

The Sphere of Government



Nineteenth Century Theories: 2. *Herbert Spencer*

HERBERT SPENCER (1820-1903) was the nineteenth century's philosopher of evolution. He aspired to universal knowledge. What he called his Synthetic Philosophy ran to ten volumes. They included *First Principles* (1862), followed by volumes on *The Principles of Biology*, *The Principles of Psychology*, *The Principles of Sociology*, and *The Principles of Ethics*. Spencer also wrote at least eight other books.

But his earliest published work was a pamphlet, *The Proper Sphere of Government*, which he wrote at the age of 22, and his first important book was *Social Statics*, published in 1851. These publications advocated

what would today be called, and was in fact called at the time, "an extreme form of laissez faire."

The limitation of state power remained one of Spencer's dominant interests till the end of his life. In a later edition of *Social Statics* he omitted a chapter entitled: "The Right to Ignore the State," but essentially his ideas on the subject of state power changed very little as he grew older. In 1884 he published a small volume entitled *The Man Versus the State*. In 1891 appeared Part IV of *The Principles of Ethics*: "The Ethics of Social Life: Justice," and he declared this to represent his definitive views on the subject. Let us summarize and analyze them.

After some prior discussion, Spencer arrives at what he calls "a formula of justice: . . . Every man is free to do that which he wills, pro-

Henry Hazlitt, noted economist, author, editor, reviewer and columnist, here continues a series of nineteenth century theories on the sphere of government. The views of John Stuart Mill were discussed in the January 1980 issue of *The Freeman*.

vided he infringes not the equal freedom of any other man." This is almost exactly the maxim that he had laid down in his *Social Statics* forty years earlier, but I regret that it seems to me vague and unsatisfactory.

In *The Principles of Ethics* Spencer was aware of criticisms that must in the meantime have been made of it by others, for he immediately proceeds to deal with one of them:

"A possible misapprehension must be guarded against. There are acts of aggression which the formula is presumably intended to exclude, which apparently it does not exclude. It may be said that if A strikes B, then, so long as B is not debarred from striking A in return, no greater freedom is claimed by the one than by the other; or it may be said that if A has trespassed on B's property, the requirement of the formula has not been broken so long as B can trespass on A's property. Such interpretations, however, mistake the essential meaning of the formula. . . . It does not countenance a superfluous interference with another's life, committed on the ground that an equal interference may balance it. . . ."¹

Now this will hardly do. If a formula does not in fact countenance actions that it does countenance on its face, then it has not been satisfactorily formulated. It is not a satis-

factory rule or guide to policy, and it must be revised or rejected. It must clearly exclude aggression against or harm to others.

But it must also carefully delimit the nature of the "aggression" or "harm." If A and B are applying for the same job or courting the same girl, and A is the successful competitor, the prospects of B may be correspondingly damaged. But as long as A "played fair," and did not resort to violence or fraud, no one would consider that B had any just cause for complaint. There are many similar cases, but there are also borderline cases. If A and B have neighboring properties and A puts up an ugly house that B considers an eyesore threatening his property value, has B just cause for suit? If A puts up a fire hazard or a chemical factory that pollutes B's air or water, nearly everyone would consider B's case much stronger. It is problems like these that legislators and courts have to try to solve by passing scores of laws and making thousands of decisions in individual cases.

More a Formula for Liberty than for Justice

Spencer's formula strikes me more as an attempted definition of liberty than as a maxim of justice. And if it is so, then I much prefer the formula of John Locke in 1690: "Freedom of men under government is to have a standing rule to live by,

common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not: and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man."²

Montesquieu stated essentially the same formula more briefly in 1748: "Liberty is the right to do what the laws allow. If a citizen had a right to do what they forbid it would no longer be liberty, for everyone else would have the same right."³

So all practicable liberty is liberty under law. But the shortcoming of both Locke's and Montesquieu's formulas is that they fail to state explicitly that the restraints that the laws impose must be just, definite, and minimal. But even a formula that embodied these specifications would again fall short unless it spelled out what these just and minimal restraints would be. This is the dilemma that confronts all efforts to frame a concise definition of either justice or liberty.

The nearest to a good, short specification that I can at present remember is Thomas Jefferson's call for "a wise and frugal government, which shall restrain men from injuring one another, which shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take

from the mouth of labor the bread it has earned."⁴

But I have perhaps allowed myself to be carried too far astray on this point. Spencer's case for the minimal state does not rest solely or even mainly on his own "formula for justice." Though he does not embrace the doctrine of Natural Law, he does believe that man has certain inherent rights which we recognize by "a priori intuition" or "a priori cognition." He proceeds to write a series of ten chapters on The Right to Physical Integrity, The Rights to Free Motion and Locomotion, to the Uses of Natural Media, The Right of Property, of Incorporeal Property, of Gift and Bequest, of Free Exchange and Free Contract, to Free Industry, of Free Belief and Worship, and of Free Speech and Publication. No government, he argues, has any legitimate power to violate or abridge these rights.

A Modern Ring

At the end of Part IV Spencer comes to seven chapters (23 to 29) on the nature, constitution, and duties of the state, and on the limits of state duties. When he discusses the constitution of the state, he might have been writing about one of the chief problems that disturb us today:

"If it is true that a generation ago landowners and capitalists so adusted public arrangements as to ease themselves and to press unduly

upon others, it is no less true that now artisans and laborers, through representatives who are obliged to do their bidding, are fast remodeling our social system in ways which achieve their own gain through others' loss. Year after year more public agencies are established to give what seem gratis benefits, at the expense of those who pay taxes, local and general, and the mass of the people, receiving the benefits and relieved from the cost of maintaining the public agencies, advocate the multiplication of them.

"It is not true, then, that the possession of political power by all ensures justice to all. Contrariwise, experience makes obvious that which should have been obvious without experience, that with a universal distribution of votes the larger class will inevitably profit at the expense of the smaller class. Those higher earnings which more efficient actions bring to the superior, will not be all allowed to remain with them, but part will be drafted off in some indirect way to eke out the lower earnings of the less diligent or the less capable; and in so far as this is done, the law of equal freedom must be broken."⁵

He sums up:

"One conclusion, however, is clear. State burdens, however proportioned among citizens, should be borne by all. Every one who receives the benefits which government

gives should pay some share of the costs of government and should directly and not indirectly pay it. . . .

"Had each citizen to pay in a visible and tangible form his proportion of taxes, the sum would be so large that all would insist on economy in the performance of necessary functions and would resist the assumption of unnecessary functions, whereas at present, offered as each citizen is certain benefits for which he is unconscious of paying, he is tempted to approve of extravagance; and is prompted to take the course, unknowingly if not knowingly dishonest, of obtaining benefits at other men's expense.

"During the days when extensions of the franchise were in agitation, a maxim perpetually repeated was—'Taxation without representation is robbery.' Experience has since made it clear that, on the other hand, representation without taxation entails robbery." (pp. 219-20)

A Duty to Protect

In his chapter on "The Duties of the State," Spencer concludes that there is in effect just one: to protect the citizenry against external and internal aggression—against foreign enemies and against its law-breakers. And in the following chapter on "The Limits of State Duties," he asserts:

"The question of limits becomes the question whether, beyond main-

taining justice, the state can do anything else without transgressing justice. On consideration we shall find that it cannot. . . .

"If justice asserts the liberty of each limited only by the like liberties of all, then the imposing of any further limit is unjust; no matter whether the power imposing it be one man or a million of men. . . . We do not commonly see in a tax a diminution of freedom; and yet it clearly is one. The money taken represents so much labor gone through, and the product of that labor being taken away. . . . Thus much of your work shall be devoted, not to your own purposes, but to our purposes,' say the authorities to the citizens; and to whatever extent this is carried, to that extent the citizens become slaves of the government." (pp. 241-43)

Examples Galore

Though Spencer insisted constantly on the priority and necessity of deductive reasoning, few political writers have been so industrious and specific in citing and piling up concrete examples of the bungling, contradictions, and abuses of power in carrying out the multitudinous functions that governments have taken on. Long before he got to *The Principles of Ethics*, he had detailed scores of these not only in *Social Statics*, but in such essays as "Over-Legislation," "State Tamper-

ings with Money and Banks," "The Collective Wisdom," and many others.

So in the *Principles* he continued to cite case after specific case. Of drafting laws, for example:

"The judges themselves exclaim against the bungling legislation they have to interpret: one judge saying of a clause that he 'did not believe its meaning was comprehended either by the draftsman who drew it' or 'the parliament that adopted it,' and another declaring that 'it was impossible for human skill to find words more calculated to puzzle everybody.' As a natural consequence we have every day appeals and again appeals—decisions being reversed and re-reversed." (pp. 252-253) One would think Spencer was writing of conditions in America today, rather than those of England in 1890.

Of the coinage: "In this we have frequent changes where changes are undesirable. We have mixed systems: decimal, duodecimal, and nondescript. Until recently we had two scarcely distinguishable pieces for threepence and fourpence" etc. (p. 253)

Socialistic Legislation

In a discussion on "socialistic legislation," Spencer excoriates the then Prime Minister, Lord Salisbury, for sneering at basic principles and saying: "We ought first to dis-

cuss every subject on its own merits." This is the method, comments Spencer, "which has been followed by those legislators who, throughout past thousands of years, have increased human miseries in multitudinous ways and immeasurable degrees by mischievous laws. Regard for 'the merits of the case' guided Diocletian when he fixed the prices of articles and wages of workers, and similarly guided rulers of all European nations who, century after century, in innumerable cases, have decided how much commodity shall be given for so much money, and in our own country guided those who, after the Black Death, framed the Statute of Labourers [to hold down wages], and presently caused the peasant revolt. The countless acts which, here and abroad, prescribed qualities and modes of manufacture, and appointed searchers to see that things were made as directed, were similarly prompted by considerations of 'the merits of the case': evils existed which it was obviously needful to prevent. . . .

"Each one of those multitudinous regulations enforced by swarms of officials, which in France nearly strangled industry, and was a part cause of the French revolution, seemed to those who established it, a regulation which 'the merits of the case' called for; and no less did there seem to be called for the numberless sumptuary laws which, genera-

tion after generation, kings and their ministers tried to enforce." (pp. 260-61)

The Remarkable Contrast

After citing many more such examples, Spencer sums up the contrast between the amazing accomplishments of free and spontaneous social cooperation and the immense harm wrought by multitudinous government interventions:

"The average legislator, equally with the average citizen, has no faith whatever in the beneficent working of social forces, notwithstanding the almost infinite illustrations of this beneficent working. He persists in thinking of a society as a manufacture and not as a growth: blind to the fact that the vast and complex organization by which its life is carried on, has resulted from the spontaneous cooperations of men pursuing their private ends. Though, when he asks how the surface of the earth has been cleared and made fertile, how towns have grown up, how manufactures of all kinds have arisen, how the arts have been developed, how knowledge has been accumulated, how literature has been produced, he is forced to recognize the fact that none of these are of governmental origin, but have many of them suffered from governmental obstruction; yet, ignoring all this, he assumes that if a good is

to be achieved or an evil prevented, Parliament must be invoked. He has unlimited faith in the agency which has achieved multitudinous failures, and has no faith in the agency which has achieved multitudinous successes." (pp. 266-67)

In expounding these views, Spencer, so far as the bulk of public opinion was concerned, was an isolated figure. Similar ideas were being voiced by a handful of others, notably Auberon Herbert (1838-1906), but the vigorous opposition of Thomas H. Huxley (1825-1895) probably came much nearer to ex-

pressing the political philosophy of the great mass of the British public in the 1880s and 1890s, to the extent that they bothered to formulate any philosophy. Huxley's views will be considered in a future issue of *The Freeman*. 

—FOOTNOTES—

¹*Principles of Ethics*, Vol. II (Indianapolis: Liberty Classics), Ch. 6, p. 62.

²*Two Treatises of Civil Government* (Everyman's: E. P. Dutton), Second Treatise, sec. 21, p. 127.

³*The Spirit of the Laws*, XI.

⁴First Inaugural Address (March 4, 1801).

⁵*Principles of Ethics*, II, pp. 212-13.

A Sobering Thought

... the cautious thinker may reason:—"If in these personal affairs, where all the conditions of the case were known to me, I have so often miscalculated, how much oftener shall I miscalculate in political affairs, where the conditions are too numerous, too widespread, too complex, too obscure to be understood. Here, doubtless, is a social evil and there a desideratum; and were I sure of doing no mischief I would forthwith try to cure the one and achieve the other. But when I remember how many of my private schemes have miscarried; how speculations have failed, agents proved dishonest, marriage been a disappointment; how I did but pauperize the relative I sought to help; how my carefully-governed son has turned out worse than most children; how the thing I desperately strove against as a misfortune did me immense good; how while the objects I ardently pursued brought me little happiness when gained, most of my pleasures have come from unexpected sources; when I recall these and hosts of like facts, I am struck with the incompetence of my intellect to prescribe for society. And as the evil is one under which society has not only lived but grown, while the desideratum is one it may spontaneously obtain, as it has most others, in some unforeseen way, I question the propriety of meddling."

HERBERT SPENCER, *The Man versus the State*

IDEAS ON



LIBERTY

Facing the Moral Attack on Capitalism

Is it not paradoxical that after emerging like the phoenix from the ashes of the Gulag Archipelago Alexander Solzhenitsyn should speak out against the land of milk and honey? Is it not ironic that after having known starvation and torture he should attack the enviable—and surely envied—comforts of the West? And yet, on the occasion of the Harvard University commencement on June 8, 1978, the man who could well be called the most significant moral leader of our century, whose challenge to the conscience of mankind may prove to have been the ultimate test for our sclerotic spiritual fiber, accused us of moral myopia, of pretending not

to live in "A World Split Apart"—the apt title of his prophetic message.

The world is split indeed, by divergent ideologies no less than by economic disparities. Those disparities, of course, are no secret. Indeed, were economics alone at stake in the dialogue it would seem that the Marxist—assuming he is truly a materialist—would opt for capitalism: the experience of nearly two centuries indicates that prosperity is attained best when trade is not hampered by regulatory legislation.

Though few men are less utilitarian in outlook than Solzhenitsyn, he is no exception in recognizing the material success of the capitalist system. He thus readily concedes that "it is almost universally recognized that the West shows all the world a way to successful economic development," inflation notwithstanding. He notes immediately,

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