss.

The parallel concept of Government, that it exists primarily to prevent such actions, has likewise existed in political philosophy as expounded by reformers throughout recorded history.

And the ideal that Government, its function clearly defined and limited, should exercise its duties efficiently and at minimum cost to its customers, is a dream long cherished by reformers and taxpayers alike.

Accurate and consistent application of the Principle of Non-Injury would maximize Liberty; and with its function clearly definable and subject to its own inherent discipline it would do so productively and without incurring an over-burdensome tax on our earnings.

This ideal is not new. It was summarized by Thomas Jefferson in his first Inaugural Address given on March 4th, 1801:

“A wise and frugal Government, which shall restrain men from injuring one another yet leave them otherwise free to regulate their own pursuits of industry and improvement, and which shall not take from the mouth of labor the bread it has earned: this is the sum of good Government necessary to complete the circle of our felicities”.