THE CULTURAL VALUES
OF EUROPE

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Freedom, Slavery, and the Modern Construction of Rights

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I. Introduction

The end of the Cold War entailed not simply the political and ideological victory of the West over its Communist adversary, but the triumph of the West's most central and cherished value, freedom. Today we are living through one of the periodic explosive diffusions of this ideal as well as the related notion of human rights. According to Freedom House, the majority of the world's 5.4 billion people have declared themselves in favour of freedom. The world seems to be in anything but a festive mood as a result of the triumph of its master value. The former Soviet Union seems to lurch from one crisis to another, its people expressing increasing scepticism about the value of the ideal their leaders have embraced. Parts of eastern Europe have descended into the unspeakable nightmare of 'ethnic cleansing'. All this as a result of gaining more freedom.

Perhaps the most extraordinary recent development, however, has been the ideological counter-assault from several Near and Far Eastern states against the ideal of freedom itself, a movement that came to a head, taking the West completely by surprise, at the now notorious United Nations conference on human rights in Vienna early in 1993. Western delegates arrived at that conference expecting to stamp the final seal of triumph on freedom's behalf in a renewed universal Declaration of Human Rights. Instead, what they confronted was the Bangkok Declaration.

Produced by one of the strangest collections of international bedfellows the modern world has ever seen — communist China and Cuba, capitalist Indonesia, and anticommunist and fundamentalist Iran — the Bangkok Declaration defiantly called into question what most of us in the West had assumed was, by now, a foregone conclusion: that all peoples, even if they did not practise them, at least accepted freedom and fundamental human rights as laudable ideals.

It argued, in essence, first, that freedom and the notion of universal human rights are not and have never been universal, and have no root or sanction in the traditions of most countries of the world. And second, that if these ideals are to be taken seriously they must be expanded to include the idea of economic development as a basic human right, and, as such, an essential part of any acceptable conception of freedom.

II. On the Nature of Freedom

The Bangkok Declaration reminds us that perhaps the greatest danger to freedom at this, its seeming moment of triumph, lies in our tendency to take it too much for granted, and in our failure to explore rigorously just what it is, exactly what its roots are, and just where it might be heading. I will attempt here, in the very broadest outline, to tell the story (or to be more precise, I will give my account) of freedom.

Freedom is a triune concept that emerged with the rise of the West itself. From as early as the middle of the fifth century B C, the thing we call freedom emerged as a cultural chord composed of three notes: personal freedom, civic freedom, and sovereignal freedom. Personal freedom is the absence of constraint on our desire to do whatever it is we please; civic freedom is the capacity to participate in the governance of our community; sovereignal freedom is the capacity to do whatever we please, both in regard to ourselves – self-ownership, empowerment – and, more controversially today but emphatically true for most of the history of freedom and the West, in regard to others.

As a triune value, freedom achieves its conceptual coherence through the idea of power. We are free, personally, to the degree that we are released from the power of another, or not prevented by the power of another, to do what we want.

This is today the most fundamental meaning of the term; conceptually as well as historically, it may have been the most basic. For most of the history of the West, however, it has not been the dominant view, although often it has been the most popular. Only during the nineteenth century did this note of the chord become hegemonic, at which point, ironically, it ceased to be the most popular. We are free, sovereignally or positively, to the degree that we exercise power, over ourselves and others. We are free in the civic sense to the degree that we share in the collective power of the state that governs us. These most basic notes of freedom have always been chordally linked, constituting the most fundamental cultural triad of the West.

Apart from certain especially discordant times, people have always wanted negative freedom, personal freedom from those above them, in order better to exercise freedom over themselves (independence) and others; and they have always felt that having power in their most meaningful political order – whether

this be village, borough, province, or state – the best guarantee for the other powers of freedom.

I have tried to show in *Freedom in the Making of Western Culture* that the social construction of freedom was made possible by the relation of slavery.[1] Slavery had to exist before people could even conceive of the idea of freedom as value, that is to say, find it meaningful and useful, an ideal to be striven for. Everywhere that slavery made its appearance, it became possible to conceive of the three notes of the chord of freedom and even, sometimes, to realize proto-historical versions of them. Thus, slavery immediately made possible something that had never existed before: the absolute, unprotected, unmediated power of life and death of one person over another. As Michael Mann has shown, the most distinctive feature of human society for most of the known history of mankind was the extraordinary resistance to the accumulation of personal power.[2] In other words, only with slavery did one person have the freedom to do absolutely as he or she pleased with another.

Slavery also immediately made possible, and stimulated the valorization of, the idea (so seemingly ridiculous to the pre-servile mind) that it is a good not to be under constraint: primordial personal or negative freedom. And only with the arrival of slaves did the idea of a class of people who are free become contradistinctively meaningful. All Gaul may have been divided into three parts, but until the Gauls took slaves, or were themselves made slaves, it would have made no sense whatsoever to call any part, however divided, free.

To conceive of something, to be able even to realize it in a sporadic way, and to desire it, however, is not to make a value of it. The shared valorization of an idea, wish, or practice only comes about when a special sociological context and a specific configuration of historical contingencies coexist. For most of human history, and for nearly all slave-holding non-Western peoples, neither the broader context nor the peculiar historical contingencies accounting for the social construction of freedom as value existed; I have attempted to explain why in my last work on the subject. The idea and proto-historical intimations of freedom remained simply that: the idea of freedom was never constructed as social value. Indeed, just the opposite happened. To the extent that the idea was conceived of in those societies that had small numbers of slaves, or even not insignificant numbers, as in the ancient Near East, it was condemned as a slave value, something desired only by the once-fallen, the debased, or the perverted.

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[1]   Orlando Patterson, *Freedom*, vol. 1: *Freedom in the Making of Western Culture* (New York, 1991). What follows in this section is based on this work, and the reader should consult it for references. For my study of the nature, types, and comparative distribution of slavery, see *Slavery and Social Death: A Comparative Study* (Cambridge, MA, 1982).

[2]   Michael Mann, *The Sources of Social Power* (New York, 1986).

Thus in all non-Western cultures where it was found necessary to find a word for freedom, that word always had connotations of loss, unredeemable failure, nastiness, delinquency, debasement, and licentiousness. Only in the West did the word come to be cherished as the most precious in the language, next only to the sound of the name of God.

III. The Origins of Freedom in the Ancient and Medieval West

In *Freedom in the Making of Western Culture*, I have tried to demonstrate how this happened; how, at the end of the seventh century BC in Athens, a peculiar set of historical contingencies led to the emergence of large-scale slavery, and how in the struggle between the land-hungry small farmers and the slaveholding ruling class the demand for economic redistribution was met by political redistribution. Democracy was socially constructed out of this struggle and was directly related to the existence of a large class of slaves, a domestic enemy, which not only made ruling elite and emancipated small farmers independent of each other (the first such mutual independence in the history of post-acephalous polities), but solved the social problem it created by generating an internal bond between free masters and free native Athenians. The *demos* became a free *demos* vis-à-vis the unfree aliens, with a shared power vis-à-vis the powerless and dominated slaves.

While freedom became identified with the sharing of the power of the community, however, the primitive idea of freedom as power was also developed with respect not only to the slaves but to all foreign peoples, who were soon seen as being fit only to be slaves. The period of the Persian Wars was the decisive turning point in this development. The power, honour, and glory that had been an aristocratic monopoly were generalized to all free Athenian men after the triumphant victory over Persia. The naked concept of freedom as pure power over another was clothed with the fine armour of aristocratic *arete*. No one ever lost sight of what lay underneath; every Greek man knew and cherished the idea that to be 'truly free' was to be powerful and to pursue the *arete*, the dignity, independence, and self-possession of the noble life, and that achievement of these required, ideally, the enslavement or domination of other individuals and other peoples. They did not need Aristotle to justify such a view for them, quite apart from the fact that his theory of natural slavery was the most embarrassingly confused thing he ever wrote. Slavery, freedom, and empire, like father, bride, and groom, marched to the altar of Athena together.[3]

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[3]   For the most accessible discussion of sovereignal or 'oligarthic' freedom among the Greeks, see Kurt A. Raaflaub, 'Democracy, Oligarchy, and the Concept of the "Free Citizen" in Late Fifth-Century Athens', *Political Theory* 11:4 (1983), pp. 517–44.

With the further expansion of slavery in the mining and urban economy of Athens, a large freedman and metic population emerged that was now predominantly male, highly skilled, and, most important of all, existed in a buoyant urban economy that provided all the space they needed to survive independently of their former masters (another first, in the history of stratified societies). These were the people who elaborated and elevated what was previously a value largely associated with Greek women: personal freedom. Hence, by the second half of the fifth century BC, the first chordal fusion of the three notes of freedom came about, and was given its immortal public expression in the funeral oration of Pericles.

All residents celebrated all three notes, but each note was ranked differently by the three main groups: citizen farmers and working-class urban Greek men cherished civic freedom above all; for the aristocratic elite, freedom primarily meant power, honour, and glory; and for the ex-slaves and other resident aliens, the primary note was personal freedom. From the very beginning, then, there was chordal unity in the expression of freedom – everyone recognized and valued, however grudgingly or enviously, all three notes, including the residents who were excluded from the experience of democracy – but there was an internal tension in its expression, reflective of the underlying class tensions in the society. The classic expression of both the chordal unison as well as the inherent tension in the triad of freedom was, of course, the funeral oration of Pericles.[4]

Classical republican and early imperial Rome marked the next critical moment in the history of freedom. With the demographic, economic, social, and cultural triumph of the freedman class at the heart of Europe's first world empire, freedom became the most cherished secular value in civilized Europe. With it came a new rendition of the chord. For a long time, historians of Rome have held that the civic or democratic note of freedom was a mere cultural echo, its political system dominated by a murderously competitive and oligarchic group of *nobiles* who controlled the Senate and the political process without regard to the masses. In a series of highly persuasive revisionist papers, however, Fergus Millar has shown us that this view, at least of classical republican Rome, is seriously flawed; that 'we cannot understand Roman politics if our view does not encompass, along with the power of individuals holding office and the collective power of the Senate as a body, the power of the people as represented, however imperfectly, in their assemblies'; that while not a democracy in the modern sense, there was a strong 'democratic element' in the legislative and legal processes and

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[4]   For the most brilliant exposition of which, see Nicole Loraux, *The Invention of Athens: The Funeral Oration in the Classical City* (Cambridge, MA, 1986). See also, Patterson, *Freedom*, vol. 1, ch. 6.

in the enormous importance placed on oratory and persuasion of the people by the political elite.[5]

Even so, I am sure Millar would agree that in comparison with civic freedom, the other two notes were resounding: the negative, personal *libertas* of the freedman proletarian and middle classes, and the sovereignal freedom of the emperor. Both strongly complemented each other. The absolutely free emperor protected with his awesome power and patronage the negative freedom of the masses against the magisterial parasitism of the senatorial class; they, in turn, clothed his mightiness with all the dignity, the authority, the honour, glory, and virtue that he coveted, with their worship, which in the end was literally religious.

The third critical development came with the emergence of Christianity. Socially reconstructed by the freedmen at the most civilized urban centres of the empire — all large-scale slave systems — out of the primitive eschatological cult from the Jewish periphery, Christianity transposed to the spiritual level the value that was central to its urban congregation. It became the first, and only, world religion to make freedom — redemption, the purchasing out of spiritual slavery and the curse of Adamic death by the sacrifice of the Saviour's life — the ultimate religious goal. What Stoicism had only partially achieved on the intellectual level, what Gnosticism, with perhaps too strong a secular philosophic influence, had first attempted and then failed at in the young faith, Pauline Christianity brought to fulfilment on both the intellectual and the spiritual level: the sacralization of freedom, inscribed in the two great letters to the Galatians and the Romans. The former celebrates personal spiritual freedom, with a fervour and abandon not to be witnessed again until the first great evangelical movement in modern Protestantism; the latter puts the brakes on in an awesomely severe, seemingly conflicting, but ultimately highly complementary conception of spiritual liberty as the thing we ultimately find only in our surrender to the one true freedom: the absolute power of God. Note that this complementarity directly paralleled the secular relation between the absolute sovereignal freedom of the emperor and the personal *libertas* of this very same freedmen class.

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[5]   Fergus Millar, 'The Political Character of the Classical Roman Republic, 200–151 BC', *The Journal of Roman Studies* 74 (1984), pp. 1–19; Millar, 'Politics, Persuasion and the People before the Social War (150–90)', *The Journal of Roman Studies* 76 (1986), pp. 1–11. Millar even speaks of the 'people' enjoying 'the three basic constitutional rights of direct voting on legislation [...] of electing all the annual holders of political and military office; and of judging in the popular courts constituted by the *comitia centuriata* and *comitia tribute*.' I am sure, however, that he would want us to understand his use of the term 'rights' in the more general sense of collective powers, rather than in the more modern, Jeffersonian sense of subjective human rights.

With the triumph of Christianity in the ensuing medieval moment, freedom was fully institutionalized. What this meant was that the underlying social and historical factors that had initially generated it in Greece, and had accounted for its universalization in Rome, were no longer needed for its survival. By capturing the mind and soul of Europe, Christianity ensured that whatever culture it dominated and fashioned would be dominated and fashioned by the value of freedom. Freedom as autonomous, central value was now no longer determined by, or dependent on, any underlying social process or favourable contingencies. Instead, it became determinative; it created or moulded its own social space; it fashioned and was indeed axial to all other values and ways of culture. Europe became Christendom. And Christendom was relentlessly focused on one goal: redemption, freedom.

Since in the wholly organic rural world of Christendom all thought was Christian thought, even when men and women acted in what may have appeared to be primarily secular ways, even when they acted against the Church, their sole way of giving expression and lending meaning to their actions was by means of the only cultural vocabulary they knew, that of the Church that worshipped a god who had sent his son to free mankind. Political thought, as Ernst Kantorowicz showed long ago, was merely secularized theology; theories of kingly devotion were merely thinly disguised royal christologies.[6] The lord of the manor who protected and saved the body was only a mortal counterpart of the Lord who shepherded and saved the soul. Servile revolts were all religious revolts, attempting to give secular expression to antihegemonic interpretations of spiritual freedom. Ruling-class repressions were all imposed with godly righteousness, as the lords gave material expression to the hegemonic, sovereignal version of their god-given liberties.

All three elements of freedom cohered in a tightly rendered triad in the late medieval world. As in all other periods of the western past, people could recognize and even settle for one or another element, especially when they had no choice in the matter. Greater economic and political equality were certainly on the list of aims of the English rebels in 1381; as one of their leaders, John Ball, famously preached: 'Whan Adam dalf and Eve span, who was thanne a gentilman.' But they also knew that such equality was an apocalyptic dream. What preoccupied them most was their demand for the end to subjection to manorial dues: simple negative freedom. The hegemonic expression of freedom, however, was invariably chordal, and this comes out most clearly in the position of the burghers and the lords.

Liberty for the medieval lord was a bundle of three basic kinds of liberties:

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[6]   Brost Kantorowicz, *The King's Two Bodies: A Study in Medieval Political Theology* (Princeton, NJ, 1957).

immunities, privileges, and representation. Immunities meant freedom from the restraint of the king in the management of the lord's affairs; privileges meant the power to do whatever he pleased within his domain, which in effect meant the capacity to impose taxes, demand labour services, and judge offenders against manorial law. Indeed, medieval lords saw nothing in the least bit odd about defending what they called 'liberty of gallows', which was the power to hang anyone found guilty of a capital crime in their domain. Finally, liberty meant to a lord, by the late Middle Ages and especially in England, the right to have some say in the most important aspect of government, that which affected him most directly, namely, the imposition of taxes, a right expressed through representation by one of his peers in the king's council, and later in Parliament.

IV. Freedom and Agrarian Capitalism: The British Case

For a long time the standard account of the rise of modern freedom was that it was a product of the bourgeois-led capitalist revolutions of Europe, especially in England and Holland. Capitalism was indeed the decisive new factor in the modern reconstruction of freedom. What is now at issue is who led this early, agrarian capitalist revolution and what were its ideological expressions. Understanding what happened requires a closer look at the old question of the development of the idea of possessive individualism, which according to C. B. Macpherson and his followers had fully emerged, along with the market, in seventeenth-century England, becoming the quintessence of bourgeois freedom. 'Its possessive quality', he writes,

> is found in its conception of the individual as essentially the proprietor of his own person or capacities, owing nothing to society for them [...] the relation of ownership having become for more and more men the critically important relation determining their actual freedom and prospect for realizing their full potential [...] the human essence is freedom from dependence on the wills of others, and freedom is a function of possession.[7]

My point of departure is J. G. A. Pocock's pregnant suggestion that there were several forms of possessive individualism, though perhaps not as many as he suggested.[8] There were, I believe, not one but two distinct forms of possessive

[7]   C. B. Macpherson, *The Political Theory of Possessive Individualism* (Oxford, 1962), p. 3.
[8]   J. G. A. Pocock, 'Authority and Property: The Question of Liberal Origins', in his *Virtue, Commerce and History* (Cambridge, 1985), p. 59.

individualism, which had their origins in two different sociohistorical sources. One form may be called bourgeois, the other honorific. Let us consider first the honorific version. The English gentry, like its European counterpart, developed the modern form of possessive individualism as part of its reconstruction of the traditional medieval value system in its successful attempt to meet the demands of the early modern world. The conventional wisdom contrasts the two sets of values – modern capitalistic possessive individualism with medieval honorific paternalism – but from what we now know about the behaviour associated with lordship in the Middle Ages, this simplistic contrast must be discarded. The medieval lord was a thoroughly acquisitive man, often brutally so, as Thomas Bisson and others have shown; he was fiercely protective of his independence, and he was also very possessive in precisely the sense defined by Macpherson. In the face of large-scale and significant levels of serfdom, self-possession had been the essence of freedom for all medieval persons, and the foundation of lordship was independence; this was the whole point of immunities and privileges.

There was a purely *in situ* economic source of this process. The enclosure movements and the aristocratic initiation of agrarian capitalism grew directly out of forces emerging from the late-medieval English past. However, these independently developed patterns were strongly influenced by, and rationalized in terms of, external ideas and models, especially those handed down from Renaissance Florence.[9] The 'end product of the Florentine experience', writes Pocock, 'was an impressive sociology of liberty, transmitted to the European Enlightenment and the English and American revolutions, which arose in reply to the challenge posed by the republic's commitment to existence in secular history'.[10] The essence of this tradition, he argues, was 'the citizen as necessarily involved in decision-making and power-relationships with other citizens in varying patterns of distribution'.[11] Furthermore, freedom was central to this tradition, although it was freedom conceived of as the expression of power – in other words, what we have called the sovereignal note of the chord of freedom: 'Freedom, civic virtue, and military discipline seem then to exist in a close relation to one another.'[12]

In like manner, *in situ* economic transformation of the mercantile order by the emerging British bourgeoisie was explained and rationalized in terms of an external model – in their case, the Dutch. Appleby has shown how, in their attempt to explain the crises and puzzles of the new capitalist economy, the

[9]   Joyce Oldhara Appleby, *Economic Thoughts and Ideology in Seventeenth-Century England* (Princeton, NJ, 1978), p. 247 n.
[10]   Pocock, *The Machiavellian Moment* (Princeton, NJ, 1975), p. 85.
[11]   Pocock, *The Machiavellian Moment*, p. 87.
[12]   Pocock, *The Machiavellian Moment*, p. 196.

English economic theorists and pragmatists of the seventeenth century muddled their way towards the idea of the market as an impersonal force emerging from the individual choices of ordinary persons rather than from an authority above, and towards the idea that 'private initiative and interests increased public good'.[13] In clarifying their thoughts they turned to that seventeenth-century version of the economic miracle, the Dutch,[14] who, in striking contrast with the aristocratic honorific elite, made a virtue of their 'unheroic qualities', and 'popularized the value of commercial virtues'.[15] The Dutch case also demonstrated the compatibility of an uncontrolled economy with stability. Further: 'Implanted and propagated as a part of this concept of commerce was a new vision of man's essential nature. What began as an explanation became a rationale for market practices. The uniform propensity to seek gain was turned into a constant in human behavior that permitted calculation and prediction.'[16]

We are now in a position to see not only how the two versions of possessive individualism differed in their relation to two of the notes of freedom, the sovereignal and the personal, but also how they were conceptually refigured from the broken chord of medieval freedom: the reconstructed idea of freedom as privilege and power was reinterpreted as the root note of positive sovereignal freedom in the aristocratic chord, whereas the idea of freedom as immunities from dues, monopolies, and constraints on trade and movement was reconstructed as the root in the bourgeois notion of negative personal freedom.

Property was the decisive instrument in the playing of both chords, but there was a critical difference in the honorific and bourgeois renditions: for the aristocrats it remained a fundamental tenet that property flowed from power and privilege – most obviously the privilege of birth and inheritance – while for the bourgeoisie it became an article of faith that power and privilege flowed from property, which was not acquired, unearned, by birth, but through thrift, hard work, and merit. For the aristocrat, freedom was power and that power was both the source and the guardian of property. It was natural, then, for him to see control of state power as an important precondition of both freedom and property. In response to the bourgeois rationale of merit, the aristocrats – all of them, not just the country set – countered with the notion of the aristocratic, civic ideal: power, both individually and collectively, was to be used for the good of the community, including the protection of the weak and poor. This defence of the poor was always partly opportunistic, but, as Isaac Kramnick notes, there was 'an element of principle here', however expedient, 'a lingering afterglow of

13   Appleby, *Economic Thought and Ideology*, pp. 62–3.
14   Appleby, *Economic Thought and Ideology*, ch. 4, passim.
15   Appleby, *Economic Thought and Ideology*, p. 97.
16   Appleby, *Economic Thought and Ideology*, p. 97.

the status model of society. [...] The gentry paid the revenue and looked after the poor; they could cede neither their privileges nor their duties.'[17]

In the struggle between the two forms of possessive individualism that occurred at the end of the seventeenth century, it was the landlords and manufacturers insisting on greater state intervention who won.[18] In advocating an alternate theory of balance of trade, they explicitly rejected the laissez-faire dogma of a harmony between private interests and public gain. John Brewer's 'fiscal-military' eighteenth-century state was the inevitable outward realization and expression of this inner aristocratic ideal. Or perhaps it was the other way around: the triumph of the fiscal-military state ensured the supremacy of the honorific version of possessive individualism and, with it, the hegemonic conception of freedom as power, and power as the guardian and generator of property.

What became of the bourgeois tradition of freedom during the eighteenth century? This is one of the least understood aspects of British history. Beyond the success of Royalist and later Whig control mechanisms, three factors may help account for the passivity of this tradition. First, the more middle-class and prosperous artisanal radicalism, when not completely cowed or diverted solely into money-making, was transformed into mild-mannered reformism – the commonwealthmen crowd. Second, a significant number of the radicals migrated, not only to America, but to the West Indies, where not a few became pirates, and the majority sustained a robust and cantankerous tradition of settler radicalism that was later to have important consequences for the history of freedom in Britain itself.[19] Third, proletarian militancy may have been diverted into increased criminality and political hooliganism that were then used to intimidate the radicals.

John Cannon, among others, has suggested that there was no challenge to the Whig hegemony because the bourgeoisie recognized fully the value of the political stability offered by aristocratic rule. That may have been so. But a part of the explanation must surely be the profound ambivalence and hypocrisy of bourgeois liberalism during the eighteenth century.[20] They could in one breath speak with passion about the equality of all mankind, and in another refer to the English masses as 'scum'. They shared John Trenchard and Thomas Gordon's conviction that 'Liberty is the divine Source of all human Happiness', yet, as Christopher

17   Isaac Kramnick, *Bolingbroke and His Circle* (Cambridge, MA, 1968), p. 55. See also, Appleby, *Economic Thought and Ideology*, ch. 6, passim.
18   Appleby, *Economic Thought and Ideology*, ch. 5, passim.
19   Christopher Hill, 'Radical Pirates?', in Margaret Jacob and James Jacob (eds), *The Origins of Anglo-American Radicalism* (London, 1984), pp. 19–34.
20   Kramnick, *Bolingbroke and His Circle*, ch. 8.

Hill notes, they more than any other group benefited from slavery and the slave trade, 'whose virtual monopoly was ultimately secured for English merchants thanks to the state power'.[21] Indeed, the nefarious involvement of the bourgeoisie with the slave trade brings into bold relief the relationship between bourgeois political passivity, economic greed, and neo-Puritan hypocrisy. Robin Blackburn, in his authoritative study of colonial slavery, has emphasized the importance of the Whig regime for the profitable alliance of colonial planters, metropolitan merchants, and manufacturing interests. The West Indian slaveholders and their allies had played an important role in the settlement of 1688–1689. With the striking exception of the Quakers, throughout the eighteenth century the 'slave trade and colonial slavery remained virtually unquestioned', and he adds:

> It was, after all, the privileges of the free-born *English* that were being celebrated. One of the earliest examples of the mobilization of a broad public opinion behind competing parliamentary factions had been a pamphlet war in the first decade of the eighteenth century concerning which ports could enjoy the custom of the slave-trading Royal Africa Company.[22]

Christopher Hill has also pointed out that former slaveowners brought back to England a contempt for labour that influenced intellectual attitudes. The Society for the Propagation of the Gospel invested profitably in West Indian slavery and forbade the conversion of their slaves: 'So the slave trade must have accentuated the Puritan tendency to hypocrisy, to double-thinking, which was to be so conspicuous among pious nineteenth-century factory-owners.'[23]

One other factor alleviated this situation: the common law. Although the law was undoubtedly used in a repressive manner, the fact remains that it imposed certain limits on the elite and its agents. As E. P. Thompson and his associates have shown, while the law was unequally and unfairly applied in the interest of the gentry, it nonetheless had its own inner, formal logic that, if it did not quite hoist those who applied it by their own petard, certainly set limits on their sovereignal freedom to do as they pleased.[24] Habeas Corpus was a reality, and every 'freeborn Englishman' knew about it. And while the situation may have

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[21]   Christopher Hill, *Some Intellectual Consequences of the English Revolution* (Madison, WI, 1980), p. 37.

[22]   Robin Blackburn, *The Overthrow of Colonial Slavery: 1776–1848* (London, 1988), p. 79.

[23]   Blackburn, *The Overthrow of Colonial Slavery*, p. 79.

[24]   E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act* (London, 1975), pp. 258–69.

been worse than what prevailed during the last half of the seventeenth century, it was better than anything existing on the continent, as Hogarth discovered on his last trip to Calais. In *The Gates of Calais*, he showed that 'the best way to indicate English liberty was to paint French slavery'.[25]

To see in the Hogarthian crowd a society-wide 'reciprocity of gentry-crowd relations' might be going too far.[26] The occasional riots notwithstanding, what existed in the country was not the insubordinate freedom of the crowd with its contempt for law and authority, but an ingeniously executed paternalistic system in which 'the connections between property, power and authority [were] close and crucial', and where the Church, the state, and tradition reinforced the law 'in maintaining bonds of obedience and deference, in legitimizing the status quo, in constantly recreating the structure of authority which rose from property and in turn protected its interests'.[27]

V. Religion, Race, and Slavery in the American Reconstruction of Freedom

It was in colonial America and, to a remarkable degree, the horrendous slave societies of the British West Indies, that we find the next critical moment in the history of the Anglo-American construction of freedom.[28]

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[25]   Derek Jarrett, *England in the Age of Hogarth* (London, 1974), pp. 20–1.

[26]   Thompson, 'Eighteenth-Century English Society', in Douglas Hay et al., *Albion's Fata Tree: Crime and Society in Eighteenth-Century England* (London, 1975), pp. 158–65.

[27]   Hay, 'Property, Authority and the Criminal Law', in Hay et al., *Albion's Fatal Tree*, p. 25.

[28]   For the following summary I draw mainly on the following general works and collections: Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA, 1967); Bailyn, *The Origins of American Politics* (New York, 1968); Bailyn, *The Peopling of British North America* (New York, 1968); Hilary Beckles, *White Slavery and Black Servitude in Barbados, 1627–1715* (Knoxville, TN, 1989); Richard S. Dunn, *The Rise of the Planter Class in the English West Indies, 1624–1713* (Chapel Hill, NC, 1972); Richard S. Johnson, *Adjustment to Empire: The New England Colonies, 1675–1715* (New Brunswick, NJ, 1981); John J. McCusker and Russell R. Menard, *The Economy of British American, 1607–1789* (Chapel Hill, NC, 1991); Edmund S. Morgan, *Inventing the People: The Rise of Popular Sovereignty in England and America* (New York, 1988); Morgan (ed.), *Puritan Political Ideas* (Indianapolis, IN, 1965); Orlando Patterson, *The Sociology of Slavery: The Development of Negro Slave Society in Jamaica* (London, 1967); Clinton Rossiter, *Seedtime of the Republic: Origins of the American Tradition of Liberty* (New York, 1953); Francis N. Thorpe, for example, *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws* (Washington, DC, 1909); Chilton Williamson, *American Suffrage: From Property to Democracy, 1760–1860* (Princeton, NJ, 1960).

Common to all the colonists was their claim that they continued to possess all the liberties of freeborn Englishmen. This was an essentially sovereignal conception of freedom, conceived of as a set of powers and immunities granted by a superior authority. As one would expect, the precise definition of these rights varied from one colony to another, but there were striking common demands. First among these was the early struggle for, and achievement of, various forms of representative government, all modelled on, or believed to have paralleled, the tripartite system of government in the mother country. In mimicking what they thought was parliamentary government in Britain, the colonists soon went well beyond what actually prevailed in the mother country. When the governors and crown resisted, the stage was set for the prolonged struggle between colonial assemblies and governors, a struggle that was decisive in the modern history of freedom. Thus, the early insistence on the selection of public treasurers, on the right to examine the accounts of the governor, and the general demand to have an important say in the selection of officials, all went well beyond contemporary practice in Britain. In these matters, the Caribbean islands, especially Jamaica and Barbados, were often more precocious than their mainland North American counterpart.

Far removed from the centre of power, local politics soon came to be seen as matters that should be the sole concern of the locals themselves, a view with which the isolated governors found it expedient to go along, however grudgingly. This, in turn, reinforced commitment to the view that government was legitimate only with the consent of the governed.

Who constituted the governed, or the people? In Britain, radicals such as the Levellers had lost out badly in their attempt to expand the size of the electorate, in spite of their willingness to exclude servants. The Levellers also lost the battle to implement fundamental laws, or 'agreements', to protect the people from their leaders. It was in the New World English colonies that the first major resolution of both these problems took place. By the late seventeenth century the majority of free adult males in colonial British America had the right to vote – somewhere between 50 and 80 per cent – and, as such, were counted among 'the people'. This was the first time that majorities of free males had such political powers since the final collapse of ancient Athenian democracy.

The role of charters and fundamental legal codes achieved pragmatically what the Levellers had ideologically failed to do in England with their agreements. All new colonies were legally established through written charters, which in effect were like proto-constitutions. It certainly promoted the unprecedented idea that a political community should be established on the basis of certain clearly defined legal principles. It was a short step from the colonial charter of Massachusetts to the Fundamental Order of Connecticut and the even more remarkable charter for Rhode Island secured by Roger Williams.

This was further reinforced by the commissions and secret instructions that were given to each new governor by the colonial authorities in Britain: authority, even that of the highest in the colony, was strictly defined and could be contested if there was the slightest suspicion – and there often was – that there had been departure from them.

The major problem facing the colonists everywhere was the shortage of labour, and everywhere the problem was solved in the same manner: reliance on two forms of unfree labor – white indentured servants and black slaves. There is no need to retell the now well-known story of how these two statuses were initially closely assimilated, then separated as slavery became identified with blacks. The story that is often not told is the one of greater interest to us, namely the extraordinary way in which one of the pivotal constructions of modern free societies – the idea of free labour – was partly invented in the colonies of the New World. As Robert Steinfeld has recently shown, it was the juxtaposition of slavery and indentured labour that, by bringing out the inherently servile nature of the latter, forced the issue of defining in a legally clear way just what constituted free labour.[29]

The acceptance and institutionalization of religious toleration, for the first time in the history of the world, was another major first for the British New World colonial societies. Many factors account for this development. Although the British tradition of an established Church was transferred to all the colonies except Maryland, in nearly all of them there were, from the start, many dissenting sects among the populace, however great the degree of, and desire for, religious uniformity among the elites. When the persecution of these sects in the early period, especially in Puritan New England, proved a failure, they were eventually accepted as the only path to domestic peace, a development that would take place decades later in Europe.

In a few cases, toleration emerged as a matter of principle, most notably in the Quaker colony of Pennsylvania and, largely under the fabulous influence of Roger Williams, in Rhode Island. In most cases, toleration emerged under force of circumstances, only grudgingly accepted in principle, which became true of most of the mainland colonies by the early eighteenth century: in Maryland, the Catholic elite found it in its own interest to pass an act of toleration; in the Carolinas and Georgia, mercantile economic policies and the proximity of the Spanish border made toleration, even of Jews, prudent. And in the case of the West Indies, toleration emerged largely as a result of religious indifference or corruption. Whatever the reason, it was in America and the West Indies that the principle of religious toleration, with its implicit right to religious freedom,

29   Robert Steinfeld, *The Invention of Free Labor: The Employment Relation in English and American Law and Culture, 1350–1870* (Chapel Hill, NC, 1991).

was first practised. It need hardly be added that religious liberty and toleration had immediate implications for political liberty and for freedom of expression. Religious views elicit the most extreme passions, and when a people finds it possible to tolerate the dissenting beliefs of others, it is easy and natural to accept their political and other intellectual differences.

Having emphasized the similarities in the social construction of freedom among the British colonial societies, I now turn to the important ways in which they differed. Differences were caused partly by differing regional origins and consequently differing views of freedom brought over to the New World, and partly by the kind of physical and socioeconomic environment that emerged, partly by the demographic and ethnic mix of the different colonies, and, not least of all, by the kind of labour regime on which they depended, especially the degree and kind of slavery.

Although his emphasis on English cultural survival and regional provenance may at times appear excessive, David Hackett Fischer, in his recent historical ethnography of early America,[30] has persuasively demonstrated the importance of these factors. The predominantly East Anglian origins of the New England colonists partly account for much that was distinctive in the material culture, stratificatory system, and religious as well as secular beliefs of the Puritans.

Central to the Puritan conception of liberty was the age-old Western distinction between inner and outer freedom. As their most brilliant theorist, John Wise, stated explicitly: 'Internally as to his Mind, and Externally as to his Person.' All life was suffused with moral purpose and graced by God's will and demands. The covenant with God immediately implied a covenant among members of the community.

The constant inner struggle, even though it was one the believer could never win, nonetheless generated an extraordinary degree of self-preoccupation that was as much secular as it was religious. It is in this struggle that we find the origins of America's almost obsessive individualism. Sacvan Bercovitch has brilliantly explored this source:

> It is an involuted manifestation of that spirit, to be sure, a sort of narcissistic *Liebestod*, constantly reenacted because incapable of fulfillment: the individual affirming his identity by turning against his power of self-affirmation. But to affirm and to turn against are both aspects of self-involvement. We can see in retrospect how the very intensity of that self-involvement — mobilizing as it did all the resources of the ego in what

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[30]   David Hackett Fischer, *Albion's Seed: Four British Folkways to America* (New York, 1989).

amounted to an internal Armageddon – had to break loose into the world at large.[31]

Break loose it did, although what it generated was perhaps too sweepingly described by Bercovitch as 'the American self'. Rather, it was that part of the American national character that David Riesman has called the 'inner-directed' personality: freedom as individualistic self-realization.

The upper-middle-class cavaliers from south-western England who colonized the Old South had an entirely different vision, one rooted in their royalist sympathies, Anglican faith, honorific individualism, and sovereignal chord of freedom. It was a vision that glorified continuity, indeed romanticized the English past which they imagined themselves to be perfecting.

With the introduction of large-scale African slavery, a system emerged that, ironically, while it reinforced the British aristocratic heritage of sovereignal freedom, also laid the foundations for the most radical democracy the modern world had known. Although he never mentions the ancient parallels, making them all the more telling, Edmund Morgan's seminal study of colonial Virginia portrays one of the great instances of history repeating itself – in broad sociological and cultural terms, of course, which is the only way history repeats itself. Morgan begins with the bold assertion that 'the rise of liberty and equality in America had been accompanied by the rise of slavery. That two such seemingly contradictory developments were taking place simultaneously [...] is the central paradox of American history.'[32]

In order to prevent any insurrectionary union of white servants and slaves, racism was deliberately reinforced through legal enactments and strong social sanctions aimed at separating the groups. With the growth of this 'screen of racial contempt', there was a general raising of the status of the lower-class whites. 'Partly because of slavery', Morgan writes, 'they were allowed not only to prosper but also to acquire social, psychological and political advantages that turned the thrust of exploitation away from them and aligned them with their exploiters.'[33]

The growth of popular government, and of a strong local legislature increasingly opposed to the rule of the colonial governors, were all of a piece with this association. The Virginian barons had no fear that the populace would vote in people who would then turn against them. On the contrary, they encouraged populist politics and it was the 'union of freedom and slavery' that made this possible. By the second quarter of the eighteenth century, the basic pattern of

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[31]   Fischer, *Albion's Seed*, p. 20.

[32]   Edmund Morgan, *American Slavery, American Freedom* (New York, 1975), p. 75.

[33]   Morgan, *American Slavery, American Freedom*, p. 344.

Southern freedom and democracy and the ingredients that supported it were well in place: a large slave labour force isolated by racism and strong solidarity among all classes of whites who felt a commonality of interests with the dominant slave-holding elite.

What emerged from this by no means unique system, in terms of Western history, was first the seemingly paradoxical phenomenon of a conservative ruling class eagerly taking the reins of revolution. Second was the strong conviction that there was no inconsistency between liberty and slavery. As William J. Cooper notes, indeed, 'the white southern celebration of liberty always included the freedom to preserve black slavery'.[34] In the end, even those elite whites who had misgivings about this paired commitment came around to the view that 'slaves were property, and the right to hold property was an integral part of liberty'.[35]

Let me hasten to add that there were other important traditions, or chords, of freedom interplaying with this dominant counterpoint, although space restraints prevent me from exploring them.[36] There were the middle colonies that, under Quaker influence, developed a chord strongly biased towards a more egalitarian and principled notion of personal freedom and toleration. Because all inner 'lamb's wars' found immediate expression in outer behaviour, it came about that the Quakers were the first Christian group to come to a principled realization that slavery was not just evil, but an abomination to be abolished. The Quakers were not the first to discuss, in theory, the evils of slavery, but as David Brion Davis has pointed out, 'genuine abolitionism, as distinct from isolated protests against human bondage, originated in the great Quaker revival' of the late eighteenth century.[37]

There were also the whites of the back country and borderlands of the south and middle colonies – the region that produced the likes of Patrick Henry and Andrew Jackson – which developed a version of pure, negative personal freedom so hostile to all authority that it bordered on the anarchic.[38] And there were, of course, the black slaves, who in their fear, trembling, and outrage, experienced the pristine rediscovery of freedom in its most elementary form: the stark, primal desire simply to be removed from the power of another. Both of these elemental sources of freedom were to greatly influence America and the development of its notion of freedom and rights. The borderlands, in spite of primitivism, have

[34]   William J. Cooper, *Liberty and Slavery: Southern Politics to 1868* (New York, 1983), p. 39.

[35]   Cooper, *Liberty and Slavery*, p. 35.

[36]   On which see Fischer, *Albion's Seed*.

[37]   David Brion Davis, *Slavery and Human Progress* (New York, 1984), p. 136.

[38]   On which see Fischer, *Albion's Seed*, pp. 772–82.

contributed a disproportionate number of the nation's presidents. And African Americans have not only been the cause and the agents of the civil war over slavery and all that it entailed for the reconstruction of freedom, but the major agents of the modern resurgence of rights in American society.

Nonetheless, the most striking thing to note about the colonial period is that, in spite of many important differences, the chords of freedom constructed in the two dominant regions – New England and the Upper South – were both essentially similar in their sovereignal focus, and, up to the end of the revolutionary era, highly complementary, even in their differences. In both, power and authority were the essence of freedom, the one religious and inner-directed, the other secular and outer-directed.

Sooner or later these two intensely individualistic reconstructions of freedom in the American continent had to come together. That fateful bonding happened in the great fraternal slaughter of the common father in the American Revolution.

It was the freest and most powerful of these Southern aristocrats who, in leading the colonies to independence from Britain, became the founding fathers of the new nation. Torn from its Southern context in the common war of independence, the aristocratic ideal of freedom as an inherited quality of the individual person – the honorific version of possessive individualism – fused with the borrowed European notion of natural rights to fashion the distinctly American conception of the individual as a bearer of inalienable rights. Forced to accommodate to the Northern notion that all men were equal, covenanted children of God, this honorific ideal of freedom was dramatically transformed and democratized, generating the belief that all men are, legally and politically, created equal. Inherited privileges and powers of birth for a few became inalienable rights for many through the simple replacement of the earthly aristocratic father by the law-giving, godly creator.

One critical element in this extraordinary cultural fusion was the use of the language and ideology of rights, resulting in the popularization of such talk, previously the preserve of philosophers, for the first time in history.

VI. The Universalization of the Rhetoric of Rights

From early medieval times, as far back as the laws of Alfred in the late ninth century, the term 'right' was being used in common law and usage to mean, generally, 'a justifiable claim, on legal and moral grounds, to have or obtain something, or to act in a certain way'. This general meaning, understandable to a ninth-century English lawyer, is exactly the sense in which we use the term today, as when a black American speaks of his civil rights, or an illegally arrested person claims his Miranda rights.

A right is, then, a legally enforceable claim to something, on someone

or some group. In common law it is the same thing as a property. In general usage during the Middle Ages, and indeed right up to the end of the eighteenth century, the term occupied the same semantic field as the nearly synonymous terms 'powers' and 'liberties', which in the positive sense were often referred to as 'privileges', and in the more negative sense as 'immunities'.

What confused the issue were the attempts by philosophers and theologians, and, later, political theorists and practitioners, to theorize, specify, and justify a special category of fundamental or essential rights. Behind all the various attempts to do so was the scholastic tradition of natural law. The theological foundation for this tradition was shattered by Protestantism and philosophical scepticism, resulting in Protestant and secular versions of natural law and rights. The Protestant tradition emphasized duty, infinite obligations, as the central feature of godly natural law, with rights being correlatively derived from them. The most fundamental of these rights was the right to do the good, for one's soul and for others in one's community.

While its communitarian emphasis and the austerity of its demands were new, the basic idea of the close identification of rights and duties goes back to the earliest Middle Ages. Indeed, what Protestant natural law theology and philosophy had done was to de-emphasize the traditional legal conception of rights as claims and powers and entitlements, and to replace this with a strong emphasis on the most important traditional, non-legal, Christian meanings of the term 'right'. First, 'that which is proper for or incumbent on one to do; one's duty'.[39] Second, 'right' in the sense of being under an obligation to act rightly according to the moral code, to do good deeds, to act with moral rectitude – these are meanings that can be traced back to the ninth century, and were common during the period of middle English. And third, 'right' in the sense of doing that which is just and equitable; the virtue of justice; doing justice and seeing justice done; to be fair; and especially when done 'in the light of nature', which is to say, with 'right and resoun' or with 'godright and resoun'.[40]

We already find this view of rights highly developed in Luther's treatise on Christian liberty. However, it was to culminate, via Calvin and Geneva, in practical terms in the American Puritan tradition of ordered liberty, briefly discussed above.

On the secular side, the development of rights theory and rights rhetoric took a decisive turn in the attempt by Hugo Grotius and Thomas Hobbes to answer Renaissance scepticism with theories of minimal natural rights, premised on secular conceptions of human nature and contractarian notions of society and government. While both men were important in the intellectual history of ideas,

[39]   The Oxford English Dictionary traces this usage back to Alfred.
[40]   The Middle English Dictionary.

they had little impact on the dramatic development of rights rhetoric during the eighteenth century. As Knud Haakonssen reminds us, both were dismissed as dangerous radicals, and the typical reaction to Hobbes during the seventeenth and eighteenth centuries was one of 'horror and incomprehension'.[41] For this reason and others, I am sceptical of Ian Shapiro's claim that the rhetoric of rights 'became central to the Western liberal tradition around the time of the English Civil War', and even more so of his assertion that Hobbes played a 'central role in articulating much of the vocabulary and underlying grammar of the modern liberal rights tradition'.[42]

Of far greater sociohistorical significance were John Locke's contributions to this tradition.[43] It is no easy matter, however, to specify just what the nature of Locke's influence was, beyond the assertion that he greatly legitimized rights talk and the notion of the social contract made in the state of nature. Ian Shapiro presents the extreme, traditional view in summarizing Locke's ideological consequences: that, like Hobbes, he promoted the view of the individual as an autonomous subject of all legitimate rights, and radically departed from the Christian tradition in separating rights from obligations; that he redefined rights in substantively negative terms; that by giving priority to rights of property and inheritance, he sanctioned intergenerational inequality; that by making toleration rather than participation central to his notion of the just state, he originated the 'paradigmatic, conservative liberal view of "genuine freedom" as freedom from politics'.

This reading of Locke contradicts those of major modern Locke scholars, several of whom insist that there was a strongly communitarian and Christian emphasis in his writings.[44] Furthermore, Locke's influence was extremely limited in his native England during the eighteenth century, and in America, where it was much stronger, it has been shown repeatedly that, whether or not he was the originator of possessive individualism, this was definitely not how he was interpreted by colonial or revolutionary Americans. As John M. Murrin observes of the most celebrated of eighteenth-century Lockeans: 'Jefferson, in a word, was not a nineteenth-century liberal, much less a possessive individualist. He did indeed take his Lockean rights seriously, but he located them within a

[41]   Knud Haakonssen, 'From Natural Law to the Rights of Man: A European Perspective on American Debates', in K. Haakonssen and M. J. Lacey (eds), A Culture of Rights (New York, 1991), p. 31.
[42]   Ian Shapiro, The Evolution of Rights in Liberal Theory (Cambridge, 1986), pp. 4, 23.
[43]   See Pocock, 'Authority and Property'.
[44]   See, in particular, J. Dunn, The Political Thought of John Locke (Cambridge, 1969); J. Tully, A Discourse on Property: John Locke and His Adversaries (Cambridge, 1980).

context of personal sacrifice for the public good.'[45] The other major influence on eighteenth-century rights rhetoric was, of course, Samuel Pufendorf. A good part of his success, however, was due to his return to traditional Christian notions of rights and duties. Rights are derived from the moral domain of God-given natural laws, the most fundamental of which was to be sociable.[46] Rights are the benefits we derive correlatively from the duties God imposes on all of us. In more practical terms, rights are 'powers' over ourselves, over others, over property belonging to us, and over property belonging to others. The most fundamental of these rights or powers, however, is the ownership or power over, or property in, oneself; in other words, liberty, the antithesis of slavery. What we have here is a complete return, in thinly disguised eighteenth-century jargon, to the late medieval conception of rights as claims or powers, only now interpreted within the Protestant moral framework.

It is these intellectual sources that combined with the idea of rights implicit in evangelical Christianity, and with a strong dose of common law,[47] to give Americans of the revolutionary era the vocabulary they needed to justify their revolt and then to craft and justify the federal constitution.

When the revolutionary era began with the Stamp Act crisis of the mid-1760s, Americans were all convinced that what were being threatened were their 'liberties' as descendants of 'freeborn Englishmen'. Increasingly, however, the defence of these liberties – largely understood in traditional common-law terms – was expressed in terms of rights language. It is no easy matter deciphering just why Americans became attached to this manner of expressing their political claims. We know that there was almost no reference in colonial America to the language of rights during the seventeenth century, and only occasional references to it, in mainly educational circles, during the first part of the eighteenth. By whatever means, however, attached they were, and it is generally agreed that by the time the revolutionary war broke out the language of rights was pervasive.

It is also the consensus among historians of the period that Americans became increasingly confused about just what it was they were talking about when they boldly claimed their rights. Actually, the situation got worse as the revolution unfolded. In the beginning, most people were simply using the term 'right' in

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[45]   John M. Murrin, 'Can Liberals Be Patriots?', in Robert P. Davidow, *Natural Rights and Natural Law: The Legacy of George Mason* (Washington, DC, 1986), p. 53.

[46]   I follow Haakonssen's excellent survey in what follows, in 'From Natural Law', pp. 27–30.

[47]   For John Phillip Reid, this is the all-important source of ideological change during this period. See his *Concept of Liberty by the Age of the American Revolution* (Chicago, IL, 1988); and *The Constitutional History of the American Revolution* (Madison, WI, 1987).

its old, clear-cut, common-law sense of a legally guaranteed claim on something; that is, a power or privilege or liberty.

A statement John Adams made in 1765 not only supports this, but hints at the source of the impending confusion. He complained that Americans were failing to grasp the notion of rights, because 'we have been afraid to think. [...] We have felt a reluctance to examine into the grounds of our privileges and the extent to which we have an indisputable right to demand them.'[48]

It is obvious from this statement that Adams had a clear, common-law grasp of what rights meant; his complaint was really about the intellectual 'grounds', the philosophical justification, for these claims or privileges. Now, it may be wondered, why would so sensible and pragmatic a person as Adams waste his time on such inscrutable philosophical matters? It is all the more puzzling when we consider that Americans, as Richard Hofstadter demonstrated long ago, have always been a notoriously pragmatic and anti-intellectual people, especially during colonial times.[49] Why on earth, then, did this most anti-intellectual of peoples end up waging what was arguably the most intellectualized revolutionary war?

The answer is simple. Precisely because, up to the revolution, they had held to a common-law view of their liberties, claims, powers, or privileges and firmly believed that the moral and legal basis for such claims were the laws and traditions of Britain to which they had a birthright, their rebellious break with Britain immediately created a crisis in the grounds on which they based their claims. In rebelliously demanding and pursuing their liberties, they had undercut the legitimacy of these claims, which was the link to Britain and its traditional liberties. To solve their problem they turned to philosophy and theology, along with other traditions such as British oppositional rhetoric, which, however, were not directly relevant to the problem of explaining rights language and were, indeed, counter to this development.

What they found, to their relief and further confusion, were the language and ideology of rights – more particularly, the ideology of the state of nature, of natural rights, and of the right to rebellion against arbitrary and unjust authority. The more religious found the natural rights tradition of Protestantism, filtered through the evangelical theology of Jonathan Edwards and John Wesley and others; the more philosophical, especially those, such as Madison, who had gone to Princeton, found what they wanted in Scottish moral sense philosophy and the works of Pufendorf; all turned to Locke, whether they read him or not.

What emerged during the last quarter of the eighteenth century was the most extraordinary intrusion of philosophy into politics that the world had ever seen.

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[48]   Cited in James H. Hutson, 'The Bill of Rights and the American Revolutionary Experience', in Haakonssen and Lacey (eds), *A Culture of Rights*, p. 65.

[49]   Richard Hofstadter, *Anti-Intellectualism in American Life* (New York, 1963).

Americans came seriously to believe that Britain's arbitrary acts had provoked their Lockean right to rebellion. Rebellion, in turn, had reduced them to the state of nature, and, as such, had returned them to a condition of complete natural rights. Understandably, everyone was eager to depart once more from this pristine condition, which meant that they had to form a new social compact in which they would surrender some rights to government, the formation of which would guarantee all the more those rights which they had reserved. It is these reserved rights, as they came to be called, that were spelled out in the many bills of rights enacted by the various states, the first and most important of which being the Virginian Bill of Rights. This bill, authored by the Virginian slaveholder George Mason, was the model not only for most of the other states of the young confederation, but for the French Declaration of the Rights of Man.[50] Mason's bill is pure Locke, as were the bills written for most of the other states and, of course, Jefferson's Declaration of Independence.

Contractarian ideology, however, presented its own set of problems, the details of which we cannot enter into here, except to note the most important for our story, namely the enormous conflict waged between the Federalists and the Antifederalists over the need for a Bill of Rights in the Federal Constitution. The Antifederalists insisted on such a bill as an essential guardian against arbitrary federal rule. The Federalists argued against the need for such a bill. These bills already existed in the constitutions of the states where they rightfully belonged, since it was in the formation of these states that individuals left the state of nature in their social compact with each other. The federal government was not emerging from such a state of nature, nor was it a compact of individuals, but a compact of collectivities, of already existing sovereign states that had happily rescued their individual members from the state of nature.

In the end a Bill of Rights was attached to the Constitution, but almost no one was happy with it. The Federalists cynically agreed to it as the only way of getting the Federal Constitution ratified, and its author, the remarkably resourceful James Madison, had been among its strongest critics, although he did in the end come around to a lukewarm support of it, especially after his observation of the behaviour of the new state legislatures convinced him that minority interests needed as much protection from the tyranny of corrupt majorities as the ruled, in general, needed constitutional protection from their rulers.

The Antifederalists felt that they had wasted their time, especially those for

[50]   For an itemized comparison of the Virginian bill and the French declaration, see Robert Palmer, *The Age of Democratic Revolution* (Princeton, NJ, 1959), appendix. See, more generally, Leslie Lispon, 'European Responses to the American Revolution', in Richard L. Park (ed.), *The American Revolution Abroad* (Philadelphia, PA, 1976), pp. 22–42.

whom the debate over the Bill of Rights had simply been a tactic in their fight against ratification. As Leonard Levy observes:

> The history of the framing and ratification of the Bill of Rights indicates slight passion on the part of anyone to enshrine personal liberties in the fundamental laws of the land. [...] Our precious Bill of Rights [...] resulted from the reluctant necessity of certain Federalists to capitalize on a cause that had been originated, in vain, by the Antifederalists for ulterior purposes.[51]

So a strange thing happened in the history of rights. Immediately after the triumph of rights rhetoric in the enactment of the American Bill of Rights, the Bill and the whole tradition of rhetoric surrounding it quickly sank to insignificance. Indeed, several states had not even bothered to ratify it, Massachusetts and Connecticut eventually getting around to it only in 1937!

The first of two near-lethal legal blows to the Bill's effectiveness came in 1833 when the Marshall court, in *Barron v. Baltimore*, unanimously ruled that the Bill of Rights was a constraint on the federal government only, and not applicable to the individual states in their relations with individual citizens. So the situation remained until 1868 when the Fourteenth Amendment – making all persons of all races born in the United States citizens – seemed for a brief moment to revive the relevance of the Bill of Rights by making it applicable to the states. Such hopes were soon dashed, however, when the intent of the Fourteenth Amendment was completely perverted in the Slaughterhouse cases of 1873, where the dogma of dual citizenship was declared. Individuals whose 'privileges and immunities' (and it is remarkable that the author of the bill had reverted to these medieval terms rather than the simple term 'rights') were protected in their capacity as federal citizens did not necessarily share such protection as state citizens who 'depend upon different characteristics or circumstances in the individual'.[52]

[51]   Leonard W. Levy, 'Bill of Rights', in Paul Murphy (ed.), *The Historical Background of the Bill of Rights* (New York, 1990), p. 331.
[52]   See Henry J. Abraham, *Freedom and the Court: Civil Rights and Liberties in the United States*, fifth edition (New York, 1988), ch. 3. Ironically, the Slaughterhouse case, brought by New Orleans butchers against a 'carpetbag' Louisiana legislature for granting a monopoly in the slaughtering of livestock to a single New Orleans firm, initially reaffirmed the states' right to regulate commerce and restrict laissez-faire. It reflected the argument of the plaintiffs that the privileges and immunities clause of the Fourteenth Amendment protected their occupational rights against the state and, as such, upheld the doctrine that the Bill of Rights was inapplicable to individuals in their relations with their states. The main effect of this decision was, however, to legitimize

In other words, a black ex-slave or a brutally exploited white worker was protected in his or her status as a federal citizen, but could still be brutalized with impunity under state law. Since people lived in states and not on federal property, and since nearly all the legal occasions on which an ordinary person would be likely to seek redress were under state jurisdiction, this amounted to another reactionary shutting out of the Bill of Rights. Indeed, it would not be until after the Second World War that the Supreme Court was to give life and meaning to the Bill of Rights, initiating the era of rights rhetoric through which we are now living.

Why did America, after struggling so hard to promote and then enact the world's first Bill of Rights, proceed immediately to spurn it? For two reasons. First, because the language and ideology of rights, having served their purpose in the war of independence and in the struggle to form a strong, centralized federal government, were recognized by the essentially conservative men who had made the revolution – especially the Northern Federalist entrepreneurs – as a dangerous tool in an emerging mass democracy. And second, because with one in five Americans being slaves, concentrated in the large-scale slave system of the South where they were the major form of property, keeping alive the language and law of rights was a constant invitation to legal mischief on the part of black slaves and their radical white supporters. There were, in fact, innumerable petitions by enslaved blacks to declare their condition an infringement of the Bill of Rights. More important, the Bill was a constant source of embarrassment for the slaveholders who were its greatest advocates. That acute embarrassment was already evident in the hypocrisies, blatant self-contradictions, and unbecoming prevarications of the revolution's greatest hero, Thomas Jefferson.[53]

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the enactment of racial discrimination by the states and to continue to make the Bill of Rights a useless tool in the struggle against racism. From this decision onward to the end of the 1920s, the Court used the 'due process' and 'equal protection' clauses of the Fourteenth Amendment – which had been clearly enacted to protect the rights of African-Americans, in particular, and individuals in general – primarily as a protection for business interests against further state regulation and welfare legislation. The Fourteenth Amendment became a virtual Magna Carta of 'entrepreneurial liberty'. At the same time, writes Robert G. McCloskey, 'the question of Negro rights and with it the question of civil rights in general, had been relegated to a minor almost negligible place among the Court's concerns'. See McCloskey, *The American Supreme Court* (Chicago, IL, 1960), p. 134, and, more generally, ch. 5–6.
[53] For one of the best treatments of Jefferson's untenable moral stances on the subject of slavery and abolition, see Charles L. Griswold, Jr, 'Rights and Wrongs: Jefferson, Slavery, and Philosophical Quandaries', in Haakonssen and Lacey (eds), *A Culture of Rights*, pp. 144–214.

Once the language and law of rights were abandoned, Americans went back to the more familiar language of freedom. It is the term 'liberty' that became the catchword, once again, of the nineteenth century. Upon doing so, however, something new became clear: the extraordinary unity of views that had seemed to emerge during the revolutionary era in the glorious rhetoric of rights was largely a function of the revolutionary situation. Everyone could agree on the rights and liberties of Americans against the authoritarian British. But with the common enemy out of the way and the problem of the union settled, the fundamentally different notes of freedom to which different groups of Americans adhered became painfully evident. These divisions were to lead irrevocably to one of the most brutal civil wars of all time.

What were they? First, there was the rise of civic freedom, of mass democracy, which increasingly alarmed the elites of both the North and the South. It was one thing to declare, in the heat of revolution, that all men are created equal; in the sober light of the morning after, it was dangerous talk. The problem is that it had been carved in the stone of the Constitution. Nothing comes through more clearly in the writings of most of the founding fathers and the first generation after the revolution than the dangers of too much democracy. We are 'all born to equal rights', warned John Adams in 1814, 'but to very different fortunes; to very different success and influence in life'. He was not always that tactful in his view of democracy, which he once denounced as 'the most ignoble, unjust and detestable form of government'. This is one subject with which he and his mortal enemy, Alexander Hamilton (who once called the masses 'swine'), could agree. The Virginian Edmund Randolph spoke for the great majority of the elite when he stated simply, 'We have suffered from an excess of democracy.'

There, however, agreement ended among the elite. The alternatives to too much democracy that Northern industrialist and Southern plantocrat offered were two radically different notes of freedom. The conflation of the honorific, other-directed sovereignal freedom of the aristocratic, slaveholding South, and of the conscience-driven, inner-directed sovereignal freedom of the bourgeois North which had achieved its apotheosis in the heroic revolutionary personality, collapsed right after life returned to normal. For the rapidly emerging capitalists of the urban-industrial North, a purely negative, personal conception of freedom became the order of the day, one in keeping with similar developments in the England of the industrial revolution. Possessive individualism had indeed finally become the hegemonic note of freedom, no longer simply the conceit of obscure philosophers and economic theorists.

The South, however, not only continued to hold on to the old agrarian capitalist version of possessive individualism, with its emphasis on honour and on freedom as power over others, but began to expand this system as never before under the twin impact of the massively increased demand for cotton in

Britain and the technical revolution of the cotton gin. As they did so, the shame and embarrassment that revolutionary slaveholders had felt about their peculiar 'species of property' gave way to a brash celebration of sovereignal freedom. Indeed, the most brilliant social theorist of nineteenth-century America, George Fitzhugh, not only wrote two powerful treatises in defence of sovereignal freedom, drawing freely on its ancient heritage, but in the process launched an extraordinary attack on the evils of industrial capitalism and of its revered negative conception of liberty in ways that often anticipated Marx.[54] Slavery, he audaciously argued, was the ideal social system, for if there were always to be power and the rule of the virtuous, it were best that people be dominated by people rather than be enslaved to capital. Industrial capitalism he condemned as a form of 'moral cannibalism' in which free labour had no liberties. Drawing parallels between ancient Athenian slavery and democracy and his own beloved South, he wrote: 'We need never have white slaves in the South, because we have black ones. Our citizens, like those of Rome and Athens, are a privileged class.' But even black slaves had their place and their traditional rights, including their 'property rights' in their masters, based on their expectations that their masters would perform their duty and honourably meet their obligations as good masters and protectors. They were certainly better off than the masterless white slaves of the capitalist world, enslaved to the merciless impersonality of capital. 'Free society asserts the right of a few to the earth', he wrote, 'slavery maintains that it belongs, in different degrees, to all [...] capital is a cruel master.'

The leaders of the new liberal ideology in both America and Britain viewed such ideas with increasing horror. Indeed, all forms of slavery, however mild, came to be seen in liberal Europe as the ultimate evil. The works of David Brion Davis have laid bare the extraordinary social and ideological meaning of the drive towards abolitionism. Up to the eighteenth century, moralists and philosophers of freedom, including Locke, had found ways of accommodating the strains and contradictions between slavery and Christianity. Nonetheless, as he points out, 'since the concept of slavery carried a penumbra of association involving sin, punishment, obedience, self-surrender, and deliverance, the strains were related to central antinomies in the structure of Western thought'.[55] During the late eighteenth century and the early nineteenth, exactly paralleling the rise of the industrial bourgeoisie and evangelical Christianity, an extraordinary moral reversal took place in Western bourgeois culture in both Europe and America,

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[54]   'Cannibals All'; and 'Sociology for the South', both reprinted in Harvey Wish (ed.), *Ante Bellum Writings of George Fitzbugh and Hinton Rowan Helper on Slavery* (New York, 1960).
[55]   David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca, NY, 1975), p. 263.

in which slavery came to stand 'as the central metaphor for all the forces that debased the human spirit'.[56]

By the turn of the century, the involvement with slavery was as much metaphorical as real: 'In the United States a series of compromises on slavery became the fulcrum of an uneasy balance of power; in Britain the triumph of the anti-slave trade movement signalled a redefinition of national interests; in France anti-slavery and anti-colonialism became ideological weapons in the contest for revolutionary leadership.' [57] In the ensuing struggles to abolish the slave trade and slavery, religion, politics, and economics fused to create the most intense passions and indelible impressions, for what was at stake was the redefinition of what was central to the Western system of values, its hegemonic notion of freedom.

New World slavery, for the dissenting Protestants of Britain and the United States, was Christianity's 'fortunate fall', providing it with 'an epic stage for vindicating itself as the most liberal and progressive force in human history'.[58] Under the banner of 'practical benevolence', the struggle became a unifying force for all the evangelicals in their attack on the worldliness of the established churches. The struggle was also an agent of secular redemption that challenged both the new paganism of the Enlightenment and the heartlessness of the new industrial order. It was also a response to the revolutionary fever that had swept the Atlantic world.

On the secular front, slavery came to be seen by enlightened liberal thought as the embodiment of all that was most irrational and restraining, the antithesis of material and moral progress. But, as Davis shows, the belief in the idea of progress that swept late eighteenth- and nineteenth-century Europe worked both ways. If history was the gradual unfolding of man's perfection through either the providential hand of God or the secular emergence of the world spirit, demonstrated most clearly in the passing of serfdom and feudalism, there would be no need for direct human intervention. Gradually all things would get better. This argument won strong support from the new or, one should say, renewed science of economics. For Adam Smith, slavery was inherently irrational and inefficient; it had no place in a modern capitalist economy. Left to its own fate, it would surely wither away. The same conclusion was drawn years later for the American case by the liberal economist John Elliot Cairnes in his classic study *The Slave Power*. The gradualist theory of progress, the abolitionists soon discovered, was their most dangerous intellectual enemy.[59]

Hence the shift to an immediatist strategy by the abolitionists, led by Garrison.

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[56]   Davis, *The Problem of Slavery in the Age of Revolution*, p. 263.
[57]   Davis, *The Problem of Slavery in the Age of Revolution*, p. 86.
[58]   Davis, *Slavery and Human Progress*, pp. 129–53.
[59]   Davis, *Slavery and Human Progress*, pp. 104–16.

In the end, of course, it took one of the bloodiest civil wars in the history of the world to settle the dispute. It used to be thought by Marxist as well as by many bourgeois historians that the root of the conflict lay in the irreconcilable economic systems of the North and the South: the one a rapidly expanding, progressive industrial capitalist system, the other a backward, paternalistic, anticapitalist throwback to the agrarian past.[60] We now know from recent cliometric studies that this interpretation was seriously flawed. The antebellum South was capitalistic through and through, and its central business, the slave plantation, typically more profitable than the average Northern firm.[61] Pragmatic Northerners were also keenly aware of the backward and forward economic linkages between the cotton plantations and their textile and shipping industries.

The radical abolitionists such as Garrison, Tappan, and Birney were among the few who saw that economic forces alone would never lead to the erosion of slavery. This realization coincided with a growing sense of social and political crisis in Jacksonian America during the early 1830s. On the one hand, there was the intransigence of the Southern slavocracy, reflected in the nullification crisis of 1831. On the other hand, there were alarming indications of black militancy throughout the Anglo-American New World: the published call for armed resistance by the ex-slave activist David Watkins, the Nat Turner revolt in Virginia, and the even bloodier island-wide revolt of Sam Sharp in Jamaica, itself an important factor in the British Parliament's decision to abolish slavery the following year.

The result of all this was the decision of the radical abolitionists to shift to an immediatist strategy, expressed in the Anti-Slavery Society's Declaration of Sentiments. This declaration appealed directly to the values of the revolutionary era, especially the Bill of Rights, in its demand that every person, regardless of race, must be 'secure in his right to his own body – to the products of his own labor – to the protections of the law – and to the common advantages of society'.[62]

Ironically, as scholars of this period have noted, while such sentiments were

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[60]   For the last serious Marxist interpretation in this vein, over-laden with a highly functionalist theory of paternalism, see Eugena Genovese, *The Political Economy of Slavery* (New York, 1965).

[61]   Robert W. Fogel, *Without Consent or Contract: The Rise and Fall of American Slavery* (New York, 1988). It remains controversial whether plantation farming was more efficient than 'free' Northern family farming; but this is a rather tedious technical matter, having to do more with definitions and methodological issues in agricultural economics than with real issues concerning real people in real time.

[62]   Cited in James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery* (New York, 1976), p. 52.

perfectly in tune with the Jacksonian attacks on the inequities of the post-revolutionary economic order – inequities of which the much-quoted Alexis de Tocqueville was so exquisitely innocent in his celebration of American equality[63] – there could be no alliance with this populist movement, since it was racist to the core. As James Brewer Stewart points out, the Jacksonians made it clear that they were dismantling monopolies so as to 'restore economic freedom to the common people, citizens could now invest as they wished – in a slave or a candy store, it made no difference'.[64]

What, then, eventually induced the Northern middle and working classes to become involved in the whole debate over slavery and, in the end, to participate in so drastic a thing as a civil war over it? The reasons largely centred on differing conceptions of their most vital interests. As in Europe, concern for the black slaves themselves was secondary. As Foner has shown, the critical issues were the free soil and free labour ideology and the critical role of the western territories in both the dreams and the realities of the middle-class and working people of the North.[65] For middle- and upper-class Northerners, what was of central concern was not the dehumanization of blacks but the fear of what they came to call the Slave Power spreading to the west, and ultimately to the North, as well as the monopolization of the government by the Southern plantocracy. For the working class, who saw the west as the escape route from the hopelessness of the urban slums, the spread of slavery threatened their one remaining dream.

Ironically, racism prompted both Northerners and Southerners to go to war. For the North, the west had to be kept safe and open for free white men and women, and Republicans played upon fears of miscegenation in their attacks on slavery. In the South the same fears were being exploited by the Southern slaveholders in their attack on abolitionism. In the end, even so radical a defender of black freedom as Frederick Douglass came to pragmatic acceptance of one of the saddest imperatives of American political life: 'the power to free the slaves lay in the rough-and-tumble of racist free-soil politics, not in the salons of Beacon Hill Garrisonians'.[66]

Thus, in America, as in Europe, emancipationists triumphed in the ideological war only when they were able to persuade people that their own liberty and spiritual salvation were at stake. Even so, there was a profound ideological issue in this realpolitik of abolitionism. It focused on one of the most ancient notes

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[63]   On some of the factors that may account for Tocqueville's monumental blind spot, see William J. Murphy, Jr, 'Alexis de Tocqueville in New York: The Formulation of the Egalitarian Thesis', *New York Historical Society Quarterly* 61 (1977), pp. 69–79.

[64]   Stewart, *Holy Warriors*, p. 53.

[65]   Eric Foner, *Free Soil, Free Labor, Free Men* (New York, 1970).

[66]   Stewart, *Holy Warriors*, p. 146.

of the chord of freedom: the idea that one is most free when one can do as one pleases with others; freedom as the exercise of power or domination over others. We have seen that from the seventeenth century, men and women had begun to have real qualms about such a notion. It was in the American Civil War that the West had its first cataclysmic assault on this age-old Western idea. The speeches of Lincoln, and in particular the debate between the defender of slavery, Stephen A. Douglas, and Lincoln during the senatorial campaign of 1858, reveal in the full glare of history the final assault on the sovereignal notion of freedom in its naked form in the Anglo-American world:

'That is the real issue', Lincoln declared.

> It is the eternal struggle between these two principles – right and wrong – throughout the world. They are the two principles that have stood face to face from the beginning of time; and will ever continue to struggle. The one is the common right of humanity and the other the divine right of kings.[67]

Actually, Lincoln posed the issue even more cogently in one of his most brilliant speeches, given six years later:

> The world has never had a good definition of the word liberty, and the American people, just now, are much in want of one. We all declare for liberty; but in using the same word we do not all mean the same thing. With some the word liberty may mean for each man to do as he pleases with himself, and the product of his labor; while with others the same word may mean for some men to do as they please with other men, and the product of other men's labor. Here are two, not only different, but incompatible things, called by the same name – liberty.[68]

The significance of the American Civil War for the history of freedom as a value and idea can now be summed up as follows: It marked the final removal of the ancient notion of freedom as *direct* personal power over others from the semantic field of freedom. Such an idea now rapidly approached the semantic status of an obscenity.

But this did not mean that power itself was dissociated from freedom. Quite the contrary. The exercise of such power, however, had to be mediated through

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[67]   'Lincoln's Reply, from the Seventh Debate, Alton, Illinois, Oct. 15, 1858', in Paul M. Angle (ed.), *The Complete Lincoln-Douglas Debates of 1858* (Chicago, IL, 1991), p. 393.
[68]   Lincoln, Address at 'Sanitary Fair', Baltimore, Maryland, 18 April 1864, in Marlo Cuomo and Harold Holzer (eds), *Lincoln on Democracy* (New York, 1990), p. 321.

control over property. Hence the sacred status that property came to acquire after this, a status reinforced by the demonization of slavery. It was during America's gilded age after emancipation that a US federal judge shamelessly, indeed proudly, announced that 'of the three fundamental principles which underlie government, and for which government exists, the protection of life, liberty, and property, the chief of these is property'.[69]

And it was during the late nineteenth century, too, that all Western peoples had learned from the Anglo-Americans the art of using the emancipation of black slaves to achieve the religious end of collective redemption, the moral purpose of reinforcing liberty, the political goal of justifying imperial expansion to protect the 'child-races' – the Belgians began their brutal colonization of the Congo as a self-righteous antislavery crusade! – and the capitalist requirements of free or cheap labour.

Later developments, during the nineteenth century and the first half of the twentieth, reveal a continuing disregard for the language and rhetoric of rights in both America and Europe. In Europe, rights ideology suffered an even more final demise than in America. The French Declaration of the Rights of Man went the way of the Revolution. It is significant that French workers during the insurrectionary period of the 1840s rarely appealed to the rhetoric of rights. Instead, as William Sewell has shown, in making their demands they turned to the *ancien régime* corporatist rhetoric of claims and liberties in a moral community that was hierarchical and that jealously guarded its privileges. The July Revolution may have seen the emergence of class consciousness, but 'it was by developing a corporate vocabulary that workers found their own voice'; it did not take the workers who manned the barricades of the July Revolution with cries of 'Vive la Liberté!' long to discover that their conception of liberty was fundamentally different from that of their liberal government. More to the point, no one, on the Right or the Left, appealed to any notion of the rights of mankind.[70]

The same pattern prevailed in liberal England, during the formative years of the working classes as well as the later period of effective collective action. This is hardly surprising, since the British had never taken to the language and philosophy of rights, in spite of Britain being its philosophical home. As Alan Ryan has recently pointed out, in continental Europe the rationalistic notion has always prevailed that citizens have only those rights granted them in authoritative legal codes; and contempt for the language and philosophy of rights is the one thing that the Right and the Left of the British political spectrum shared. Burke's polemic against the French Revolution and its infernal declaration of rights finds

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[69]   332 U.S. 46 (1947), cited in Bernard Schwartz, *The Great Rights of Mankind: A History of the American Bill of Rights* (Madison, WI, 1992), p. 209.
[70]   W. H. Sewell, *Work and Revolution in France* (Cambridge, 1980).

its counterpart in Bentham's celebrated dismissal of rights as 'nonsense on stilts'. In spite of strong current pressures to enact a code of rights, it is still the case among the 'unmetaphysical British' that 'alongside this practical attachment to individual liberty, there has been widespread skepticism of any attempt to found politics on a constitution embodying natural rights, whether these are understood as the dictates of reason, the laws of God, or rules inscribed in hearts'.[71]

The growth of the welfare state in continental Europe and Britain was wholly expressed and justified in terms of the language and notes of freedom. As T. H. Marshall observed in his classic lectures of 1949, the growth of the welfare state entailed an expansion of the domain of civic freedom or citizenship from the political to the social, and although Marshall himself resorted to the language of rights towards the end of his lectures, it is clear that he was introducing, if not a foreign concept, then what was certainly an orphaned British one, to clarify his ideas. Neither the British Labour Unions demanding greater security, nor the famous White Paper on Personal Income of 1948 responding to these claims, used the language of rights. The paper instead spoke of 'certain traditional and customary relationships' that had to be changed.[72]

As is well known, Britain, although a signatory to both, has refused to enact into British law either the United Nations Declaration of Human Rights of 1948 or the even more pertinent European Convention on Human Rights of 1951. It is significant that, in the present heated debate over the future of the welfare state in Britain, the issues are posed entirely in terms of the relationship between freedom and the welfare state. No one, either on the Right or the Left, poses the issues in terms of rights, in spite of Ronald Dworkin's repeated appeals to his British colleagues to take rights seriously. This is extraordinary, in light of the American rights-drenched approach to the issue.[73] Maurice Cranston notwithstanding, the philosopher Alasdair MacIntyre seems to speak for most British intellectuals when he writes that 'there are no such rights, and the belief in them is one with the belief in witches and unicorns'.[74]

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[71]   Alan Ryan, 'The British, the Americans and Rights', in Haakonssen and Lacey (eds), *A Culture of Rights*, p. 375.

[72]   T. H. Marshall and Tom Bottomore, *Citizenship and Social Class* (London, 1992), pp. 3–51.

[73]   See, for example, the lively debate between Robert E. Goodin and Roy Van Den Brink-Budgen in which the terms 'rights' is conspicuous for its absence: Goodin, 'Freedom and the Welfare State: Theoretical Foundations', *Journal of Social Policy* 11.2 (1982), pp. 149–86; Brink-Budgen, 'Freedom and the Welfare State: A Multi-Dimensional Problem', *Journal of Social Policy* 13.1 (1984), pp. 21–39.

[74]   Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (South Bend, IN, 1982), p. 67.

America has taken a radically different path. There, of course, there was much greater resistance to the growth and legitimization of the welfare state, and vicious state hostility to the organization of labour. In this resistance, the forces of reaction found an all-too-willing ally in the US Supreme Court, which, as Henry Abraham correctly argues, pursued right up to the Second World War a 'double standard' of justice, in which political freedom, meaning essentially individual freedom against the state in defence of property, was vigorously protected at the expense of economic freedom and security.[75] In spite of the powerful struggle of capital and the legal system against the growth of economic freedom, however, America did not lag as far behind Europe as had originally been thought. This is the main finding of the recent work of Theda Skocpol, who shows that veterans and women were able to tap into American nationalistic, pro-military, and materialist values to extract from the state a surprisingly high level of welfare support.[76] The culmination of this ad hoc, resisted, but grudgingly conceded, welfare process was the reforms of Franklin D. Roosevelt.

When in January 1941 he made the classic call to world peace and order based on the four freedoms, he still avoided the language of rights, although this would have been the perfect occasion to invoke them. It is all the more remarkable, then, that in 1944 we find Roosevelt issuing his 'Economic Bill of Rights', phrasing his call for an expansion of freedoms to the domain of economic security in terms of a set of basic economic 'rights'. In those four years a rhetorical revolution had taken place. The language and rhetoric of rights, now called 'human rights', were back with great force in the vocabulary of politics.

By that time the language of rights had entered its new golden age. The factors accounting for this dramatic turn of events are beyond the scope of this essay. I merely list here the generally accepted reasons for this change. Foremost among them was the formation of the United Nations, which not only had written into its charter the promotion of 'human rights', but immediately undertook as one of its first major tasks the setting up of a commission to issue a Universal Declaration of Human Rights. The main reason for such urgency on the matter of rights was, of course, the Nazi horror, which, as slavery had done previously, imprinted upon the consciousness of Europe the need to protect that which was essentially human by the thoroughness of its barbaric denial of all things human. Even so English a statesman as Churchill felt moved to urge the UN to 'enthrone' human rights. The shift from talk about *natural* rights to talk about *human* rights partly reflected the changed intellectual climate in which it was no longer felt necessary to derive rights from a god, especially the Christian

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[75]   Abraham, *Freedom and the Court*, esp. ch. 2.

[76]   Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the U.S.* (Cambridge, MA, 1992).

God, or reason, or innate moral sense, or nature. But it also partly reflected the final ebbing of slavery as the contradistinctive leviathan in the conceptualization of freedom and rights.

The quintessence of slavery was its violation of nature, of what is most seemingly natural in the human condition – being a taken-for-granted part of the community in which one is born; owning, being in possession of, one's most intimate carnal, social, and spiritual self. The slave is not, strictly, dehumanized. Rather, he or she is denaturalized, denativized, natally alienated, deprived of all claims to citizenship; and he or she is depersonalized, deprived of all claims to selfhood and independent identity. Slaves are perversely but nonetheless humanly claimed in an embrace of social death with their owner, who wants them to be very much alive, to possess them physically and personally, to use them, to use them up, parasitically, for his or her own carnal ends, contradistinctively, to define the owner's own identity, his or her own most cherished personal value and social status. Hegel and Kojeve were just plain wrong – although brilliantly and instructively so: there was no existential dilemma for the master, who always knew that, for the slave to be most useful, he or she had to be kept human; kept inferior, and apart to be sure, the ultimate human other, essential for the definition, the conception, the very construction of the owner's own human identity and his or her cherished natural rights. It is noteworthy that no master class has ever denied its slaves human agency in, or even diminished responsibility for, their crimes, which is what one expects of the truly dehumanized; to the contrary, in all slaveries, the slave pays a greater price for his or her misdeeds.

With the Nazis things were a lot simpler, because we are reduced here to bestiality. Nature is not violated, for to make war and to kill are natural. There is here no complex, symbolically laden process of denativization and parasitic resocialization, no 'othering', no embrace of death. There is simply physical death and carnage on a scale that is humanly incomprehensible for reasons that defy all human, moral sense. And there is a cold, calculated hatred of the other that is inhuman because so lacking in the natural passions of war-making as the world had previously known it. Nazism brought into question not the natural, but the human. The efficient, moral bestiality of Europe's most civilized nation threatened to undermine all confidence in the fundamental difference between being human and being a mere beast with a more complex head. It was this threat that led even Churchill to call for the enthronement of 'human' rights.

Other factors played a role in the sudden shift back to the language of rights. There were the post-war decolonization movements, all of which drew upon the Western language of rights, especially the right to national self-determination, in their ideological struggle against the imperial powers, a strategy that obliged the United States to support them out of its respect for its own proud tradition as the first new nation.

In addition, the Cold War played its role. As the leader of the 'free world', the United States found the rhetoric of rights a powerful weapon with which to beat its Communist adversaries, in spite of its own contradictory record of support for authoritarian regimes in Latin America and other parts of the world.

The Cold War, however, was to influence the resurgence of rights rhetoric even more powerfully on the domestic front in America. It provided one important opening for oppressed minorities in their struggle for equal political and social rights. It is no accident that the minority group that led this struggle were African Americans who succeeded, finally, in persuading the Supreme Court to take the long-moribund Bill of Rights seriously. In doing so, the modern history of rights had come full circle. Hobbes and Locke, it will be recalled, had initiated the modern world's reconception of freedom in terms of fundamental natural rights. The fundamental right for both was the right not to be enslaved. Neither, however, had the courage or the means to practise or even to encourage what they preached for real living slaves. It was the descendants of the very slaves in whose ancestors Locke had financially speculated with such extravagant contradiction who finally gave meaning to Locke's celebrated definition of freedom in the second treatise on government, a discourse which, it will be recalled, was written under the chapter entitled not 'Of Freedom', as one might have expected, but, as this wisest, if most contradictory, of dead, white, English males correctly figured, under the title 'Of Slavery'.