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THE Libertarian Forum

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THE PRESIDENCY '76 THE MORNING LINE

We are writing this article after the early caucuses but before the first primaries — a good time for an interim assessment of the Presidential sweepstakes. First, probably the most important issue that has arisen for libertarians is the sudden and rising counter-revolution the abortion question. Well-financed and raucous, using all the available propaganda techniques, the "Pro-Lifers" are clearly making this Presidential year the focal point of their counter-revolution: to overthrow the Supreme Court decision and to criminalize abortion once more. Cleverly, while the Catholic Church is of course the major force in this nationwide effort, the Catholics have managed to draw in fundamentalist Protestants and some Orthodox Jews in an effort to cast off the theological odor of their campaign.

Let us make no mistake: Every woman has the absolute right to her own body. Outlawing abortion is a coercive invasion of that right; it is enslavement of women and compulsory baby-making. While the Supreme Court decision was not perfect, it must be rallied around to defend that vital natural human right. Yet where are the feminists now when they are needed for that defense? Here was one issue that the feminists were perfectly sound on; and yet now where are their voices? The feminists I have spoken to have declared themselves bored with the entire issue; wasn't it won several years ago? Perhaps so, but that victory is now in grave doubt, unless the feminists begin a vigorous counter-agitation against the Pro-Lifers. Surely here is an issue more important than the ERA or "chairman" vs. "chairperson."

Here, too, is an issue that the newly-formed Association of Libertarian Feminists can really take the lead on, and in the process advance the cause of abortion-freedom and of libertarianism in general. Here is a chance for libertarians to take the lead in a broad ideological alliance for human rights.

The Pro-Lifers have been using every bit of available demagoguery: including showing repulsive movies of bloody fetuses. OK, we can show movies, too, if it comes to that: of women being butchered by illegal abortionists in back alleys, of the discrimination against the poor that the old law entailed, of the imposed poverty and misery of the families that the State forced upon the world. Let us resolve: They shall not bring back the days of illegal abortions!

Meanwhile, however, the criminalizers proceed without opposition. Ronald Reagan has adopted the full pro-Lifer creed, and the other candidates hedge and fuzz the issue, but move cravenly into the anti-abortionist camp, including Ford's absurd call for a states-rights abortion amendment, and Jimmy Carter's typical fuzzy ambiguities. And, as the cutting edge of the criminalizing campaign, Ellen McCormack, young Catholic housewife from Long Island, is reaping a great deal of publicity from her race in the New Hampshire Democratic primary.

The big surprise of the Democratic race is the emergence of Georgia peanut merchant Jimmy Carter as the leader after the early caucuses.

Carter is a menace; for he is a hoked-up, phony—"good ole boy" version of the statist monster, Scoop Jackson. But Scoop, fortunately for American liberty and world peace, has all the charisma of a dead mackerel, and so he has to depend on the bosses in the large states; Scoop cannot survive a campaign where he has to "press the flesh." But "corn pone" Carter is the perfect flesh-presser, his ever-present smile masking the icy-blue eyes, his charisma remaining intact because of his constant and egregious waffling and evading of the issues. Until now, furthermore, Carter has been able to sucker the liberals, anxious to find a "good Southerner" to offset George Wallace. The liberal counter-attack against Carter has now begun, with a blistering critique by Steven Brill in the March *Harper's*: "The Pathetic Lies of Jimmy Carter." But will the counter-attack be in time?

I myself didn't take Carter seriously until the end of December, when the New York Times (Dec. 28) published a list of the economists advising each of the Presidential contenders. Many were predictable: Reagan had Friedman and the Friedmanites, Scoop had the No. 1 Corporate State businessman Felix Rohatyn of the international banking firm of Lazard Freres, Fred Harris has the socialists and semi-socialists: Michael Harrington, Bob Lekachman, Nat Goldfinger of the AFL-CIO. But, lo and behold! it was Jimmy Carter that the all-star cast of top Establishment liberals: Lester Thurow of MIT, Lawrence Klein of the University of Pennsylvania, Joseph Pechman of Brookings, Richard Cooper of Yale. Ho ho, said I to myself, is the "fix" in for Jimmy Carter? Is it indeed? The Carter boom, in fact, was launched by Time magazine, the quintessence of the Establishment. And now we find that Carter's top foreign policy adviser is none other than Columbia University's Zbigniew Brzezinski, Hubert Humphrey's top foreign policy strategist in the 1968 campaign. The centrist Brzezinski has long yearned to be Secretary of State, and now it looks as if he might get his wish.

As for Scoop, he is relying on the bosses: Mayor Daley of Chicago, and particularly the hack regulars of the New York Democracy. In New York, the up-state regulars, plus Brooklyn boss Meade Esposito (boss, also, of Mayor Abe Beame) and Queens Democrat leader Donald Manes, have declared openly for Scoop; in the meanwhile, Governor Hugh Carey and his minions (headed by state chairman and Bronx Democrat boss Pat Cunningham — now under a corruption cloud) are pushing their own "uncommitted" slate, which may well end up in the Jackson camp when the dust settles. The Democrat liberals in New York are at sixes and sevens — Bella Abzug and Harlem Congressman Charles Rangel have their own liberal uncommitted slate. In the meanwhile, in a particularly amusing note, the left-liberal reformers, headed by the "West-Side kids" who got their start in the Gene McCarthy movement of 1968, decided to push for Birch Bayh instead of the expected Fred Harris. The reason: "Bayh can win". Except that Bayh hasn't won much yet.

The most amusing note of the Democratic sweepstakes so far,
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Pres. '76 —

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however, is former North Carolina Governor Terry Sanford — once the favorite "good Southern" of the liberals. Getting no support anywhere for President, Sanford dropped out; but, when asked if he will return the federal matching funds, he said no, because he might decide to re-enter later on! That's it, Terry, whatever else happens, hang on to the money.

Meanwhile, the colorless, carefully comprising-liberal Mo Udall is hanging in there, hoping for lightning to strike in New Hampshire. Pennsylvania's Governor Milton Shapp, though getting virtually no support so far, and himself under a corruption cloud, is not dropping out either. He has fallen back on his last line of defense: a deal for a bloc of convention delegates from the Wallaceite law-and-order cop and mayor of Philadelphia, Frank Rizzo, a former Nixon Democrat. Plus a hope of undercutting Scoop Jackson for Miami Beach's Jewish votes in the Florida primary, on the frank appeal: "Isn't it time that we had a President?"

The Democratic race, so far, is a dismal swamp of strong conservative statists (Jackson and Carter), and weak liberals. In the wings, there is the "unannounced" candidate, the gasbag centrist and Old New Dealer Hubert Humphrey, whose personal style alone would be an affliction on the American public. Most interesting are two dark horses so dark as to be really "unannounced", from the new quasi-libertarian, anti-Big Government wing of the party, a wing growing in strength as a result of the increasing public revulsion against Big Government, the same revulsion which is misguidedly leading people into the camp of the warmonger Reagan. One, of course, is Governor Jerry Brown of California, who, in contrast to Reagan, is pro-peace and pro-civil liberties (especially the latter) as well as against Big Government domestically. His only hope rests with the California primary, the last one in the nation. The other is the original proto-Brown politico, Governor Dan Walker of Illinois. However, Walker the original Democratic budget-cutter, faces a formidable foe not troubling Jerry Brown: the Mayor Daley machine, the eternal enemy of Walker. Daley's candidate, the formidable Illinois Secretary of State Howlett, looked like a good bet to overthrow Walker in the Democratic primary for Governor, which of course would have ended any Presidential chances Walker might have had. But now, happily, Howlett has suddenly come under his own corruption cloud, so Walker might possibly pull through.

Meanwhile, in the Republican camp, Reagan remains the Number One menace, to American liberty and to the libertarian movement. It is vital to expose Reagan as the Pied Piper of the nationwide revulsion against Big Government, the piper who would lead the increasingly libertarian masses into a statist world of militarism and nuclear war. When challenged in New Hampshire about why he is opposed to amnesty to Vietnam War resisters, especially in view of the fact that Vietnam was not a war declared by Congress, Reagan answered: "I still think it ought to have been a declared war, and I still think we ought to have won it." (See A. Cockburn and J. Ridgeway, *The Village Voice*, Feb. 23, p. 15.) "We ought to have won it": there stands the true thinking and instinct of Ronald Reagan and of the conservative movement. How many tons of bombs, how many American lives, how many Vietnamese lives, would such a "victory" have cost? Reagan is the leading political conservative, and conservatism thirsts for mass murder. The fact that Reagan wants increased tax credits for investment pales in importance besides this stark fact.

Furthermore, as could have been predicted, Reagan's much vaunted and much-criticized "\$90 Billion plan" turns out to be a phoney. It took very little for Reagan to retreat; he now claims that the federal government should keep collecting the \$90 billion and then quickly turn the money over to the respective states on the spot. So much for the hope for drastic reductions in the federal income tax. Reagan has also expressly abandoned the idea of making Social Security voluntary. And when we realize, further, that Reagan wants massive increases in the military budget, we can full see the tinsel of Reagan's and conservative promises of leading the assault on Big Government at home.

And what indeed of abortion? What kind of "hostility" to Big Government is it that envisions the resumption of police enforcement against millions of women and against physicians?

In short, Ronald Reagan and conservatism are not opposed to Big Government at all. All that they want is shift in the priorities for government activity and expenditure: a bit less welfare, a lot more militarism, coerced "morality", and war overseas. Reagan must be stopped, and the sooner the better.

Meanwhile, the expected erosion of "libertarians" into the Reagan camp has begun, Dana Rohrabacher, the "troubadour" of the movement, and for many years an "anti-political" LeFevrian, has suddenly emerged as a top Reagan aide in New Hampshire. And several other leading LeFevrians are joining the Reagan camp as well. These defections are a fascinating example of how the two major, and seemingly diametrically, opposed "deviations" from the proper, plumb-line libertarian strategy — "left sectarianism" and "right opportunism", often complement and feed upon each other. For after several years of political inaction and hugging one's libertarian "purity" to one's bosom, despair tends to set in, and it becomes all too easy to yearn for some short-run gains — and hence the leap into right opportunism and to the evil of Reaganism. (The phenomenon works the other way too; many libertarians, disgusted with years of their own political opportunism on the right-wing, leap into the seemingly immaculate purity of left-sectarianism.)

Meanwhile, President Ford has been predictably waffling in the direction of Reaganism — notably in his clever device to "oversee" the monstrous, secret, and despotic CIA while proposing the crack down on the "leakers" who are at least trying to inform the American taxpayers on what these rascals are doing in our name; and in the Angolan fiasco, in which Kissinger obviously tried to prove that, at least in marginal areas, he can be as warlike as Schlesinger and the ultra-hawks. But — and this is no mean feat — the Ford Administration did have the guts to toss out the thuggish Pat Moynihan, who delighted the right-center Establishment by playing to the Zionist gallery. Moynihan now joins Schlesinger in leading the pro-war forces pressuring Ford-and-Kissinger from the right. It must be realized that, for all its numerous defects, the Kissinger balance-of-power imperial politics is far better than the war crusade of the right-wing; detente at least preserves a real if uneasy peace with the Soviet Union and preserves American lives and freedom from the holocaust of nuclear war. Meanwhile, Moynihan, returning to Harvard to help raise the next generation of the power elite, cranks up his unannounced campaign to gain the Democratic nomination for the Senate from New York — a campaign that has great attraction for the Old New Deal hack regulars who run the party in that state. For Moynihan is indeed a perfect reflection of the old FDR-Truman-Scoop Jackson mentality. A man who has had the intellectual — shall we call it, "flexibility" — to serve in top policy-making posts every President since Jack Kennedy, Moynihan is the Perfect Model of the Modern Social-Democrat: pro-statist at home, pro-Empire and pro-war abroad. Harvard is the perfect spot for him; given the alternatives, let us hope he remains there forever. □

We Make The Media!

The Libertarian Forum has just been recognized by the media — a libertarian first! The lively liberal bi-weekly, *The New Times* (Feb. 20, 1976), devotes a paragraph to our December, 1975 editorial, "Stop Reagan!" Having evidently read our editorial carefully, editor Tony Schwartz quotes from our stressing the menace of Reagan's pro-war foreign policy. Clearly, *New Times* believes this to be news because, as Schwartz puts it, "Ronald Reagan is facing strong opposition to his candidacy from a group in sympathy with many of his announced views." I.e., libertarians.

This event holds several lessons for libertarians. In the first place, in a repeat of the first media publicity for libertarians in the winter of 1970-71, liberals tend to be delighted to find groups of "rightists" who are opposed to Conservatives. Fine; because, while liberals are happy to underscore splits in the "right wing", the news of libertarianism itself gets disseminated to the public. And, finally, there is a happy coincidence here: for stopping Reagan is a vital task, and also happens to be a particularly newsworthy one. The more that we differentiate ourselves from conservatism and Reaganism the better — for we will be helping to save the country from war while disseminating libertarianism at the same time. □

Revisionism And Libertarianism

Introductory Note

What's happening at Reason? The long-awaited Revisionist issue of Reason finally appeared in February, 1976. There is good material there, particularly the excellent articles by William Marina ("U. S. Interventions: Aberrations or Empire?") and Alan Fairgate ("Non-Marxist Theories of Imperialism"). And yet — some references to Vietnam were cut out of the Marina article, mentions of the "ruling class" were excised from the Fairgate article, other commissioned articles on Cold War Revisionism were rejected, and my own eagerly commissioned overview for the Reason issue (which follows *verbatim*) was rejected by Messrs. Poole and Machan for three reasons: space, because they themselves disagreed that the U. S. is the major imperialist power, and because the article would be a shock to their readers. The latter is certainly true; judging from Reason readers' reactions to my own columns on foreign policy, their readers in almost desperate need of education to steer them away from their National Review-Birchite knee-jerk responses on foreign affairs. A "shock treatment" may well do them a world of good.

As a toperoo, Tibor Machan moved his own Viewpoint column out of order so as to be able to attack Revisionism in the issue itself. Tibor's argument is characteristic of a large number of right-wing libertarian views on foreign policy: the Argument from Ignorance. Tibor launches his article by conceding that "I am not an historian", that he knows nothing about foreign affairs, and that even his opinions are "not often well founded", after which he proceeds to give his opinions, including the "impressionistic viewpoint" that the "United States comes off better" than other countries in foreign affairs. Now come on, Tibor; would you ever say things like that in the area of philosophy?

As one might expect from that opening, the rest of Machan's column needs no detailed critique. Except to offer two definitions of imperialism in response to his query: a short one — "The use of coercion by the State of one country against the citizens of another country"; and a more expanded definition to apply to current Western imperialism in the Third World, from Leonard Liggio's brilliant article "Why the Futile Crusade?", and quoted in the Fairgate article in Reason's own Revisionist issue: "The imperialist power of the Western countries . . . imposed on the world's peoples a double or reinforced system of exploitative imperialism — by which the power of the Western governments maintains the local ruling class in exchange for the opportunity to superimpose Western exploitation upon existing exploitation by the local ruling states." After which, I call upon Messrs. Machan and Poole, plus the Reason readership, to read or reread the Fairgate article and all of the books and articles referred to therein. Perhaps then the ignorance of these and other right-wing libertarians will prove not to be "invincible" after all.

I do not mean to imply by all this that Reason is hopeless. On the contrary, as the libertarian movement's largest magazine, it commands the interest and concern of us all. But with foreign policy, with questions of war and peace, being the single most important topic for libertarians and for all Americans, it is particularly important that right-wing libertarians heed the vitally important dictum of Brand Blanshard in his Reason and Belief: that it is profoundly immoral to let one's opinions go beyond the range of one's knowledge.

What has revisionism to do with libertarianism? Many libertarians see no connection. Steeped in the theory of the non-aggression axiom, and that the State has always been the major aggressor, these libertarians see no need to concern themselves with the gubby details of the misdeeds and interrelations between Germany, Russia, Britain, the United States, and other particular states. If all States are evil, why worry about the details?

The first answer is that theory is not enough in dealing with the concrete world of reality. If all States are evil, some are more evil than others, some particular States have engaged in enormously more aggression, both internally against their subjects, and externally against the

citizens of other States. The State of Monaco has committed far less aggression than the State of Great Britain. If we libertarians are to understand the real world, and to try to bring about the victory of liberty in that world, we must understand the actual history of concrete, existent States. History provides the indispensable data by which we can understand and deal with our world, and by which we can assess the relative guilt, the relative degrees of aggression committed by the various states. Monaco, for example, is not one of our major problems in this world, but we can only learn this from knowledge of history, and not from *a priori* axioms. But of course to learn about concrete reality takes work, not only a substantial amount of reading, but also reading with the basic elements of revisionism in mind. Work that investigates the complexities of history, and that is not easily reducible to catch phrases and sloganeering.

Revisionism is an historical discipline made necessary by the fact that all States are governed by a ruling class that is a minority of the population, and which subsists as a parasitic and exploitative burden upon the rest of society. Since its rule is exploitative and parasitic, the State must purchase the alliance of a group of "Court Intellectuals", whose task is to bamboozle the public into accepting and celebrating the rule of its particular State. The Court Intellectuals have their work cut out for them. In exchange for their continuing work of apologetics and bamboozlement, the Court Intellectuals win their place as junior partners in the power, prestige, and loot extracted by the State apparatus from the deluded public.

The noble task of Revisionism is to de-bamboozle: to penetrate the fog of lies and deception of the State and its Court Intellectuals, and to present to the public the true history of the motivation, the nature, and the consequences of State activity. By working past the fog of State deception to penetrate to the truth, to the reality behind the false appearances, the Revisionist works to delegitimize, to desanctify, the State in the eyes of the previously deceived public. By doing so, the Revisionist, even if he is not a libertarian personally, performs a vitally important libertarian service. Hence, the Revisionist historian performs crucial libertarian tasks regardless of his own personal ideology. Since the State cannot function, cannot command majority support vital to its existence without imposing a network of deception, Revisionist history becomes a crucial part of the tasks of the libertarian movement. Crucial especially because Revisionism goes beyond pure theory to expose and reveal the specific lies and crimes of the State as it exists in concrete reality.

Revisionism can be "domestic"; thus, revisionist historians in recent years have shown that the growth of the American State in the twentieth century has come about, not in a "democratic" attempt to curb Big Business "monopoly", but in the course of a conscious desire by certain elements of Big Business to use the State to fasten a cartelized and monopolized economy upon American society. Revisionist historians have further shown that the "welfare" State injures, rather than benefits, the very groups that such a State allegedly helps and succors. In short, that the Welfare State is designed to aid the ruling coalition of certain Big Business groups and technocratic, statist intellectuals, at the expense of the remainder of society. If the knowledge of such historical truth became widespread, it would be difficult indeed for modern Big Government to sustain itself in operation.

While historical Revisionism has performed important services on the domestic front, its major thrust has dealt with war and foreign policy. For over a century, war has been the major method by which the State has fastened its rule upon a deluded public. There has been much discussion over the years among libertarians and classical liberals on why classical liberalism, so dominant in the early and mid-nineteenth century in Western Europe and America, failed ignominiously by the time of the advent of the twentieth century. The major reason is now clear: the ability of the State to wield patriotism as a weapon, to mobilize the masses of the public behind the interventionist and war policies of the various powerful States. War and foreign intervention are crucial methods by which a State expands its power and exploitation, and also provide elements of danger for one State at the hands of another. Yet the

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Center For Libertarian Studies Formed!

The heart and soul of libertarianism is its ideas, and the success of liberty will be still-born if that body of ideas is not discussed, advanced, and disseminated to scholars and interested students of liberty. For libertarianism is itself a growing discipline, one that cuts across and integrates material from a host of other disciplines in the sciences of human action: including philosophy, law, economics, history, sociology, biology, and education. But in order for this libertarian discipline to grow and prosper, there must be communication between and encouragement for the increasing number of younger scholars in the separate "official" disciplines. Modern higher education fosters isolated specialization, with little or no communication between the various scholarly fields. And yet, the spirit of liberty within these highly promising younger discipline, is bound to fizzle out unless there is increasing communication between these scholars, fruitful interchange and advance of ideas, and ways to encourage their research (including an outlet for publishing their findings.) No task is more important for the permanent nurturing and advance of liberty, and no course of action will have such a high "payoff" per unit dollar "invested." There are plenty of funds for other tasks with immediate returns; but this seemingly abstract and long-run development of the basic ideas and scholarship of liberty is a task of enormous importance that has so far been widely neglected.


Realizing the vital importance of building communication between libertarian scholars, especially the growing number of young thinkers and researchers, Professors Walter Grinder and Walter Block have held three annual fall Libertarian Scholars Conferences in the New York area. Operating with virtually no funds and under Spartan conditions, these conferences have nevertheless been outstanding successes: providing highly important papers and discussions in such areas as philosophy, history, sociology, economics, and law. Though with little hope of publication, the scholars nonetheless did outstanding work on papers that have still not seen the light of day.

Based on that experience, several of us in New York realized that the need for a center of libertarian scholarship is there, the people are there, and that now what we must do is to organize and appeal to a broad base of funding among the legion of those who would dearly like to see the discipline of libertarianism advance, and to foster and publish scholarly research in this vitally important area. And so, we have formed the Center for Libertarian Studies, and we hereby announce our existence and appeal for whatever funds you can spare.

Among the activities we are planning are the following: a periodical *Journal of Libertarian Studies*, filling at long last the need for a continuing libertarian journal on the highest scholarly level; *Occasional Papers*, pamphlets to be published by the Center; a *Newsletter* informing friends and donors of our activities; annual *Libertarian Scholars Conferences*, which will have enough support to bring in scholars from around the country; *Special Conferences* on particular scholarly themes; *Fellowships* to enable junior scholars across the country to come to New York to study with the resident scholars there; *Lectures or Lecture Series* by Center scholars.

Officers of the Center for Libertarian Studies are John Hagel III, President; Walter E. Grinder, Secretary and Executive Director; Walter Block, Treasurer; and Murray N. Rothbard, Editor, *Journal of Libertarian Studies*. Other members of the Executive Committee of the Center are: Williamson Evers, Dale Grinder, Chuck Hamilton, Robert D. Kephart, Leonard P. Liggio, Joseph R. Reden, Ralph Raico, and Joseph R. Stromberg. For our Board of Advisors for the Center and *Journal* we have been fortunate to obtain the following distinguished scholars: Friedrich A. Hayek, Nobel laureate in Economics; Yale Brozen, professor of economics, University of Chicago; Arthur A. Ekirch, professor of history, State University of New York, Albany; Jean-Pierre Hamilius, professor of economics, Luxembourg; Henry Hazlitt; John Hospers, professor of philosophy, University of Southern California; James J. Martin; Felix Morley; James A. Sadowsky, S. J., professor of philosophy, Fordham University; Louis M. Spadaro, professor of economics, Fordham University; Dr. Thomas S. Szasz, professor of psychiatry, Upstate Medical Center, Syracuse, N. Y. And in view of our

desire to carry forward the ideals of their late husbands, we are particularly honored to have on our Board of Advisors, Mrs. F. A. Haper and Mrs. Ludwig von Mises.

Donations to the Center are tax-deductible; checks should be made out to the Fund for New Educational Projects. Donors of \$100 or over, who will constitute the "Friends of the Center", will receive all of the Center's publications gratis, as well as invitations to the Center's by-invitation-only conferences. Inquiries or donations should be sent to the Center for Libertarian Studies, 200 West 58th St., Suite 5D, New York, N. Y. 10019. 

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State — every State — has been particularly successful in deluding its citizens that it fights wars and intervenes in other countries for their protection and benefit; when the reality is that war provides a golden opportunity for the State to bamboozle its citizens into gathering together to defend it and to advance its interests and its power. Since war and foreign policy provide the State with its easiest means of delusion and deception, Revisionist exposure on the foreign affairs front is the most important avenue of desanctification and delegitimation of the State apparatus and of State aggression.

In the Revisionist exposure of the truths about foreign affairs, one particular myth, strongly held by most Americans and even by most libertarians, has been of supreme importance: namely, the myth propagated by the arch-statist and interventionist Woodrow Wilson that domestic dictatorships are always hellbent on foreign war and aggression, while domestic democracies invariably conduct a peaceful and non-aggressive foreign policy. While this correlation between domestic dictatorship and foreign aggression has a superficial plausibility, it is **simply not true** on the factual, historical record. There have been many domestic dictatorships that have turned inward upon themselves and have therefore been pacific in foreign relations (e.g. Japan before its compulsory "opening up" in the mid-nineteenth century by the U. S. 's Commodore Perry); and all too many domestic "democracies" that have conducted a warlike and aggressive foreign policy (e.g., Britain and the United States.) The existence of democratic voting, far from being a barrier against foreign aggression, simply means that the State must conduct its propaganda more intensively and more cleverly, in order to bamboozle the voters. Unfortunately, the State and its Court Intellectuals have been all too equal to this task.

In the history of foreign affairs, then, a *priori* history simply does not work; there is nothing to be done but engage in a detailed and concrete historical inquiry into the detailed wars and aggressions of particular States, keeping in mind that the record of the foreign policy of "democracies" needs even more debamboozlement than the foreign conduct of dictatorships. There is no way to deduce relative degrees of guilt for war and imperialism from libertarian axioms or from the simple degree of internal dictatorship in any particular country. The degree of guilt for war or imperialism is a purely evidentiary question, and there is no escape from the task of looking hard at the evidence.

The result of such a cool-eyed empirical look at the evidence, at the history of particular States in the modern world, is bound to be a shock for Americans raised on the foreign affairs mythology propounded by the Court Intellectuals of the media and of our educational system. Namely, that the major aggressor, the major imperialist and war-monger, in the nineteenth and down through the first half of the twentieth century, was Great Britain; and, further, that the United States signed on, during World War I, as a junior partner of the British Empire, only to replace it as the major imperial and war-mongering power after World War II. The Wilsonian ideology is simply a pernicious myth, especially as applied to Britain and the United States in the twentieth century, and libertarians

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Fuller, Law, And Anarchism

By Randy E. Barnett*

(Editor's Note: Mr. Barnett's article is of great importance for libertarian and anarchist legal philosophy. For what he shows is, that by taking the great natural law legal philosophy Lon Fuller's concept of proper law, and applying it to substantive content of the law, one arrives at the remarkable conclusion that the State itself is illegal, by any intelligible formulation of legal forms. And so, not only are archists wrong in thinking that the State is necessary for the development of law, but the State is in basic and inherent contradiction to law itself!)

I

The Harvard Law School lecture hall was deafeningly still as Lon Fuller rose from his chair and slowly walked to the blackboard. Almost gracefully the old man drew a vertical line with an arrow at the bottom end. "This is how most people view the law," he said. "They see it as a command from above." Then he drew a horizontal line with arrows at both ends. "But this," he continued, "is the way most law actually is. A way for people to order their lives by knowing what to expect of others." As he continued his talk, focusing for a good deal of time on which side of the road we drive on and which side we pass on, one could almost feel the disappointment in the air. So that was all the great man had to say. Ah, it's too bad that age has to dim the mind so. This at any rate was the look in people's eyes.

I must confess to a similar feeling — that is, at first. I had been thinking along much the same lines, but I was hoping for much more in the way of an elaboration. Well, maybe I should re-read his book, I told myself. When I did I discovered to my surprise that what I was searching for was there and in brilliant form. I had read *The Morality of Law* several years earlier and, while I liked it at the time, I had either completely missed the crucial points or completely forgotten them (probably the former). Now I seized upon every argument with the passion.

Professor Fuller (Carter Professor of Jurisprudence, Emeritus, Har-

vard Law School) lays out a view of law as a purposive enterprise. The purpose which animates the law also determines in a general way the form a law should take. This internal dynamic Fuller calls the morality of law. It is a guideline to how one should make law if one wishes to make good law. Like Fuller's talk, this approach sounds simple, deceptively so. The implications of *The Morality of Law* are far reaching, perhaps, one might argue, even revolutionary. The purpose of this paper is to examine a few of these implications.

II

Before embarking on an analysis of Fuller's views, it might be prudent to first spell them out in a bit more detail. Fuller argues that there are two sorts of morality: the morality of aspiration and the morality of duty. The morality of aspiration "is the morality of the Good Life, of excellence, of the fullest realization of human powers . . . (A) man might fail to realize his fullest capabilities . . . But in such a case he was condemned for failure, not for being recreant to duty; for shortcoming, not for wrongdoing." (5) The morality of duty, on the other hand,

"lays down the basic rules without which an ordered society directed toward certain specific goals must fall short of its mark . . . It does not condemn men for failing to embrace opportunities for the fullest realization of their powers. Instead, it condemns them for failing to respect the basic requirements of social living." (5, 6)

The substance of the law, argues Fuller, deals only with duty. It must act to enforce certain reciprocal understandings in order to avoid harm to the innocent. It cannot and should not "compel a man to live the life of reason . . . We can only create the conditions essential for rational human existence. These are the necessary, but not the sufficient conditions for the achievement of that end." (9) Fuller sees three conditions for the op-

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must simply gird themselves to unlearn that myth, and to bring themselves into tune with historical truth. Since libertarians have managed to unlearn many of the domestic myths promulgated by the American State, one hopes that they can find it in their hearts to unlearn the pervasive foreign policy myth as well. Only then will classical liberalism, let alone full libertarianism, be able to achieve a full Renaissance in the Western world, and especially within America.

The Greatest deception of the American (and the British) State, then, is its allegedly defensive and pacifistic foreign policy. When Revisionists maintain, therefore, that the major guilt for war and imperialism in the twentieth century belongs to the United States and to Great Britain, they are not necessarily maintaining that the various enemies of the United States have been domestically and internally less dictatorial or aggressive than the United States government. Certainly, libertarian revisionists do not maintain this thesis. No libertarian would claim that the internal polity of the Soviet Union, Communist China, Nazi Germany, or even Kaiser Wilhelm's Germany was less despotic than that of Britain or the United States. Quite the contrary. But what libertarian, as well as other, Revisionists, do maintain is that the U. S. and Great Britain were, as a matter of empirical fact, the major aggressors and war-mongers in each of these particular wars and conflicts. Such truths may be unpalatable to a priori "historians", but they are facts of reality nevertheless.

Furthermore, as indicated above, it is precisely the use of war and war mythology that has led to the acceleration of domestic statism in the U. S. and in Great Britain in this century. In fact, every significant advance of American statism has come about in the course of one of its allegedly "defensive" wars. The Civil War crushed states' rights and brought about an inflationary and statist banking system, a regime of high tariffs and subsidies to railroads, and income and federal excise taxation; World War I ushered in the modern planning and "New Deal" Welfare-Warfare

State in America; and World War II and the Cold War completed that task and led to the current Big Government Leviathan that we suffer under today. It is highly relevant and vital to the understanding of the burgeoning American State that each of these consequences were not unfortunate accidents brought about by foreign "aggressors", but the result of a conscious and deliberate aggressive and war-mongering policy indulged in by the American State.

Revisionism therefore reveals to us in all its starkness that the State Enemy in the United States is purely at home and not abroad. Foreign States have served merely as scapegoats for the aggrandizement of American State power at home and abroad, over domestic citizens and foreign peoples. The Enemy is not a foreign bogey, but here in our midst. Only full understanding of this truth by libertarians and other Americans can enable us to identify the problems we face and to proceed to insure the victory of liberty. Before we can overcome our enemies, we must know who they are.

To defend its depredations, the American State has been able, with the help of its Court Intellectuals, to employ a powerful propaganda weapon to silence its opponents and to further delude its public. Namely, to label the critics of its imperialist and war policies conscious or unconscious agents or sympathizers with the domestic policies of its various State enemies. And so, throughout this century, Revisionists, even libertarian Revisionists, have been continually accused of being tools or sympathizers of the Kaiser, of the Nazis, or of the Communists — sometimes all at once or *seriatim*. In this post-Wilsonian age, even a priori libertarians have been duped into tarring Revisionist libertarians with the same smear brush. Even the imbecility of thinking for one moment that a libertarian can really be a Nazi or a Communist has not deterred the bamboozled libertarians from smearing and denigrating their more clear-sighted colleagues. What is needed above all is to cast off the post-Wilsonian mythology and a priori history of twentieth century American propaganda, and to realize that the (American) Emperor really has no clothes. The penetrating truths of Revisionism are needed to de-bamboozle libertarians along with other Americans; hopefully, this issue of Reason will contribute to this vital task. ■

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timum efficacy of the notion of duty." (23) First, the duty must be created by the parties themselves. "The reciprocity out of which the duty arises must result from a voluntary agreement between the parties immediately affected." (23)

Second the performances required must be in some sense equal in value. Here I must disagree. Fuller searches for some measure of value to apply to things which are different in kind. Such a search will prove as fruitless as the medieval search for a "just price" and for the same reason. The subjective valuations of the parties (the only standard of relevance in a voluntary exchange) are incommensurable by virtue of their subjectivity. What Fuller may be searching for (as his later reliance on the concept of marginal utility reveals) is a notion of an *ex ante* desire of each party for that thing held by the other. Only if such a condition exists is a free exchange possible, else why exchange? Fuller points out that "we cannot speak of an exact identity, for it makes no sense at all to exchange, say a book or idea in return for exactly the same book or idea." (23) We leave to the parties the determination of the "fairness" of the exchange. Surely this satisfies Fuller's second condition of a situation which makes "a strong appeal to the sense of justice." (23)

The third condition is that "the relationships within the society must be sufficiently fluid so that the same duty you owe me today I may owe you tomorrow — in other words, the relationship of duty must in theory and in practice be reversible." (23)

Fuller feels that without this condition, as a practical matter, people will have no reason to honor their obligations and further, citing F. A. Hayek, that a society of free traders, capitalism, is the most conducive to the development of moral and legal duty.

The purpose of law, then, is to protect this requisite reciprocity thereby giving rise to duties. It operates "at the lower levels of human achievement where a defective performance can be recognized if care is taken, with comparative certainty and formal standards for judging it can be established." (31) It does not reward virtuous acts. This is left to more subjective, intuitive, and largely informal procedures. The prime purpose of law is the discernment and enforcement of legal duties and nothing more. This is entirely consistent with the natural rights tradition. On this view, these requisite legal duties are what rights are and their very formulation depends on their objective necessity as a condition of rational human existence. The law, then, must enforce human rights and nothing more.

To confine the purpose of law to the enforcement of duties is not, however, to minimize either its importance or the difficulties involved. Fuller argues that it is this purpose, however difficult, that determines the nature of the legal enterprise. And he sees the law as exactly that: an enterprise. Those who see the law as essentially a command (such as H. L. A. Hart) are wrong. Law is no mere one-way street. It is as much a co-operative project as medicine or carpentry and as such it is governed by certain common sense rules. These rules are not arbitrary. They are and must be consistent with the goal of law: the determination of general rules of behavior to allow rational (or irrational for that matter) men to plan and act.

If these rules of lawmaking are not arbitrary, nor are they precise or absolute. The process of reaching the best possible law is, like all endeavors toward perfection, governed by the morality of aspiration, that is, they are more an art than a science. Fuller gives eight ways to fail to make a law, but he cannot, nor can anyone, say exactly when one factor should be given precedence over another. This decision must be made by the skillful practitioner based on the facts of each instance of lawmaking, just as a diagnosis of disease and a prescription for its cure can only be made well on an individual basis by a skilled physician.

Fuller lists eight roads to disaster:

"The first and most obvious lies in a failure to achieve rules at all, so that every issue must be decided on an ad hoc basis. The other routes are: (2) a failure to publicize, or at least to make available to the affected party, the rules he is expected to observe; (3) the abuse of retroactive legislation, which not only cannot itself guide action, but

undercuts the integrity of rules prospective in effect, since it puts them under the threat of retrospective change; (4) a failure to make rules understandable; (5) the enactment of contradictory rules or (6) rules that require conduct beyond powers of the affected party; (7) introducing such frequent changes in the rules that the subject cannot orient his action by them; and, finally, (8) a failure of congruence between the rules as announced and their actual administration." (39)

The thrust of Fuller's anti-positivism is his contention that to the degree that a lawmaker fails to follow any one of these eight directions, he does not simply make "bad law": he makes something that is not properly called law at all. (39) And while these eight routes to failure point to the indispensable conditions for law on its lowest level, they also serve as "eight kinds of legal excellence toward which a system of rules may strive." (41) The law, then, "embraces a morality of duty and a morality of aspiration. It . . . confronts us with the problem of knowing where to draw the boundary below which men will be and above which they will be admired for success and at worst pitied for the lack of it." (42)

III

This then is Fuller's scheme. He sees in current legal thinking a persistent error. "This is the assumption that law should be viewed not as the product of an interplay of purposive orientations between the citizen and his government (or lawmaker) but as a one-way projection of authority, originating with government and imposing itself upon the citizen." (204) He feels that theorists are wrong in identifying law with the nation-state. Law, he points out, is everywhere around us in forms not imposed from above. International law, tribal law, the rules of private organizations are all "horizontal" forms of law. It is only the vertical conception of law which prevents the identification of these systems as legal systems.

With examples of "reciprocal" or horizontal law abundant in history and the world, Fuller is at a loss to figure why contemporary thinkers refuse to see the law in this light. I shall attempt to put forward an explanation for this phenomena. This explanation rests on Fuller's internal morality of law, or, more precisely, on principle of legal excellence: that a lawmaker should itself obey the rules it sets up to govern its citizenry. We must, then, examine this, Fuller's eighth principle, in more detail.

The question which gives the positivists the more trouble is, "How can a person, a family, a tribe, or a nation impose law on itself that will control its relations with other persons, families, tribes, or nations?" (233) The positivists view law as a thing which cannot be self-imposed; it must proceed from a higher authority. Fuller's answer emphasizes his eighth principle: "Now I suggest that all these questions would require radical redefinition if we were to recognize one simple, basic reality, namely, that enacted law itself presupposes a commitment by the governing authority to abide by its own rules in dealing with its subjects." (233)

What Fuller means by this is that the rule-maker must first make rules by which laws are to be passed. It must then abide by these rules because of the expectations of the subjects that it will do so. The failure of the positivists to distinguish between the power of the State and the law is their failure to see that the law-maker is constrained by his own rules imposed from below by the expectations of the citizenry. Thus even a State legal system is a two-way system.

I maintain, however, that this does not adequately explain the positivists' erroneous concept of law. Fuller fails in his attempt because he has not followed his own principle far enough. If he did, he would see that the state legal system does not conform to the principle of official congruence with its own rules. It is because the positivists see that the State inherently violates its own rules that they conclude, in a sense correctly that State-made law is *sui generis*. An elaboration is obviously called for.

First of all, what do we mean when we speak of the "State"?

I have no quarrel with Weber's definition as put forth in his book, *The Theory of Social and Economic Organization*:

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"A compulsory political association with a continuous organization (*politischer Anstaltsbetrieb*) will be called a "state" if and insofar as its administrative staff successfully upholds a claim to the monopoly of the legitimate use of physical force in the enforcement of its order." (p. 154)

Furthermore, it is a central characteristic, if not an essential one of the State that it claims the power to tax.*

Fuller's eighth requirement is that "the governing authority (must) abide by its own rules in dealing with its subjects." (23) I accept this principle as stated by Fuller but would disagree with his interpretation of it. I take this principle to mean that "what's good for the goose is good for the gander" or, more formally, the lawmaker must obey the substance of his own laws. Fuller errs in limiting the commitment of the lawmaker, not to follow all his own rules, but only those rules which govern how to make a law. Clearly our formulation of this principle is a far more reciprocal one. And actually Fuller gives no reason why he limits the principle in the way he does.

If we accept what Fuller says but not his narrow interpretation, it becomes obvious that the State by its nature must violate this commitment. For example, the State says that citizens may not take from another by force and against his will that which belongs to another. And yet the State through its power to tax "legitimately" does just that. (Any reason why the State taxes is irrelevant to this discussion since we are only dealing here with the fact that this action is incongruent with its own rules for its citizens) More essentially, the State says that the person may use force upon another only in self-defense, i.e. only as a defense against another who initiated the use of force. To go beyond one's right of self-defense would be to aggress on the rights of others, a violation of one's legal duty. And yet the State by its claimed monopoly forcibly imposes its jurisdiction on persons who may have done nothing wrong. By doing so it aggresses against the rights of its citizens, something which it rules say citizens may not do.

The State, in short, may steal where its subjects may not and it may aggress (initiate the use of force) against its subjects while prohibiting them from exercising the same right. It is to this that the positivists look when they say that the law (meaning State-made law) is a one-way, vertical process. It is this that belies any claim of true reciprocity.

Fuller's principle is correct, but he is wrong in applying it only to the lawmaker's obligation to follow his own procedure (which indeed it must). A lawmaker fails to act in congruence with its rules and, as a result, fails to achieve the aspiration of a legal system to the extent that it fails to follow all of its rules, procedural and substantive alike. To the degree that it does not and cannot do this it is not and cannot be a legal system and its acts are outside the law. The State *qua* state, therefore is an illegal system.

While Professor Fuller cannot be expected to agree with this analysis, it is quite plain that he would not be shocked by its conclusion. First, we do not contend that all State-made law is not law. It is a question of degree. Only when and to the degree that the State does not follow its own rules (as well as Fuller's seven other requirements) is it acting illegally. True, a State must by its nature act illegally, but Fuller has no trouble envisioning a Stateless, non-monopolistic system of law.

The objectionable aspect inherent to the State is its coercively monopolistic element. The alternative would be a non-monopolistic or multiple system of law. That such a system is perfectly consistent with Fuller's concept of law as a purposive enterprise says much for his concept. As he himself states, "A possible . . . objection to the view (of law) taken here is that it permits the existence of more than one legal system governing the same population. The answer is, of course, that such multiple systems do exist and have in history been more common than unitary systems." (123)

Anarchists have long had trouble with the concept of law. Because they too have identified law with the institution that makes it, the State, many have rejected law altogether. Many critics of anarchism insist that without a state there can be no law. But Fuller has no such trouble. He argues that such theoretical difficulties "can arise only if theory has committed itself to the view that the concept of law requires a neatly defined hierarchy of authority with a supreme legislative power at the top that is free from legal restraints (emphasis added)" (124) Fuller's whole purpose is, of course, to reject this vertical view of law.

As to the practical difficulties of such a system, Fuller points out that they "can arise when there is a real rub between systems because their boundaries of competence have not been and perhaps cannot be clearly defined." (124) He points out that one possible solution, a constitutional arrangement, "is useful, but not in all cases indispensable. Historically dual and triple systems have functioned without serious friction, and when conflict has arisen it has been solved by some kind of voluntary accommodation." (124)

IV

The Morality of Law, then, is truly a revolutionary document. Its view of law as an enterprise whose purpose it is to establish general rules of behavior distinguishes the rule of law from the rule of the State. And if one places on Fuller's eighth principle what I contend is its proper construction, the State is shown to be as essentially illegal form of legal system. Then, almost as icing on the cake, Fuller tells us that not only is the alternative of a multiple legal system consistent with a proper view of law, it is practical and possible as well.

All this Lon Fuller simply and elegantly told his audience. However great their expectations may have been that night, it can now be seen that they were more than fulfilled. That his listeners came to hear something great, heard something great and yet were disappointed by what they heard must be termed ironic; more than that, it is also pathetic. ■

*Mr. Barnett is a student at Harvard Law School.

*I refuse, however, to become embroiled in a debate over the definition of the State. The inevitable result of such semantic disputes is either that one is urged to broaden the definition so that we see "states" everywhere or narrow it to show that there's really no such thing as a State. Such entreaties are illegitimate. The State (unfortunately) exists so let's define it so as to distinguish it from organizations which are not states by picking out its essential features and get on with our analysis.

"The considerations and objectives that have guided the colonial policy of the European powers since the age of the great discoveries stand in the sharpest contrast to all the principles of liberalism. The basic idea of colonial policy was to take advantage of the military superiority of the white race over the members of other races. The Europeans set out, equipped with all the weapons and contrivances that their civilization placed at their disposal, to subjugate weaker peoples, to rob them of their property, and to enslave them . . . If, as we believe, European civilization really is superior to that of the primitive tribes of Africa or to the civilizations of Asia—estimable though the latter may be in their own way—it should be able to prove its superiority by inspiring these peoples to adopt it of their own accord. Could there be a more doleful proof of the sterility of European civilization than that it can be spread by no other means than fire and sword?"

—Ludwig von Mises, *The Free and Prosperous Commonwealth*.

"The one bright moment in the Taft Administration, in fact, came when Dr. Taft was given his drubbing in November, 1912. Turning out such gross incompetents, to be sure, does very little practical good, for they are commonly followed by successors almost as bad, but it at least gives the voters a chance to register their disgust, and so it keeps them reasonably contented, and turns their thoughts away from the barricade and the bomb. Democracy, of course, does not work, but it is a capital anaesthetic."

— H. L. Mencken

Von Hoffman Versus Schlesinger

By this time, it is no news to libertarians that Nicholas von Hoffman is our outstanding sympathizer in the mass media. While not a consistent libertarian, von Hoffman has had the intellectual independence and breadth of vision to cast off left-liberal shackles to espouse libertarian positions on almost all the issues that count. He has endorsed every major Libertarian Party ticket in the last few years; and he is a living proof that libertarianism can attract converts and sympathizers from the New Left as well as the Old Right. In his syndicated column of February 19, von Hoffman has a brilliant and withering critique of that idol of all too many right-wing libertarians: the ultrahawk "martyr" James Schlesinger.

Von Hoffman notes that *Fortune* magazine for February is virtually given over to the apotheosis of Schlesinger: not only a lead article espousing his pro-war stance, but even a cover portrait of the brutal bureaucrathawk as Hero, done, as von Hoffman says, "in the brush strokes of capitalist realism." Posing as a hard-nosed realist, the article reveals that Schlesinger, along with his colleagues and disciples is rather what C. Wright Mills once called a "crackpot realist". For, writes von Hoffman, "what we have here, rather, is a sermon, a religious statement. The theme is dark and predestinarian." God, working in history, has thrust upon America the role of policer and ruler of the world, "a painful role of sacrifice unending", in von Hoffman's words. Or, in Schlesinger's own words, "the weight of responsibility placed on the United States will not disappear . . ." Placed by whom? As von Hoffman notes, "the essence of predestinarian Calvinist virtue was to understand the inevitable fate God has prepared and to cooperate with it." And so, with a sober heart, we take up the painful but necessary weight of God's burden to maintain and expand the American Empire in waging the fight against the Communist Devil.

But, says Schlesinger, there is a problem; for the United States has sinned, sinned in having a "faltering purpose." In short, we have begun to chafe under the burden of God's commandments. For the United States is "a nation apparently withdrawing from the burdens of leadership and power". Why have we withdrawn from these burdens? Because we have not realized that interventionism and imperialism are not ours to choose but ordained commands. Again in Schlesinger's words: "America's involvement in the external world . . . has appeared to be a matter of simple choice reflecting nothing more fundamental than our tastes or moral preferences."


And so, to quote von Hoffman: "Hence the practice of morality becomes the sin of sloth and gluttony, but there is a sacrament which revivifies, forgives, and puts us again as one with a gloomy destiny God has preordained for us. That sacrament is power. Power will overcome 'the loss of vision, or moral stamina, of national purpose . . . !'"

The Devil, of course, makes no such mistake. As always in the theology

of the anti-Communist crusaders, the Communist Devil is all-wise, all-seeing, free from error or fallibility, though of course totally evil. For, says Schlesinger, "By contrast, Soviet leaders have consistently valued power in general, aside from specific uses . . ." The Soviets, as von Hoffman notes, "appreciate the power of power, the sacrament for its own sake."

And so we must take on the trappings and the majesty of Power; to fight the Communist Power, we must imitate it. Schlesinger even hacks away at the great Lord Acton's dictum that "power corrupts", for, says our apologist for Power, this "neglects an equally important truth. Weakness also corrupts . . ."

James Schlesinger is, indeed, as von Hoffman calls him, "Dr. Death." In Schlesinger's world-outlook we hear the echoes of the insane and infamous war-cry of Spanish fascism: "Long Live Death!" Schlesinger and his supporters have thrown down the gauntlet to all lovers of liberty; for they have consciously cast their lot with Power. The American revolutionaries knew the alternatives; for they knew that the basic and fateful choice for mankind was and always will be: "Liberty or Power", and they knew that the two stand in fatal and unending confrontation. Power is always the enemy of liberty. In America, the Communist Party consists of a few aging hacks running Gus Hall for President; but James Schlesinger and his numerous and powerful followers stand very close to the levers of Power, including the nuclear button. For American liberty, for the peace of the world, for the lives and properties of all of us, James Schlesinger and all his cohorts: the Moynihans, the Reagans, the Buckleyes, etc. are The Enemy. We believe that man does have the free will to choose, to choose liberty and reject Power now and forever.

And to those libertarians who are falling for the siren song of Schlesingerism, we beseech you to consider this: Why is it that you have not been taken in by the massive propaganda for domestic statism, for Social Security, for the minimum wage, for OSHA, or whatever; and yet you allow yourselves to swallow whole the massive propaganda for the essence of the brutal State: for war for militarism, and for Empire? For here is the very essence of the State, and yet here you parrot the Establishment line without question or cavil; here you fall for every foreign bogey that the State has devised. Don't you know why classical liberalism, our forebears fell apart at the end of the nineteenth century? It is because so many of the Liberals, here and in Europe, fell for the siren song of war and empire. As England, the home of the great laissez-faire and anti-war and anti-imperialist liberals, Cobden and Bright, fell for the war calls of Palmerston and then of "Liberal Imperialism" and marched into disaster. We beseech you, in the bowels of Liberty, to stop your unthinking support of the war crusaders before it is too late, too late for liberty and even for the human race itself. 

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