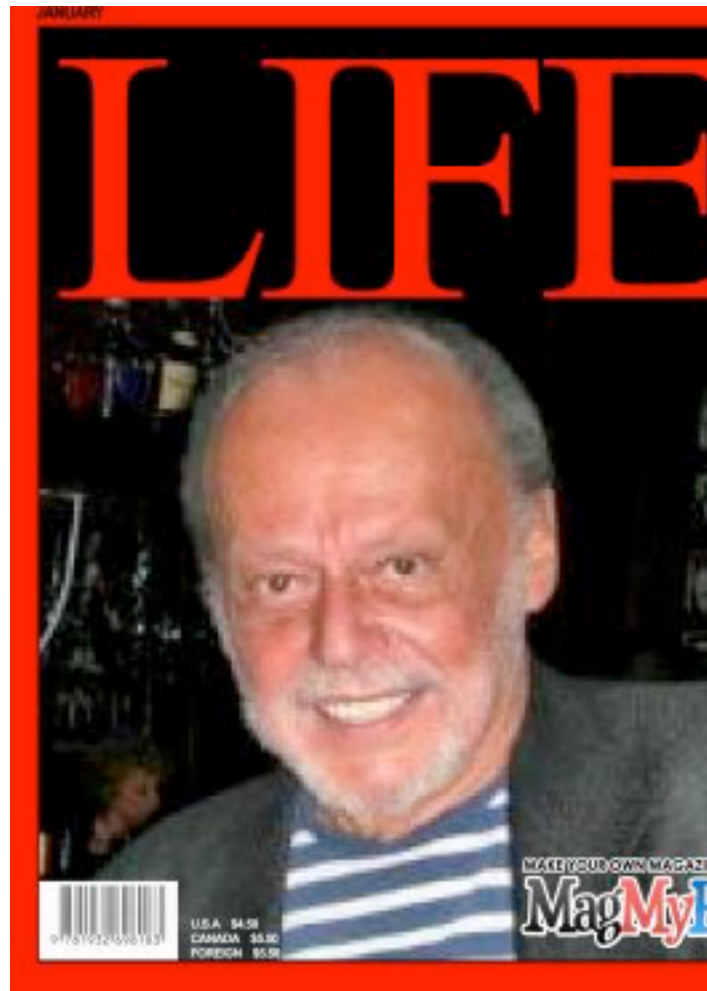


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## ***“TO PROMOTE THE GENERAL WELFARE”***

An Essay on the Meanings and Problems Thereof in the  
Eighteenth and Twentieth Centuries

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The purpose of this paper is to consider the promotion of the general welfare as one of the objectives or ends of civil government set forth in the Preamble to the Constitution. I shall not limit myself to speculations about what the writers and signers of the document meant by it, nor even to the interpretations which have been placed upon it in the course of subsequent constitutional developments. In line with the central interest of the consultants in the reconstruction of the Constitution to accord with the realities of the twentieth century, my chief concern will be to understand what the phrase “general welfare” might mean today if it were included in the Preamble to the Constitution now being drafted or re-drafted. I shall try to show that the basic differences between the economic and political circumstances of the eighteenth century and those operative today make the general welfare a much more significant as well as a much more difficult constitutional problem now than it was 175 years ago.

### 1. *THE ENDS OR OBJECTIVES OF GOVERNMENT*

The Preamble states the ends for the sake of which the Constitution is established: a more perfect union, domestic tranquility, justice, the common defense, the general welfare, and the blessings of liberty. As Mr. Buchanan pointed out in his paper on Political liberty (October 21, 1958), the Preamble thus enumerates the components of the common good as the end of government, adding to such traditional elements as justice, peace, freedom, and order, the common defense, on the one hand, and the general welfare, on the other. As Mr. Buchanan also pointed out, these terms tend to be overlapping in their significance. A more perfect union is needed to ensure domestic tranquility as well as to provide more effectively for the common defense and thereby preserve both internal and external peace. The establishment of justice is also indispensable to preserving domestic peace and to securing the blessings of liberty. And the general welfare not only rests on the establishment of justice—on just laws justly administered—but it also affects and is affected by the conditions conducive to political liberty and other individual freedoms.

The fact that the objectives enumerated in the Preamble are thus interconnected should not obscure the separate meaning of each by itself. Peace is one thing; justice, another; liberty, still another; and unless the general welfare differs in meaning from all the rest, it does not properly belong in the enumeration as one of the specific objectives of civil government, or as one of the distinct constituents of the common good.

However, the phrase “general welfare” has been and can be used in such a way that it does not have the separate meaning required for its inclusion among the ends of government. It is sometimes used as if it were a synonym for the common good. The Latin *bonum commune* is often translated “the good in general,” and it is easy to see how the notion of the general well-being of the people might fuse with the notion of what is good for them in general or in common. The identification of the general welfare with the public weal or the common good would, of course, make such things as peace, justice, liberty, and the common defense constituents of the general welfare; in which case, the general welfare should not itself be included in an enumeration of the elements that make up the common good (i.e., the general welfare).

In what follows I shall try to understand the meaning of the general welfare as something which is not identical with the common good, but is only one of a number of specific elements in its make-up. To get at its meaning, it may be helpful to consider two statements of the ends of government which differ from the enumeration presented in the Preamble. The first of these is John Locke's; the second, the statement made in the Declaration of Independence. Neither are as exhaustive in their enumeration of the elements of the common good as the Preamble. Neither mention the general welfare (nor, for that matter, domestic tranquility, justice, or the common defense). But in each there is something which, in my judgment, has a direct bearing on the meaning of the general welfare.

According to Locke, the end of civil government can be comprehensively described as “the protection of property,” but only, of course, if the term “property” is itself given a comprehensive meaning, i.e., a meaning which covers everything that is justly due men because it is theirs by natural right. Locke enumerates the three principal things that he has in mind under this comprehensive meaning of the term “property.” They are: *life, liberty, and estates*. While “estates” undoubtedly meant for Locke primarily property in land, it can be generalized to cover all forms of proprietorship in economic goods, both consumable goods and the means of production. Of the three things mentioned by Locke as the specific rights which it is the duty of good government to protect, it is the right to economic goods (i.e., “estates” generally understood) which has a direct bearing on the general welfare as an end of government.

The Declaration of Independence introduces a startling alteration in the statement of the three principal natural rights which it is the duty of good government to secure for its people. It substitutes “the

pursuit of happiness” for “estates,” while repeating “life” and “liberty.” At first glance, the substitution appears strange, since the right to the possession of economic goods can scarcely be regarded as equivalent to the right to the pursuit of happiness. Yet I shall attempt presently to show not only the close relation between the possession of economic goods and the pursuit of happiness, but also how the pursuit of happiness, like the possession of economic goods, throws light on the meaning of the general welfare as one of the things to be promoted by good government. But first I would like to spend a moment on the subject of natural rights, justice, and just government.

Justice is sometimes said to be the end of civil government. Thus, for example, Federalist Paper #51 declares:

Justice is the end of Government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.

As the Declaration of Independence proclaims, the just powers of government, to which the governed should give their consent, are those which enable a government to secure the rights of men, i.e., to give legal protection to such natural rights as life, liberty and “estates” or “the pursuit of happiness,” or both if there is a substantial difference between them. But justice also consists in treating equals equally, and unequals unequally in proportion to their inequality. Now, in this paper, I shall assume the truth of two basic points made in the Declaration of Independence: first, that there are natural rights, at least the three or four which have so far been mentioned; and second, that, precisely because they belong to man by nature, not by convention, and because all men are the same in nature (i.e., equal in respect of being human), all men are equally endowed with these natural rights.

A just government, then, is one which treats all men equally with regard to these natural rights. It does not, for example, respect some men’s right to the pursuit of happiness, and deny or ignore the same right on the part of others. If it can be shown that the general welfare involves the right to the possession of economic goods and the right to the pursuit of happiness, it follows that all men, by natural right, are equally entitled to participate in the general welfare, and that a just government should promote the general welfare with this in mind. (Equal right to participate in the general welfare should not, however, be interpreted to imply equality in the possession of economic goods.)

The main task, as I see it, is to show how these two rights—the right to the possession of economic goods and the right to the pursuit of happiness—are related, and how, as related, they give concrete meaning to the promotion of the general welfare as one of the objectives of just government. This will require some analysis of the meaning of happiness.

The natural right which a just government should secure for its people is, of course, not the right to happiness, but the right to its pursuit. Happiness itself, as distinct from its pursuit, is, as we shall see, almost identical in meaning with the common good. Hence it would be just as improper to include happiness among the elements of the common good, as to include the general welfare when the latter is identified with the common good. But promoting the pursuit of happiness, especially when it is seen to depend upon the possession of economic goods, can be understood as one of the specific objectives of a government that aims at the common good or, what is the same, the happiness of all. In short, I shall try to show that “to promote the general welfare” is “to promote the pursuit of happiness through the possession of economic goods.”

Before doing that, however, I would like to comment briefly on some indications of the meaning attached by 18<sup>th</sup> century writers to the “general welfare” clause in the Preamble and in Article I, Section 8 of the Constitution; and to suggest how that meaning has changed or enlarged under 20<sup>th</sup> century conditions.

## *2. THE GENERAL WELFARE IN THE 18<sup>th</sup> AND 20<sup>th</sup> CENTURIES*

Section 8 of Article I sets forth the powers granted to Congress by the Constitution. The first paragraph of this section declares that Congress shall have the power “to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States.” This is followed by an enumeration of specific things which Congress is empowered to do, and the last paragraph of the section then grants Congress the power “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof.”

Among the specific things enumerated, a number relate to the common defense, e.g., to raise and support armies; to provide and maintain a navy; to regulate the land and naval forces; to establish and train a militia; to declare war. A number relate to the fiscal aspect of government to borrow money; to coining money; to pro-

vide for the punishment of counterfeiting. Since the opening paragraph indicates the three general headings under which the specific powers fall—(i) the common defense, (ii) fiscal matters, and (iii) the general welfare—it is reasonable to suppose that the remaining specific items relate to the general welfare. They are such things as the regulation of foreign and domestic commerce; the formulation of a uniform rule of naturalization; the establishment of post offices and post roads; the institution of copyright and patent laws; and the creation of tribunals inferior to the Supreme Court. This odd assortment of things may give the impression that the general welfare clause in the opening paragraph of the section is intended to cover whatever cannot be placed under the much more definite headings of fiscal policy and common defense. Thus loosely interpreted, it would seem to allow for an expansion of the powers of government beyond those clearly needed to maintain peace, defend the nation, and defray the expenses of government.

Among the architects of the Constitution, Madison opposed such a loose interpretation of the general welfare clause. In his *James Madison, Philosopher of the Constitution*, Edward McNall Burns writes as follows:

If Madison refused to countenance a loose construction of the necessary and proper clause, even less did he approve of a liberal construction of the general welfare clause. The insertion of the words “common defense and general welfare” in Article Section 8, of the Constitution... was the result, he maintained, of a kind of freak of history. The taxing power clause as it originally stood expressed simply a power “to lay taxes, duties, imposts, and excises,” without indicating any objects and of course intended that the revenues derived should be applicable to the other specified powers of Congress. A solicitude to prevent any possible danger to the validity of the debts contracted by the Confederation led the Convention to add the phrase “to pay the debts of the United States.” Then, inasmuch as this might be taken to limit the taxing power to a single object, a familiar phrase of the Articles of Confederation, “to provide for the common defense and the general welfare,” was annexed but without any purpose of giving additional power to Congress. In the new instrument as in the old this phrase was intended merely as a general and introductory statement to be qualified by the specific grants of power contained elsewhere.

Furthermore, according to Madison, not a single reference was ever made in the Convention to the general welfare

clause as a grant of power, unless a proposal offered on the twenty-fifth of August should be considered as such. An amendment was introduced on that day to give Congress power to provide for payment of the public debts “and for defraying the expenses that shall be incurred for the common defense and the general welfare.” The amendment was rejected, only one State voting for it. It is impossible to believe, Madison insisted, that the jealous defenders of States’ rights in the Convention and the advocates of a strict limitation of Federal powers should have silently permitted the introduction of a phrase nullifying the very restrictions they demanded. The only explanation that is in any degree possible, he maintained, is that the words “common defense and general welfare” were taken for granted as harmless since they were being used in precisely the same way as in the Articles of Confederation.<sup>1</sup>

Madison pointed out also that when the Constitution was submitted for ratification, a majority of the States proposed amendments to safeguard their own rights and the liberties of their people. Thirty-three were demanded by New York, twenty-six by North Carolina, twenty by Virginia, and smaller numbers by the others—all of them designed to circumscribe the powers of the Federal Government by restrictions, explanations, and prohibitions. Yet not a single one of these amendments referred to the words “general welfare,” which, if understood to convey a substantive power, would have been more dangerous than all of the other powers objected to combined. That the terms with any such meaning attached to them could have passed unnoticed by the State conventions, characterized as they were by strong suspicions against the whole project of a national government, was more than Madison could believe, and he did not see how anyone else could believe it.<sup>2</sup>

In view of these facts of history, Madison argues that only one conclusion was possible, namely, that the general welfare clause was never intended to be a grant of power. Its meaning, he insisted, must be sought in the succeeding enumeration of powers, or else the general government of this country is a government without any limits whatever. If Congress as the supreme and sole judge of that subject can apply money

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<sup>1</sup> Letter to Andrew Stevenson, Nov. 27, 1830, *Writings* (Hunt ed.) vol. IX, pp.

<sup>2</sup> *Ibid.*, vol. IX, p. 422.

to the general welfare, then it may assume control over religion or education or any other object of State legislation down to the most trivial police measure.<sup>3</sup> The only correct interpretation is to permit taxation for some particular purpose, embraced within one of the enumerated powers and conducive to the general welfare. If a proposal for collecting and expending Federal revenues meets these qualifications, it is constitutional; otherwise it is not. Acceptance of the opposite interpretation would destroy the import and effect of the enumeration of powers. For, he declared, it must be patent to anyone who chooses to think on the subject that there is not a single power which may not be considered as related to the common defense or the general welfare; nor a power of any consequence which does not involve, or make possible the right to exercise power in either one or both of these premises would not be the limited government contemplated by the fathers of the Constitution, but a consolidated government of absolute power.<sup>4</sup>

The foregoing is confirmed by the treatment of Article I, Section 8 in *The Federalist*. Hamilton begins the discussion in No. 32 and continues it through six or seven papers, whereupon Madison carries it on for another half dozen issues. Throughout most of these the chief concern is with fiscal problems, on the one hand, and with national defense, on the other. There is no mention of the general welfare until the last pages of No. 41. Here Madison most emphatically expresses the same views which Professor Burns has culled from other sources.

Some, who have not denied the necessity of the power of taxation, have grounded a very fierce attack against the Constitution, on the language in which it is defined. It has been urged and echoed, that the power 'to lay and collect taxes, duties, imposts, and excises, to pay the debts, and provide for the common defence and general welfare of the United States,' amounts to an unlimited commission to exercise every power, which may be alleged to be necessary for the common defence or general welfare. No stronger proof could be given of the distress under which these writers labor for objections, than their stooping to such a misconstruction.

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<sup>3</sup> *Annals of Congress*, vol. III. pp. 387-388

<sup>4</sup> Report on the Virginia Resolutions, *Writings*, (Hunt ed.), vol. VI. pp. 355-357 *Federalist* (Lodge ed.), No. 42, pp. 257-258.



Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color for it; though it would have been difficult to find a reason for so awkward a form of describing an authority to legislate in all possible cases. A power to destroy the freedom of the press, the trial by jury, or even to regulate the course of descents, or the forms of conveyances, must be very singularly expressed by the terms ‘to raise money for the general welfare.’

But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon? If the different parts of the same instrument ought to be so expounded, as to give meaning to every part which will bear it, shall one part of the same sentence be excluded altogether from a share in the meaning; and shall the more doubtful and indefinite terms be retained in their full extent, and the clear and precise expressions be denied any signification whatsoever? For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power? Nothing is more natural or common, than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect than to confound and mislead, is an absurdity, which, as we are reduced to the dilemma of charging either on the authors of the objection or on the authors of the Constitution, we must take the liberty of supposing, had not its origin with the latter.

The objection here is the more extraordinary, as it appears that the language used by the Convention is a copy from the Articles of Confederation. The objects of the Union among the States, as described in Article third, are, ‘their common defence, security of their liberties, and mutual and general welfare.’ The terms of Article eighth are still more identical: ‘All charges of war, and all other expenses, that shall be incurred for the common defence or general welfare, and allowed by the United States in Congress, shall be defrayed out of a common treasury,’ **&c.** A similar language again occurs in Article ninth. Construe either of these Articles by the rules which would justify the construction put on the new Constitution, and they vest in the existing Congress a power to leg-

islate in all cases whatsoever. But what would have been thought of that assembly, if, attaching themselves to these general expressions, and disregarding the specifications which ascertain and limit their import, they had exercised an unlimited power of providing for the common defence and general welfare? I appeal to the objectors themselves, whether they would in that case have employed the same reasoning in justification of Congress, as they now make use of against the Convention. How difficult it is for error to escape its own condemnation!

So far, then, Madison denies any wider significance to the “general welfare” clause than can be gathered from the enumeration of the particular powers granted Congress in Article I, Section 8. Nor does he admit any distinction between the common defense and the general welfare as headings under which these specific powers fall. He tacitly approves the language of the Articles of Confederation which places an “or” between “common defense” and “general welfare,” as if these were alternative ways of saying the same thing.

However, there is one passage in *The Federalist* (no. 45) in which Madison, no longer concerned with the interpretation of Article I, Section 8, employs the term “welfare” in a much broader sense. Identifying it with the “public good” or “the happiness of the People,” he declares that “the real welfare of the great body of the People” is the supreme object of government. The whole passage follows;

We have heard of the impious doctrine in the Old World, that the People were made for kings, not kings for the People. Is the same doctrine to be revived in the New, in another shape, that the solid happiness of the People is to be sacrificed to the views of political institutions of a different form? It is too early for politicians to presume on our forgetting that the public good, the real welfare of the great body of the People, is the supreme object to be pursued; and that no form of Government whatever has any other value, than as it may be fitted for the attainment of this object. Were the plan of the Convention adverse to the public happiness, my voice would be, reject the plan. Were the Union itself inconsistent with the public happiness, it would be, abolish the Union. In like manner, as far as the sovereignty of the States cannot be reconciled to the happiness of the People, the voice of every good citizen must be, let the former be sacrificed to the latter.

To identify the general welfare with the public good or the happiness of the people goes to the opposite extreme of giving it a meaning co-extensive with that of the common good. As pointed out earlier, this would require us to remove the term “general welfare from the Preamble; for, as identical with the common good, it is not coordinate with other things there enumerated as elements or constituents of the common good, such things as peace, justice, liberty, etc. To retain it significantly in the Preamble, the term must be given a meaning which defines an objective that is distinct from other specific objectives.

The solution here being proposed turns on the relation between the general welfare and the happiness of the people as their ultimate common good. Far from identifying the general welfare with the happiness of the people, the solution conceives the general welfare as that set of economic conditions which the people need in order to engage effectively in the pursuit of happiness, taken as their natural right. Thus understood, the promotion of the general welfare is distinct from the protection of life and liberty and from the maintenance of peace and justice, all of which may also be needed for the pursuit of happiness.

Even if men are secure in their life and liberty, even if they enjoy the reign of peace and live under just laws, they may still lack things which are needed for the pursuit of happiness. These things are certain external conditions of life, such as a decent standard of living, adequate housing, medical care and the protection of health, educational opportunities, time free from the toil whereby subsistence is obtained, etc. In a broad sense of the term, they are all *economic*; they are all forms of *wealth* or *things that wealth is able to provide*. It is in this broad sense of “economic” that, I suggest, a 20<sup>th</sup> century re-writing of the Preamble would refer to the promotion of the general economic welfare as one of the principal objectives of government.

The meaning of the term “welfare” in such 20<sup>th</sup> century expressions as “the welfare state” and “welfare legislation” is economic welfare in this broad sense. I shall subsequently consider whether a government’s efforts to promote the general economic welfare must necessarily lead to the creation of a “welfare state” in the sense in which that term connotes one or another form of socialism or socialized economy. I shall also try to explain why the economic welfare of the people was not, and probably could not have been, regarded as one of the principal objectives of civil government in the 18<sup>th</sup> century. This is not to say that it *should not* have been so regarded; for, if the pursuit of happiness is one of the basic natural

rights, and if certain economic conditions are indispensable means to that end, then government, to secure these rights, has the duty to promote the general economic welfare of its people.

What should be done, as a matter of right, is sometimes not practicable or conceivable practically. The promotion of the general welfare, as the 20<sup>th</sup> century understands it in economic terms, was not practicable nor, perhaps, even thinkable within the framework of the 18<sup>th</sup> century economy. In addition, there were other reasons, which will be mentioned later, why the writers of the Constitution would not have thought of the general welfare in terms of the economic conditions needed for an effective pursuit of happiness.

The fact that we today can and do think of general economic welfare as a major objective of government reflects the revolutionary changes which have taken place in the economy of the country since the 18<sup>th</sup> century, and not only in the economy, but in our political institutions as well. If the Constitution were being drafted today, the word “economic” might be inserted into the “general welfare” clause in the Preamble to make that objective of government quite specific; and in the enumeration of the powers granted to Congress to enable it to promote the general welfare thus understood, such things as the regulation of wages, hours, and the conditions of work, the establishment of unemployment insurance, social security, and old-age pensions, the creation of departments of labor and of health, welfare, and education, etc., might be expressly detailed in the formulation of Article 1, Section 8.

It is not the contention of this paper that these specific measures are the only or the best ways to promote the general welfare under 20<sup>th</sup> century conditions. On the contrary, reasons will be advanced for considering alternative proposals directed to the same end. But whatever set of economic measures would finally be adopted by a convention met to constitute a government for the United States in the 20<sup>th</sup> century, the Constitution, this paper contends, would have to envisage some program for providing the economic conditions requisite for citizenship and the good life, as the Constitution of the United States in the 18<sup>th</sup> century did not.

Whether or not the promotion of the general economic welfare can be accomplished in ways that also secure the blessings of liberty and conform to the principles of justice is, of course, the chief problem to be faced if liberty and justice still remain, in the 20<sup>th</sup> century as in the 18<sup>th</sup>, among the primary objectives of government. But a sober sense of the current realities requires us to recognize that a 20<sup>th</sup> century constitutional convention, confronted by

these realities, might be forced to regard the promotion of the general economic welfare as the paramount obligation of government, and to subordinate all other considerations thereto, even at some sacrifice of liberty and justice.

### 3. *ECONOMIC GOODS AND THE PURSUIT OF HAPPINESS*

Happiness, conceived as the *summum bonnum* and as the ultimate goal of human striving, is defined by John Stuart Mill as the sum total of satisfactions of which an individual life is capable. This is, of course, only a formal definition. It does not tell us concretely or materially what happiness consists in. But it does tell us what it means to be happy. As Aristotle puts it, the mark of the happy man is that he is in possession of all the goods he desires and, thus satisfied, he wants for nothing. In support of this distinguishing mark of happiness when it is regarded as the supreme object of desire and the goal of life, both Mill and Aristotle appeal to the common sense of the matter that nothing can be the supreme object of desire which, when possessed, leaves one still with basic desires unsatisfied; and that nothing can be the goal of all striving which is a means to ends beyond itself.

This way of thinking about happiness involves six points which can be briefly stated as follows:

- (1) Happiness is not one particular good among other goods. Health, wealth, knowledge, and friendship are, for example, such goods. Possessing any one of them, a man might still desire the others. Let us refer to such things as health, wealth, knowledge, and friendship as particular goods or particular kinds of goods. Let us further assume for the moment that a fairly exhaustive enumeration can be given of the particular kinds of goods which can be objects of human desire, man being constituted as he is. Then we can say that, in relation to all particular goods, happiness is *the good in general*; or, in other words, the sum total of these goods. All the particular goods are to be regarded as parts, elements, or constituents of happiness.
- (2) The word "happiness" is often used as a synonym for a momentary feeling of joy or satisfaction in the possession of some particular good. In this sense of it, happiness can hardly be regarded the ultimate goal of a human life, or as the complete and supreme good which includes all other goods or satisfactions as parts of itself. The two senses in which men use the word "happiness" are as far apart as the

satisfaction of a moment and the satisfactoriness of a whole life. In the latter sense, the word “happiness” is synonymous with “a good life,” i.e., a life made good by the achievement and possession on of all the various kinds of goods which are appropriate to a human life and which enrich or perfect it by fulfilling the wants or needs of human nature.

- (3) In this sense, happiness is not something which can be experienced, felt, or enjoyed in a passing moment. Just as one cannot pass final judgment on a building as it is going up, though one may be able to predict that it looks as if it would turn out well, so we can say of a man in mid-life that it looks as if his life would turn out well, but the final judgment on whether or not he had a happy life must await the completion of his life as a whole. Happiness, in other words, is the quality of a whole life.
- (4) This way of thinking of happiness makes good sense of the phrase “the pursuit of happiness.” The pursuit of happiness is a lifelong undertaking. It consists in so managing one’s desires and so conducting one’s affairs, from start to finish, that one’s life, like a building being planned and executed, turns out well—all its parts in place, well-proportioned, fitting together in such a way that no one part excludes any other that should be there. The perfect life, like the perfect building, is, of course, an ideal never fully achieved. The pursuit of happiness thus consists in trying to lead the best life of which the individual is capable. individuals differ in their capabilities, and the circumstances of each individual life are uniquely its own. These facts, however, still leave it possible for each individual to strive for as good a life as he is capable of living; the degree of happiness he attains in approximating the ideal is relative to his individual capacities.
- (5) While happiness is thus relative to the individual nature, it is also something relative to the common or specific nature in which all men share. Insofar as they differ individually, men pursue happiness each in his own way; but insofar as they are all of the same human constitution, they all have certain natural needs or desires in common and it is in terms of these that it can be said that what constitutes a happy life is in its broad or general outlines the same for all men. This is an objective matter, based on human nature itself and the capacities with which man is endowed and

which call for fulfillment or realization. Subjectively, the miser who has all the gold he consciously desires may regard himself as happy even though he is starving, friendless, ignorant, etc. But looked at objectively by anyone who knows what a human life can be like when it is enriched by the variety of goods of which every man is capable, the miser is a figure of abject misery. Objectively speaking, he has gone astray in his pursuit of happiness.

- (6) If the pursuit of happiness is among the basic natural rights, along with life and liberty, and if, as such a right, it is something which a justly constituted government should try to secure, not just for some but for all who are citizens of the republic, then one further consequence of great importance follows. Objectively and rightly considered, the pursuit of happiness by each individual must be such that it can be successful without necessarily frustrating anyone else in the similar pursuit. One example should suffice to make this point clear. Let us suppose that the pursuit of happiness were to involve achieving absolute power over other men, to the extent of enslaving them. On this supposition, if some men were to be successful in their pursuit of happiness, others—those enslaved—would necessarily have to fail, not only because they who were enslaved could not enjoy mastery over others, but also because they would be deprived of the freedom which is among the goods that all men naturally seek. Hence the pursuit of happiness cannot involve the achievement of absolute power over other men, and still be a natural right, equally possessed by all men and equally entitled to protection by a justly constituted government. This is another way of saying that happiness is a *common* good, i.e., a good which men can pursue cooperatively in such a way that it is *possible* for each to achieve it to some degree without preventing others from achieving it also. The basic moral point here can be expressed in a form which resembles Kant's categorical imperative. Where Kant said, "So act that the maxim of your action can be made a universal precept directing the action of all other men." we can say; "So pursue your individual happiness as a *common* human good, that every other man can pursue his individual happiness in the same way."

I will not argue for this conception of happiness and of its pursuit, beyond saying that it alone makes good sense of the proposition that the pursuit of happiness is a natural right, equally possessed by

all men because they are all men. In respect to this, as in respect to other natural rights, all men are equally entitled to protection by government. But one further matter needs clarification in order to complete the picture and make good sense of a democratic government's obligation to secure this right, i.e., to do whatever it is reasonable and practicable for a government to do in abetting the pursuit of happiness by each and every individual.

There are some aspects of the pursuit of happiness which are simply beyond the power of a government to do anything or much about. There are some which a government can affect only indirectly or incidentally. And there are some which can be directly affected by the constitution of a government, by the substance of its legislation, and by the framework of life it provides for individuals. To make this clear, it is necessary to attempt an exemplary, if not exhaustive, enumeration of the various kinds of particular goods which enter into happiness as a common object of human striving because they correspond to the needs or capacities with which human nature endows every man.

What follows is at once an enumeration and classification of the particular goods which men seek when, unlike the miser, they avow what is good for them and when, unlike the man who wants absolute power over others, they recognize the moral duty to pursue happiness in a way that does not prevent other men from pursuing it too.

- 1) *Goods of the body*, such as health, strength, the pleasures of sense.
- 2) *Goods of the mind*, such as knowledge, understanding, prudence, and even a modicum of wisdom; together with such goods of the mind's activity as the skills of inquiry, of critical judgment, and of creative production.
- 3) *Goods of character*, whether described ethically in terms of such moral virtues as temperance and fortitude, or described psychoanalytically in terms of an integrated person's reasonableness in the management of his emotions and appetites; together with the functioning of a good will in the making of choices among alternative objects of desire or courses of action.
- 4) *Goods of human association*, such as family relationships, friendships, and loves.



- 5) *Political goods*, such as civil peace and political liberty, together with security of life and limb and the protection of individual freedom by the prevention of violence, aggression, coercion, or intimidation.
- 6) *Economic goods*, such as a decent supply of the means of subsistence, living and working conditions conducive to health, medical care, opportunities for access to the pleasures of sense, opportunities for access to the goods of the mind through educational facilities in youth and adult life, and enough time free from toil for subsistence, both in youth and in adult life, to take full advantage of these opportunities.

Of these six classes of goods, the first four belong to the inner or private life of the individual. They are acquired and preserved by him as a result of the way of his life depends mainly on him. This is particularly true of the goods of character and of human association; they are the least dependent on the good fortune of beneficent external circumstances. With regard to his acquirement of the goods of the mind and especially the goods of the body, the individual is more dependent on favorable environmental conditions; e.g., conditions conducive to health and provisions for medical care, in the case of bodily goods; opportunities for schooling and learning and free time to take advantage of these opportunities, in the case of the goods of the mind. Hence, with regard to all the goods in the first four classes, the actions of government can abet the pursuit of happiness only indirectly, if at all; and it does so indirectly by the action it takes in the sphere of political and economic goods.

These last two classes of goods are environmental or external in the sense that the individual's possession of them is mainly dependent on the outer or public conditions of his life. Thus, for example, unless he is fortunate enough to live in a republic and to be among those who are enfranchised by its constitution, he does not have political liberty. Unless he has income-producing property or has access to it, and unless his property in such estates, or what I shall subsequently describe as "the economic equivalents of such property," is protected by government, he does not have, through forms of wealth and the things which wealth can provide, the economic goods that he needs for the pursuit of happiness—needs not only because they maintain his life and health, but also because they facilitate his acquirement of other goods, especially the goods of the mind.

Hence, so far as civil government can secure the individual's right to pursue happiness, it does so largely through measures which directly affect his possession of political and economic goods. I cannot do anything about his acquirement and possession of the other goods which belong to the individual's inner or private life, except as these environmental goods minister to them. Thus, for example, it may be practicable now, though perhaps it was not always practicable in the past, for a government to see that no individual starves or is under-nourished; but no government, now or ever, can see to it that he is temperate and does not ruin his health by gluttony. Similarly, it may be practicable now for a government to provide adequate educational facilities for every child and even for every adult, but no government can prevent an individual from neglecting these opportunities, or make him acquire and use the goods of his mind. A democratic government can give every man suffrage and, therewith, political liberty, but it cannot give him the civic virtue whereby he uses that freedom well.

In the light of the foregoing, let us look once more at the Preamble to the Constitution in relation to life, liberty, and the pursuit of happiness. We now see that security of life and limb, political liberty, and freedom from violence or aggression, are themselves among the environmental goods which contribute to the individual's happiness; and, furthermore, that, with respect to these essentially political goods, the individual's pursuit of happiness can be directly promoted by civil government. Another political good of the same sort is peace, both at home and abroad. All these goods are covered by the clauses in the Preamble which mention domestic tranquility, the common defense, and the blessings of liberty as fundamental objectives of government.

But security of life and limb does not exhaust the meaning of the "right to life," for that involves economic as well as political conditions. Nor does political liberty and freedom from violence or aggression exhaust the meaning of the "right to liberty." That also involves economic factors, i.e., conditions which provide the freedom of a man's time from toil for subsistence and a certain degree of independence of other men with regard to his hold on the means of his own subsistence. These economic aspects of the right to life and liberty, together with all the other economic goods which are elements of happiness and are involved in its pursuit, are not covered in the Preamble unless they are covered by the general welfare clause.

It is the contention of this paper that we must so interpret the general welfare clause in our 20<sup>th</sup> century re-thinking of the Constitu-

tion; and we must do so with an understanding of why that interpretation was not and could not be put on the general welfare clause in the 18<sup>th</sup> century.

The first step toward that understanding can be taken by considering the one clause in the Preamble which has not yet been dealt with: “to establish justice.” As liberty has both a political and an economic significance, so justice is concerned with the distribution of both political and economic goods. If (i) the fundamental equality of men consists in their common humanity, in terms of which happiness and its pursuit involves certain common elements for all men; and if (ii) the equality of men in relation to government consists in their equal possession of the basic natural rights, in regard to which they are equally entitled to the protection of government; and if (iii) justice requires a government to treat equals equally and to render to each what is due him by right, then to establish justice, a government must establish the institutions of both political and economic democracy. It establishes political democracy by the institution of universal suffrage, whereby it grants to every man the equal status of enfranchised citizenship and, with that, the political liberty to which all are equally entitled. It establishes economic democracy by whatever measures or institutions promote the general welfare in such a way that every man has at least the indispensable minimum of the economic goods that he needs for his pursuit of happiness. (In the economic as well as the political sphere, the individual may, of course, forfeit his rights by his own misconduct or have to be treated as a ward of society because of incompetence.) As political democracy abolishes the distinction between a ruling and a subject class, so economic democracy abolishes the distinction between the “haves” and the “have-nots” with respect to the economic factors in the pursuit of happiness.

Even though the establishment of our Constitution was preceded by the declaration that all men are by nature equal and are equally endowed by nature with certain unalienable rights, and even though the Preamble to the Constitution calls for the establishment of justice, those who drafted our Constitution in the 18<sup>th</sup> century did not and could not think of political and economic democracy as something then practicable. For some of them, it was not even desirable: their image of “the people” did not embrace the whole population, but only men like themselves or of their own class. For others in the 18<sup>th</sup> century, as Lincoln later remarked, the propositions about human equality and equal rights in the Declaration of Independence were at best a pledge to the future, in the faith that future conditions might make politically and economically practicable what no prudent statesman would have attempted to institute

under 18<sup>th</sup> century conditions.

The revolutions which changed the whole picture. The industrial revolution has at last made our society affluent enough to make economic democracy practicable; and, over the last hundred years as more and more men have come to share in the economic conditions prerequisite for active citizenship, we have progressively extended the suffrage to more and more. Where the 18<sup>th</sup> century was compelled by circumstances to think of the few, or considerably less than all, as participants in political life and in the pursuit of happiness, we in the 20<sup>th</sup> century can and, for the most part, do think practically in terms of human equality and equal rights. When we say that all men should be free politically, or that government should promote the general welfare so that all men can effectively engage in the pursuit of happiness, we mean all men, not some. Nothing could be more revolutionary.

#### *4. ECONOMIC CONDITIONS OF THE PURSUIT OF HAPPINESS IN THE 18<sup>th</sup> AND 20<sup>th</sup> CENTURIES*

In the 18<sup>th</sup> century those men who had what Locke called “estates” had some grasp on the economic goods needed for the pursuit of happiness. Let us refer to them as “men of property,” where property means not just some supply of consumable goods, but sources of income. Only men who had substantial property in this sense really had access to the whole range of economic goods for themselves and their families, such things as educational facilities, adequate medical care, and ample free time for the liberal pursuits of leisure, over and above a decent supply of the means of subsistence. Men of limited estates, owners and operators of small farms or small businesses, were often unable to do much more than provide for their daily needs by toil which consumed a large part of their time. Nevertheless, in the 18<sup>th</sup> century view, the men of property had, in varying degrees, the economic independence requisite for political liberty and access to the economic conditions requisite for the pursuit of happiness.

It was in these terms that 18<sup>th</sup> century statesmen defended a property qualification for suffrage. It was also in these terms that we can understand what Jefferson might have had in mind when he revised Locke’s “life, liberty, and estates” to read “life, liberty, and the pursuit of happiness.” If those who had estates were secured in their possession, the protection of their property rights by government was equivalent to abetting their pursuit of happiness insofar as that involved something more than the preservation of their lives and liberties, and perhaps also the preservation of peace, at home

and abroad. In addition, the protection of property rights (in the sense of “estates”) was certainly one of the principal things contemplated in the 18th century by those who called for the establishment of justice. Hence, if justice were done, domestic tranquility preserved, the common defense maintained, and the blessings of liberty conferred, little if anything more was needed to promote the general welfare in the sense in which Madison identified it with the happiness of the people, i.e., of the enfranchised citizens of the republic who were fortunate enough to be in an economic position that facilitated their pursuit of happiness or even made it possible.

What about those less fortunate, the men with insufficient property or no estates at all and little or no opportunity for access to them?

Both Adams and Jefferson proposed the widest possible diffusion of the ownership of property (thinking mainly, of course, in terms of land) as the only way to realize their ideal of the republic as a free society. It is not clear how far either Adams or Jefferson intended their recommendations to go, but we know that they wished for a large middle-class of small property owners. In their view, the safety and prosperity of the republic as a free society depended on a citizenry thus constituted in the main. Even though it was not possible for them to see it through to its logical conclusion, their view contains, in germ, the ideal of a politically and economically classless society, i.e., one in which the ever-growing middle class pushes out the upper and lower fringes and becomes the only class. This is just another way of describing our twentieth century approximation to the mass society in which all men are enfranchised citizens and men of property, *or* men who have the economic equivalents of property.

Within the framework of the pre-industrial and far from affluent economy of the 19th century, the widest possible diffusion of the ownership of income-producing property would necessarily have fallen far short of the universalism implicit in the ideal. Even taking the frontier domains and westward expansion into account, even allowing for a favorable balance of trade in foreign commerce, the limited amount of land available and the limited productive power of other forms of capital, when considered in relation to a constantly increasing population, would have imposed severe limits on the extent to which the vision proposed by Adams and Jefferson could have been realized at any time prior to the 20<sup>th</sup> century. Until technological advances increased the power of capital instruments to produce a volume of wealth fully commensurate with the basic economic needs of the whole population, and to do that with a diminishing consumption of the time individuals must

spend in toil, our society was simply not wealthy enough to conceive of its government's having, in justice, the obligation to promote the general welfare through the widest possible diffusion of the economic goods needed for the pursuit of happiness.

Under the conditions of affluence already attained or within reach, the widest possible diffusion no longer need fall short of the whole population. It is now practicable, as it never was before, for justice to be done by securing to every man his natural rights, especially the right to political liberty and the right to the pursuit of happiness, insofar as both these rights involve the economic welfare of individuals or families. Any reconstruction of the Constitution in accordance with present realities must, therefore, take the greatly enlarged view of the obligations of government, which results from seeing how far it is now practicable to do justice by treating *all* men as equally endowed with natural rights and equally entitled to their protection.

Insofar as this enlarged view concerns the general welfare clause in the Preamble, and the empowerment of Congress to provide for the general welfare in a revised version of Article I, Section 8, it calls on us to solve the problem of how the widest possible diffusion of economic goods should be accomplished. That we should try to solve it in a way which would make the promotion of the general welfare consistent with the preservation of our fundamental liberties, need not be argued here; nor need it be argued that a just distribution of wealth among individuals or families should be based on the contribution they make to its production. But this leaves quite open the question whether the widest possible diffusion of economic goods can or should be accomplished (i) through private property in the means of production, with the traditional rights of possessory private property fully restored, or (ii) through what I have been calling "the economic equivalents of such property." I shall consider these alternatives, and their relation to liberty, in the section to follow.

##### *5. ECONOMIC WELFARE AND THE BLESSINGS OF LIBERTY*

We are here concerned with alternative ways in which individuals can have the economic goods they need for the pursuit of happiness.

In this context, I shall mean by "income-producing property" an individual or family estate (whether land or other capital goods) large enough to provide for the physical well-being and health of a family, its access to the pleasures of sense, its access to formal ed-

ucational facilities and other opportunities for learning, with enough free time from toil to take advantage of these opportunities and to engage in the liberal pursuits of leisure, and with enough economic independence for the exercise of an independent voice in public affairs.

The image which this brings to mind is, of course, the image of possessory private property as it existed in the 18<sup>th</sup> century and through most of the 19<sup>th</sup>. I shall waive for the moment the question whether property in this sense, with all the rights of ownership which these earlier centuries recognized and enforced, has now vanished or is rapidly vanishing under 20<sup>th</sup> century conditions of corporate or collective capitalism. I shall also waive the question whether it can ever be restored again, even though it may now have to consist largely in the ownership of shares of equity in capital instruments corporately managed. I shall assume for the moment that it can be restored and invested with its traditional rights, even if that requires a radical reconstitution of corporate enterprise and a restoration of the owners to power over the managers.

Making this assumption will enable me to draw a sharp contrast between two possible ways in which a democratic government can promote the general economic welfare. Should the assumption prove false, the one of the two possibilities be eliminated, the contrast will sharpen our sense of what is involved in taking the other course, if that should turn out to be the only practicable alternative.

The other course is one which we have in fact been taking for the last thirty years or a little more. It involves the widest possible diffusion of economic goods through the economic equivalents of income-producing property. When I speak of "the economic equivalents of income-producing property," I have two situations in mind.

Let us consider, first, the situation of a wage-earning family in the United States, one that owns no share of capital at all and has no private property except in consumable goods, and one in which the wage-earners are unionized. *In the total absence of income-producing property*, such a family can have a decent supply of the means of subsistence and the comforts and conveniences of life; it can have living and working conditions conducive to health; it can have adequate medical care; it can have access to the pleasures of sense; it can have access to formal educational facilities and to other opportunities for learning; and it can have all these things with enough time free from toil to take advantage of them, *though it may not have them with enough economic independence to exer-*

*cise a politically independent voice in public affairs.* In other words, without any income-producing property, it can have almost all the economic goods that were enjoyed by an 18<sup>th</sup> century family with an estate large enough to supply these goods. Therein it has a reasonably firm hold on the economic conditions requisite for citizenship, for engagement in the liberal activities of leisure, and for an effective pursuit of happiness.

Let us consider, second, the situation of a family whose income is partly derived from wages and partly from dividends of the profits earned by capital, or even a family whose income is entirely derived from the latter source. Such families might also conceivably have all the economic goods that were enjoyed by an 18<sup>th</sup> century family with an estate large enough to supply these goods; but they would still have it *in the absence of possessory property in the 18th century sense*; for, under the form which corporate or collective capitalism has taken in this century, their ownership of shares in corporate equities does not carry with it the full parcel of rights which belonged to 18<sup>th</sup> century proprietors. These rights have been in large part eroded or attenuated. Hence such families can also be described as having the economic equivalents of property, excepting, of course, some of the rights possessed by 18<sup>th</sup> century proprietors. Lacking these, they may also, to a significant degree, lack the economic independence and power which such rights conferred upon their ancestors; and in this respect, they may not be as well off as unionized wage-earners who derive some economic independence from the power of the union to which they belong.

For the moment, we shall not be concerned with the extent and character of the power a government must exert over the economy in order to promote the general welfare through providing for and protecting the possession of the economic equivalents of property on as wide a base as is now possible. Nor shall we consider, for the moment, the difference between a government which promotes the general welfare in this way while at the same time protecting the attenuated existence of private property in the means of production, and a government which thinks it necessary for the general economic welfare to abolish private property entirely and transfer ownership of all means of production to the state. For the moment, we need only observe that in both cases it is possible, given an affluent society, for all families to have *almost all* the economic equivalents of income-producing property, even if no families have such property (as in the completely socialized economy) or if, having such property in an attenuated form (as in our completely socialized economy), they lack many of the property rights possessed by 18<sup>th</sup> century proprietors.



I said “*almost all* the economic equivalents” because, as already noted, in one important respect they may not have one economic equivalent of income-producing property as it existed in the 18<sup>th</sup> century, namely, economic independence and power. They lack this to whatever extent they are dependent upon or subservient to the power of government for their access to wealth and the economic goods which wealth provides. The worker in the completely socialized economy is probably the worst off in this respect, though in all other aspects of his economic welfare he may be as well off in the completely socialized economy as in our partly socialized economy, given an equal degree of affluence in both economies. And in our partly socialized economy, the non-unionized, non-owning wage earner or salaried employee has less economic independence and power than either the members of strong unions, on the one hand, or salaried employees who are also share-holders of capital, on the other. Neither of these groups, however, have nearly as much economic independence and power as the proprietors of substantial estates in the 18<sup>th</sup> century who thought of a government as promoting their economic welfare and aiding their pursuit of happiness by doing no more than safeguarding their estates and all their rights as proprietors of them.

The most important thing to note about the substitution for property (in the 18<sup>th</sup> century sense) of its economic equivalents is that the economic power which the 18<sup>th</sup> century proprietor possessed is not among the substitutable equivalents. Adams, following Harrington, made much of the fact that power follows property. and that as property is diffused, so is power. But when, in the 20<sup>th</sup> century, we try to diffuse the economic equivalents of property instead of property itself, we cannot also diffuse economic power. On the contrary, we must concentrate economic power in the hands of those agencies which are engaged in diffusing the economic equivalents of property.

When the agency of diffusion is the state, as in Soviet Russia, it is also the only property-owner. But when, as in our country, the diffusion is accomplished through private corporations and labor unions as well as by the state, the concentrated economic power which they must possess, in order to function as the agencies for diffusing the economic equivalents of property, need not be wholly or even largely dependent on their ownership of the means of production. It may derive, in large part, from their administrative control over the diffusion of the economic equivalents of property, that is, all the equivalents except the economic power which they must retain in order to function as they do.

With these things noted, I shall now briefly contrast two ways of promoting the general welfare in our present affluent industrial society.

The first consists in the widest possible diffusion of private ownership of income-producing property instead of the widest possible diffusion of the economic equivalents of such property. It calls for a 20<sup>th</sup> century realization of the ideal proposed by Adams and Jefferson in the 18<sup>th</sup>. That ideal, as we have seen, envisaged a nation of property-owning citizens, whose economic independence, derived from property, would match and reinforce their political liberty as citizens.

Furthermore, as Adams pointed out, a wide diffusion of economic power, along with property, in the hands of individual citizens would prevent the concentration of economic and political power in the hands of government, or in the hands of a small owning-and-ruling class. It would thus safeguard the institutions of a free society, the most serious threat to which is the concentration of economic and political power in the hands of the privileged few or in the hands of a government which they actually, if not nominally, control. If we turn from political liberty and the institutions of a free society to the pursuit of happiness, the private ownership of income-producing property and the protection of property-rights, as the 18<sup>th</sup> century understood them, would also provide the requisite economic welfare.

What, then, is involved in realizing this ideal under 20<sup>th</sup> century conditions? On the one hand, the affluence and industrial power of our economy now makes it possible for the widest possible diffusion of either income-producing property or its economic equivalents to include all or almost all families. On the other hand, the corporate or collective form of our capitalism *appears* to make it impossible for the share-owner of equities to have the economic power and rights which belonged to 18<sup>th</sup> century proprietors. If it were in fact impossible, as Messrs. Berle, Means and many others claim, then we would face an insurmountable obstacle to creating a nation of citizen capitalists who would be property owners in the 18<sup>th</sup> century sense.

Against this claim, Mr. Kelso and I contend that the full rights of private property can be restored to the share-owner of equities in capital, by legislation affecting the organization and operation of corporations, the relation of owners to management, and the distribution of profits to owners. With property rights restored and pro-

tected by law, the one remaining task would be to accomplish the widest possible diffusion of private property in capital. Mr. Kelso and I have outlined a variety of measures for spreading the ownership of existing enterprises as well as creating new capitalists with the creation of new capital, together with measures for limiting the size of capital estates, so that, ultimately, every family can derive at least part of its annual income from the earnings of capital, and progressively more from this source and less from the wages of labor.

We have called this revolutionary program (with some propriety, we think) the “capitalist” solution of the problem of how our government can promote the general economic welfare in a way that (i) preserves the institutions of a free society, (ii) reinforces the political liberty of citizens by giving them the economic independence and power which income-bearing property confers when property rights are fully protected. (iii) establishes justice with respect to the distribution of wealth, and (iv) secures to them and their families the economic conditions needed for an effective pursuit of happiness.

This is not the place to set forth these proposals in detail nor to argue their feasibility. Suffice it to say that, if they are feasible, they represent a much more desirable solution of the problem than the one currently being tried in this country. That solution involves what Mr. Berle has described as “the socializing of property”; and even though it falls short of complete socialism by retaining some vestige of private property in the means of production, we think it is proper to call it the “socialist” solution in contrast to the “Capitalist” solution we have proposed.

The complete socialism of a society which has vested the ownership of the means of production entirely in the hands of the state, and thus concentrated economic and political power in the central government (or, what is in effect the same, in the hands of its bureaucrats) and the incomplete socialism of our corporate and laboristic capitalism (with great economic and political power in the hands of corporation-managers and union-leaders, as well as an increasing concentration of economic power in the central government which must control these power groups) have much in common so far as the promotion of the general economic welfare is concerned. With the total abolition of private property in the one and with the progressive erosion of its rights in the other, both can provide its people with the economic conditions for the pursuit of happiness *only* by attempting to diffuse among them the economic equivalents of property.

In both cases, though to a different degree, this involves the management and even operation of the economy by the government: it requires government to engage or intervene in the production and distribution of wealth; it requires government to guarantee, through “welfare legislation,” a decent minimum subsistence, sufficient free time from toll, economic security for the old or disabled; as well as to provide directly, through “welfare services,” access to educational and medical facilities, decent housing, and even amusements. But, as we have seen, it cannot give the individual citizen the economic power and independence which only income-producing property with full rights is able to confer. On the contrary, it makes him economically subservient to the central government (under complete socialism) or to corporations, labor-unions, and the government (In our partly socialized economy.) In addition, it produces great concentrations of political and economic power instead of diffusing them.

Consequently, while the socialist solution of the problem of promoting the general welfare through diffusing the economic equivalents of property (i.e., all except the economic independence of the individual) may succeed to whatever extent the affluence of the economy makes it practicable to see that every family has at least a minimum supply of the economic goods needed for the parson of happiness, it does so in a manner which would appear to be inconsistent with the preservation of liberty.

It may be objected that the incomplete socialism of the United States and England has not yet caused any diminution in their traditional liberties, either the loss or weakening of political liberty on the part of their individual citizens or the deterioration of their free institutions. It may be argued, therefore, *that so long as socialism remains incomplete*, and mixed with some private ownership of the means of production, however attenuated its property rights may become, we need not fear any serious loss of liberty with the widespread substitution for old-fashioned private property of socialized property or the economic equivalents of property. Our constitutional and democratic government can promote the general welfare by diffusing the economic equivalents of property and still preserve the blessings of liberty.

The fact that Soviet Russia is a “welfare state” but not a “free society,” may be explained by two differences between it and our country: (i) it had no tradition of political liberty and free institutions to preserve; and (ii) state ownership of the means of production carried the socialization of property too far. It may even be

said that it is still too early to judge whether complete socialism is incompatible with constitutional democracy; and it may be predicted that Soviet Russia, once it has advanced far enough industrially, has become affluent enough, and has secured itself against threats from within and from abroad, will be able to retreat from totalitarianism and give its people a full measure of liberty along with a high standard of economic welfare, yet without restoring private property in the means of production.

Against these objections, arguments, and predictions, this paper must content itself with offering two points for consideration.

The first is that state ownership of the means of production concentrates political and economic power in the hands of government, or the reigning bureaucrats, to a degree which makes constitutional democracy impossible. With the developments mentioned above, Soviet Russia may be able to give its people a high standard of economic welfare, but so long as it retains complete socialism it will never be able to give them political liberty or free institutions.

The second point to be considered turns on the following question: *Can the progressive socialization of our economy, which has taken place in this century and especially during the last thirty years, be stopped short of complete socialism?*

If that can be done, then, of course, the partial socialism with which we are currently attempting to solve the problem of promoting the general economic welfare may leave intact the political liberty and the free institutions we still have, or at least not seriously weaken them. The socialist solution, as we are now working it out, would then appear to be as desirable as the capitalist solution; or, considering the one respect in which it fails to provide the economic equivalent of property, namely, economic independence for the individual, it may still appear to be almost as desirable and, in addition, much more feasible or even the only really feasible way to promote the general economic welfare under 20<sup>th</sup> century conditions.

On the other hand, if the answer to the question posed above is that the trend toward complete socialism can be stopped only by taking radical steps in the opposite direction, by whatever measures are needed to put the capitalist solution of the problem into operation, then we are confronted by the following dilemma: to promote the general economic welfare, *either* we must continue along our present path even if that leads to complete socialism and the loss of liberty, *or* we must try to reverse the trend

of this century and attempt to make the capitalist solution work for the sake of preserving our liberties.

## 6. CONCLUSION

It has been the controlling contention of this paper that the promotion of the general economic welfare has now become the paramount objective of our constitutional democracy and that any 20<sup>th</sup> century reconstruction of our Constitution must so regard it, even if serving that end involves some sacrifice of, liberty. In the light of that thesis, this paper concludes with a number of questions for those who are engaged in the task of re-thinking the Preamble and subsequent provisions of the Constitution.

*First*, is the dilemma formulated at the end of the preceding section an unreal one and quite avoidable, because we can continue to follow our present method of promoting the general welfare and still stop short of complete socialism, thus preserving our fundamental liberties?

*Second*, if the answer to the first question is affirmative, then what provisions should be introduced into the Constitution to place limits on the socialization of the economy in order to make sure that the promotion of the general welfare by the diffusion of the economic equivalents of property does not lead to any serious impairment of political liberty or our free institutions?

*Third*, if the answer to the first question is negative, and the dilemma cannot be avoided, then in terms of which of the two alternatives that we have so far considered should it be resolved, assuming both to be feasible and considering their relative feasibility and desirability?

*Fourth*, should the capitalist solution be judged unfeasible, no matter how desirable it might be, and should the socialist solution, though feasible, be judged undesirable because of the destruction of liberty if it must eventually bring about, can some feasible and desirable solution be found, which will both promote the general economic welfare and preserve the blessings of liberty?

## Appendix

### TEXTS WITHOUT COMMENT

1. But a state exists for the sake of a good life, and not for the sake of life only: if life only were the object, slaves and brute an-

imals might form a state, but they cannot, for they have no share in happiness or in a life of free choice. (Aristotle, *Politics*, Book III, Ch. 1280<sup>a</sup>31-34)

2. There remains to be discussed the question, Whether the happiness of the individual is the twine as that of the state, or different? Here again there can be no doubt—no one denies that they are the same.... It is evident that the form of government is best in which every man, whoever he is, can act best and live happily. (Aristotle. *ibid.*, Book VII, Ch. 2, 1324<sup>a</sup>5-25)
3. The happiness and well-being which all men manifestly desire, some have the power of attaining, but to others, from some accident or defect of nature, the attainment of them is not granted; for a good life requires a supply of external goods, in a less degree when men are in a good state, in a greater degree when they are in a lower state. Others again, who possess the conditions of happiness, go utterly wrong from the first in the pursuit of it. But since our object is to discover the best form of government, that, namely, under which a city will be best governed, and since the city is best governed which has the greatest opportunity of obtaining happiness, it is evident that we must clearly ascertain the nature of happiness. (Aristotle, *ibid.*, Book VII, Ch. 13, 133<sup>b</sup>39-1332<sup>a</sup>8)
4. *A constant determination to a pursuit of happiness, no abridgment of liberty.* But to give a right view of this mistaken part of liberty let me ask,—Would any one be a changeling, because he is less determined by wise considerations than a wise man? Is it worth the name of freedom to be at liberty to play the fool, and draw shame and misery upon a man's self? If to break loose from the conduct of reason, and to want that restraint of examination and judgment which keeps us from choosing or doing the worse, be liberty, true liberty, madmen and fools are the only freemen: but yet, I think, nobody would choose to be mad for the sake of such liberty, but he that is mad already. The constant desire of happiness, and the constraint it puts upon us to act for it, nobody, I think, accounts an abridgment of liberty, or at least an abridgment of liberty to be complained of. God Almighty himself is under the necessity of being happy; and the more any intelligent being is so, the nearer is its approach to infinite perfection and happiness. (Locke, *Essay Concerning Human Understanding*, Book II Ch. XXI, Section 51)
5. [The utilitarian] standard is not the agent's own greatest happi-

ness, but the greatest amount of happiness altogether; and if it may possibly be doubted whether a noble character is always the happier for its nobleness, there can be no doubt that it makes other people happier, and that the world in general is immensely a gainer by it. Utilitarianism, therefore, could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefited by the nobleness of others, and his own so far as happiness is concerned, were a sheer deduction from the benefit...According to the Greatest Happiness Principle, as above explained, the ultimate end, with reference to and for the sake of which all other things are desirable (whether we are considering our own good or that of other people), is an existence exempt as far as possible from pain, and as rich as possible in enjoyments, both in point of quantity and quality, the test of quality being the preference felt by those who in their opportunities of experience, to which must be added their habits of self-consciousness and self-observation, are best furnished with the means of comparison. This, being, according to the utilitarian opinion, the end of human action, is necessarily also the standard of morality; which may accordingly be defined, the rules and precepts of human conduct, by the observance of which an existence such as has been described might be, to the greatest extent possible, secured to all mankind. (J. B. Mill, *Utilitarianism*, Ch.2)

6. It results from the preceding considerations, that there is in reality nothing desired except happiness. Whatever is desired otherwise than as a means to some end beyond itself, and ultimately to happiness, is desired as itself a part of happiness, and is not desired for itself until it has become so. (J. S. Mill, *ibid.* Chap. 4)
7. It is not equally true, that men in general, in every society, who are wholly destitute of property, are also too little acquainted with public affairs to form a right judgment, and too dependent upon other men to have a will of their own? If this is a fact, if you give to every man who has no property, a vote, will you not make a firm encouraging provision for corruption, by your fundamental law? Such is the frailty of the human heart, that every few men who have no property, have any judgment of their own. They talk and vote as they are directed by some man of property, who has attached their minds to his interest.... Harrington has shown that power always follows property. This I believe to be as infallible a maxim in politics, as that action and reaction are equal, is in mechanics. Nay, I believe we may advance one step farther, and affirm that the balance of power in



a society, accompanies the balance of property in land. The only possible way, then, of preserving the balance of power on the side of equal liberty and public virtue, is to make the acquisition of land easy to every member of society; to make a division of land into small quantities, so that the multitude may be possessed of landed estates. If the multitude is possessed of the balance of real estate, the multitude will have the balance of power, and in that case the multitude will take care of the liberty, virtue, and interest of the multitude, in all acts of government. I believe these principles have been felt, if not understood, in the Massachusetts Bay, from the beginning. (John Adams, letter to James Sullivan, May 26, 1776. *Works*, IX, 976-377)

8. It has been the fashion to speak of the conflict between human rights and property rights, and from this it has come to be widely believed that the cause of private property is tainted with evil and should not be espoused by rational and civilized men. In so far as these ideas refer to plutocratic property, to great impersonal corporate properties, they make sense. These are not in reality private properties. They are public properties privately controlled and they have either to be reduced to genuinely private properties or to be publicly controlled. But the issue between the giant corporation and the public should not be allowed to obscure the truth that the only dependable foundation of personal liberty is the personal economic security of private property.

The teaching of history is very certain on this point, It was in the mediaeval doctrine that to kings belong authority but to private persons, property, that the way was discovered to limit the authority of the king and to promote the liberties of the subject. Private property was the original source of freedom. It is still its main bulwark. Recent experience confirms this truth. Where men have yielded without serious resistance to the tyranny of new dictators, it is because they have lacked property. They dared not resist because resistance meant destitution. The lack of a strong middle class in Russia, the impoverishment of the middle class in Italy, the ruin of the middle class in Germany, are the real reasons, much more than the ruthlessness of the Black Shirts, the Brown Shirts, and the Red Army, why the state has become absolute and individual liberty is suppressed. What maintains liberty in France, in Scandinavia, and in the English-speaking countries is more than any other thing the great mass of people who are independent because they have, as Aristotle said, “a moderate and sufficient property.” They

resist the absolute state. An official, a teacher, a scholar, a minister, a journalist, all those whose business it is to make articulate and to lead opinion will act the part of free men if they can resign or be discharged without subjecting their wives, their children, and themselves to misery and squalor. (Walter Lippmann, *The Method of Freedom*, 1934, pp. 100-102)

9. The procedure is new. The ideal is old. It is the ideal of the free man secure as against all the principalities and powers of the world. Its permanent concern is for those who are, as Aristotle described them, in the middle condition. Its special concern is to bring as many as possible to this middle condition. Free men with vested rights in their own living: men like these alone, and not employees of the state or the disinherited who today walk the streets and are at home nowhere, can constitute a free society.

In their independence liberty has its roots down deep in human nature. In their hands the state is most nearly representative of the general good. With them peace and order are most likely to prevail against the violence of factions and the stratagems of adventurers. By them the public business is most likely to be coolly and prosaically conducted. For in all the orbit of their own independence there is ample scope for initiative and adventure and excitement, and they need not seek it in the streets. They are too firmly established in their own separate interests to be easily susceptible to the contagious fevers of huddled and amorphous crowds. Let it be said that they do not respond readily to a grandiose and magniloquent tempo in public affairs; that they count the costs and are not easily impressed, in fact that they rather dislike what is too clever and too original. They have hold of the substance of liberty and they cling to it. They are stubborn and careful. But they have self-respect and, of their fate, though it be a small one and private, they are the masters. (Walter Lippmann, *The Method of Freedom*, 1934, pp. 112-113)

10. To say that liberal democracy rests on private property is almost pure tautology. To discuss policy problems of “property” would be to discuss almost all economic-policy problems of our society. Only a few discursive remarks on the subject are here in order.

Private property in the instruments of production is an institutional device both for dispersing power and for securing effective organization of production. The only simple property sys-

tem is that of a slave society with a single slaveowner—which, significantly, is the limiting case of despotism and of monopoly. Departure from such a system is a fair measure of human progress. The libertarian good society lies at an opposite extreme, in the maximum dispersion of property compatible with effective production, or, as process, in progressive reconciliation of conflicts between equality and efficiency. Such process involves increasing dispersion both of wealth among persons or families and of proximate productional control among enterprises or firms.

Basic to liberty are property rights in labor or personal capacities. The abolitions of slavery and serfdom are the great steps toward freedom—and, by the way, are striking reconciliations of apparent conflict between productional and distributional considerations. Property in one's own services, however, is a secure, substantial right only where there are many possible buyers. It thus implies private property in other resources and freedom of independent sellers of labor to choose and to move among autonomous, independent organizations or firms. It also implies a distinctively modern institutional achievement, namely, the separation or dissociation of the economic and the political—a political order that sustains formal rights and a largely separate economic order that gives them substance. Otherwise, freedom to contract for one's services is merely an anomalous, synthetic, administrative construct, resting on "platforms" or on "administrative law," that is, freedom to contract with a single buyer or to choose among the offers of a single ultimate authority. (Henry Simons, *Economic Policy for a Free Society*, 1848. pp. 27-28)

11. With the rise of the pension trusts into the "passive-receptive" end of the corporation structure, the old "passive-receptive" stockholder is gradually disappearing. At best he is, shall we say, a pensionnaire. The last vestige of his power to legitimate a management by a vote, is in the hands of the pension trustees. He has an expectation arising out of the fact that he may have performed a certain number of years of acceptable work and fulfilled a certain number of other conditions. But does he have any property right in the pension trust? The courts say no. The power—what is left of it—lies in the trustees, or in those insurance companies which administer trusts.

When power is lodged in a particular group it has no choice except either to exercise it or to try to revolutionize the system. There is no way of avoiding power. If you take it and refuse to

exercise it you suffer the fate of King Lear—the King who wanted to be king but did not want to be bothered. The trust funds admit they have it but they have thus far refused to use it. This situation cannot last very much longer. Somebody is bound to use that power, of necessity. Pension trusts are so concentrated that a relatively small amount in equities outbalances any number of scattered holdings.


The private property system in production, which began with our great-grandfather's farm and forge, has almost vanished in the vast area of American economy dominated by this system. Instead we have something which differs from the Russian or socialist system mainly in its philosophical content. Under a pure socialist or Communist system, in theory, every worker has an old-age pension at the end of his labors. We are developing the same thing by "socializing" property without a revolution. It is one of our more amazing achievements. Whether one likes it or not depends on one's philosophy.

Possessory private property in this area has been metamorphosed. In its place is a power pyramid. At the moment this is a management pyramid, but it is beginning to be balanced by a pyramid of men who have no possible property interest in the actual corpus but do have the power of choice—the pension trustees. These are naked power vehicles, with the "receptive" end so far dispersed that it cannot even be discerned. To make the joke complete, let us suppose that a pension trust liquidated itself tomorrow and satisfied its contract obligations. If it was a well-run trust, there would be a balance left over. That balance would very likely escheat to the state because there was no claimant to it left. In the most violent private-property-minded country in the world this is perhaps one of the most magnificent economic jests the world has seen. (Adolph Berle, *Economic Power and the Free Society*, 1958 pp. 12-14)

12. Even more important than the size and transiency of the emerging middle class is the fact that its members are not men of property. The concept of property has been an inseparable part of political theory since the close of the Middle Ages. "As the feudal system merged into the king state," A.A. Berle has written, "the revolutionary doctrine that there should be private property began to assert itself, reaching a high degree of philosophical justification in the middle of the eighteenth century when the French physiocrats declared that if a man was to be free, able to speak his own mind, depict his own thought and develop his own personality, he would have to have a base apart from one that was politically or ecclesiastically organized

and controlled.”

The rationale for private property is as valid today as it was two centuries ago. The man without property is powerless and defenseless. Property is—to mix metaphors—both a hedge and a pedestal. It is a hedge in the sense that it provides an area of freedom for the property-owner. Inside this hedge—small or large—the owner is free to express his own personality. To be sure, government and society, trade unions and other property-owners are all liable to intervene in the sacred domain. Nevertheless, the principle of property is that you are free to do as you like in your own holding. Property is also a pedestal in that it gives its owner an extension of his personality, something more to stand on than his own two feet. Men and women with property automatically have more power—and usually more prestige—those without it. To paraphrase George Orwell, the possession of property makes some men more equal than others.

“It may be a nuisance sometimes not to have a private income,” C. P. Snow has one of his characters, a young graduate of medical school, say after being disinherited by his wealthy father. “I mean there are times when it’s valuable for a doctor to be independent of his job. He can do things and say things that otherwise he wouldn’t dare. Some of us ought to be able to say things without being frightened for our livelihood.” Independence of mind, freedom of action, can only result from possessing a source of income which is securely one’s own. This is why Jefferson called for an America in which everyone would be a property-owner. It is idle to call on propertyless men to be heroes or martyrs. One in ten thousand will answer such a call, and he will do it for reasons which are both unpredictable and highly personal in their origin. (Andrew Hacker, *Politics and the Corporation*, 1958, p.7) 

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